

Vinson&Elkins

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Power Series

Power: Structuring a Data Center

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Today's Speakers



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Overview of Structuring Options

Overview of Power Structuring Options for Data Centers / AI Facilities

- **Front-of-the-Meter (“FTM”): Retail**

- Energy supplier serves campus as end-use customer under state retail rules
- Blends wholesale procurement with retail delivery and tariff interfaces
- Compatible with sophisticated ramping and minimum load constructs
- Mitigates performance and outage risks via market sourcing capability

- **FTM: Wholesale**

- Direct participation in organized wholesale markets
- Seller typically manages transmission and wholesale market interface on a passthrough basis; Buyer responsible for distribution and retail interface
- Suitable where resale or market participation is intended
- Without a permissive regulatory structure, may need to be combined with a “Sleeve”

Overview of Power Structuring Options for Data Centers / AI Facilities (cont'd)

- **Sleeving (Combination of Wholesale and Retail FTM Transactions)**
 - Supplier delivers wholesale products to a retail provider, and the retail provider in turn delivers products to the data center
 - Pricing can be pass-through or block-based with imbalance mechanisms
 - Centralizes balancing and forecasting at supplier level
 - Often requires intricate “lockbox” agreements to solve for credit matters
- **Behind-the-Meter (“BTM”)**
 - Dedicated generation (and typically BESS for larger projects) at or near campus
 - Microgrid controls designed for stringent availability requirements
 - Mitigates local power quality risk through on-site redundancy
- **Equipment Lease + Services Agreement**
 - Lessor owns and leases generation equipment to data center; separate services agreement covers O&M, fuel, and dispatch
 - Separates equipment ownership from operational risk; tailored allocation of maintenance and performance risk
 - May offer favorable balance sheet and tax treatment; common in BTM and bridge power contexts

Overview of Power Structuring Options for Data Centers / AI Facilities (cont'd)

- **Bridge Power**

- Shorter term BTM solution, often utilizing “mobile” generation resources (i.e., 5 – 25 MW mobile pacs), fuel cells
- Structured as a modular, scalable microgrid platform (typically with dual-fuel – natural gas / diesel – capabilities)
- Rapid deployment timeline compared to permanent generation assets to enable early data center energization and preliminary ramping

- **Build-Own-Transfer (“BOT”)**

- Developer finances, builds, commissions, and sometimes operates power assets before transferring ownership at COD or after a period of operation
- Shifts development risk and is increasingly used by both hyperscalers and utilities; Compatible with most structures discussed above
- Utilities outside RTOs use BOT to meet AI demand while avoiding ratepayer subsidization in early development stages

- **Framework Agreements**

- Staged development with go/no-go decision points
- Pre-set commercial terms convert to executable PPAs as projects mature
- Accommodates rapid scale-up with defined windowing mechanisms

Revenue and Cost Models

Pricing Overview

Fixed Charges (Capacity — \$/MW)

- Monthly payments based on contracted MW
- Covers capital recovery, fixed O&M, and return on investment
- Common in BTM, bridge power, and tolling structures
- Provides bankable revenue for project financing

Variable Charges (Energy — \$/MWh)

- Per-MWh pricing for delivered energy
- May be fixed, indexed to CPI, or market-referenced
- Often steps up in tranches as load ramps
- Subject to "minimum commitment" floors

Passthrough Costs

- Transmission, distribution, and ancillary services
- RTO/ISO administrative charges
- State taxes and RPS compliance costs
- Day-ahead vs. real-time price differentials ("DART spread")

Key Insight: In FTM structures, the split between seller and buyer responsibility is critical. The seller typically bears wholesale energy and capacity procurement risk; the buyer bears regulated passthrough charges.

Minimum Load Commitments

The Problem

Data centers ramp over months or years, but power suppliers need predictable revenue from day one to finance their projects. How do you bridge that gap?

The Solution

Minimum load commitments — the buyer guarantees a floor level of consumption (or pays as if it did). The floor ramps in defined "tranches" as the campus is built out.

Key Mechanics

Tranched Delivery: The contract defines successive capacity tranches. Each tranche has its own minimum load, pricing, and start date. Energy is assigned to tranches in sequence.

Shortfall Settlement: If the buyer takes less than its minimum in any hour, it pays the difference between the contract price and the market price (times the shortfall volume). If the market price exceeds the contract price, the supplier shares a portion of the upside.

Acceleration Rights: The buyer can accelerate a future tranche's minimum with 12–24 months' notice. This is permanent — the buyer cannot later reduce it. Pricing stays locked at the tranche rate.

Force Majeure: Typically does not excuse minimum load obligations. This is a hard point for the power supplier's financing — lenders require revenue certainty regardless of the buyer's circumstances.

Delay and Performance

Delay Framework

- **General Framework**

- Trigger: Unexcused delayed capacity (FTM) or energy availability (BTM)
- Remedy: Liquidated damages, typically on a per-MW-day basis, however, certain FTM structures will require Seller's procurement of replacement capacity or indemnification for any resource-adequacy deficiency penalties
- Cap: Delay damages are often subject to an aggregate cap
- Termination: Market is moving away from delay-triggered termination rights toward self-help and cure rights, driven by lenders, but many existing agreements provide Buyer a termination right for failure to satisfy a longstop date

- **Excusable Delay (typically day-for-day scheduling relief, sometimes capped at 365 days)**

- Interconnection agreement or network upgrade delays beyond Seller's control
- Material regulatory changes affecting critical path
- Force majeure events meeting contract definition
- Buyer acts/omissions in breach or violation of law

- **New Trend: Step-In Rights as Ultimate Remedy**

Availability / Performance Guarantees

Element	FTM PPA	BTM / Bridge Power Solution
Measurement Basis	Expected output based on resource/capacity factor	Energy requested up to contracted capacity
Typical Target	95–98% annually	99%+ monthly (per building/load block)
Excused Events	Force majeure, curtailment, transmission constraints	Force majeure, Buyer failures, fuel supply events
Remedy Structure	Replacement energy or cover damages	Tiered LDs; capacity payment adjustment after cap

- **Common Structural Features**

- FTM structures are somewhat mitigated given inherent grid connectivity
- Credited delivery capped at contracted capacity to prevent over-delivery from masking shortfalls
- Tiered liquidated damages regime with escalating penalties as availability declines
- Aggregate LD caps with capacity payment reductions or termination rights for sustained underperformance
- Exclusive remedy for isolated failures; termination preserved for chronic deficiencies

- **Bridge Power Considerations**

- Equipment swap or rapid unit replacement rights for underperforming mobile pac units
- Heat rate guarantees common in tolling structures
- Modular redundancy provides inherent availability protection

Change of Control and Assignment

Assignment and Change of Control Considerations

Seller

- Certain COC and non-affiliate assignments require Buyer consent
- **"Approved Purchaser" safe harbors:**
 - Technical experience (operated comparable generation)
 - Investment-grade or equivalent credit rating maintained
 - Not a competitor or party in material dispute with Buyer
 - No rating downgrade after contract date
- Collateral assignments to financing parties permitted without consent (customary consents and estoppels required)

Buyer

- Affiliate transfers permitted without consent; notice required
- Campus occupant transfers permitted if assignee assumes all Buyer obligations
- **"Credit Buyer" threshold for non-affiliate assignees:**
 - Equivalent credit rating and market capitalization tests
 - Equivalent credit support must be posted or maintained
 - Replacement security required upon ownership changes
 - COC can be very Buyer specific and tailored

Developing Issue: IPOs and Newer Market Entrants

Many newer data center entrants lack the established credit profiles of Google, Microsoft, or Amazon. Where a buyer (or its parent) is pre-IPO or recently public, COC provisions require careful attention: an IPO may itself constitute a change of control, rating-based thresholds may not apply to unrated entities, and the credit support package may need to be restructured at or around the IPO. Sellers and their lenders are increasingly focused on "credit cliff" risk — the possibility that a buyer's financial profile changes materially after signing. Drafting should address IPO-triggered COC events, transitional credit support mechanics, and substitute guarantor requirements.

Termination Matters

Termination Payments

- Common approach in FTM structures is for the non-defaulting party to calculate gains, losses, and costs in good faith, aggregated into a single net settlement amount
- BTM / bridge power solutions are more complex and may contemplate present value of all future payments
- FTM compares contract cost of remaining capacity and energy to market price of equivalent reliability and scheduling flexibility
- Market price determined by reference to settlement prices of energy futures, dealer quotations, third-party replacement offers, forward price curves, and liquid trading hub prices
- Adjustments for length of remaining term, locational basis differences, reliability, and scheduling flexibility
- Project-specific additions may include fuel cost reimbursement obligations and defined liquidated damages

Why this matters: On a 15–20 year contract worth hundreds of millions to billions of dollars, the termination payment methodology can produce wildly different outcomes depending on market conditions at the time of termination. The choice of valuation inputs, discount rate, and whether the calculation is one-way or two-way are among the most heavily negotiated provisions in these agreements.

Regulatory Considerations

Source of Regulation

Who Regulates the Data Center Arrangement?

- Traditionally, the States
 - State utility laws and regulations
 - Local utility tariffs
- Where applicable, a regional transmission operator/independent system operator (RTO/ISO)
 - Examples: ERCOT, PJM, Southwest Power Pool, MISO
- Potentially FERC
 - DOE suggested a FERC rulemaking
 - FERC instead issued show cause orders to interstate RTOs/ISOs
- Potentially NERC
 - Reliability standards under development on issues like voltage and frequency ride-through concerns

Commercial Arrangements

- Power Delivery Mechanics in Context of Utility Regulation
 - Self-service
 - Incidence of tenancy
 - Electric generation equipment lessor or operator
 - Others
- FTM, BTM, Bridge Power, and/or Off-Grid Island Configurations
- Large Load Thresholds
- Interconnection Queue Requirements
- BYOG
- Firmness of Service
- Transmission Cost Allocation Strategies

Real Estate Considerations

Site Selection

- **Path to Power**
 - Developers prioritize sites with verified, near-term access
 - Value of the site is tied to power availability
 - Timing considerations – leasing and purchase price
 - Capital Planning – increased up-front costs
- **Acreage and Access**
 - Proximity to power generation
 - Space for necessary infrastructure
 - Substation
 - Generators
 - Easement rights
- **Zoning and Community Impact**
 - By-right Project / Discretionary Public Hearings
 - Special Use Permits / Variances



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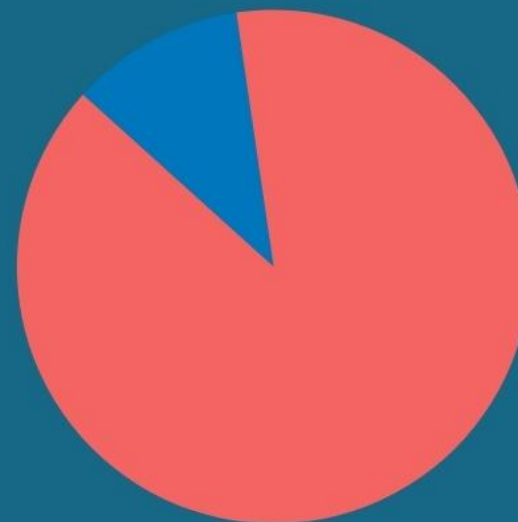
AI Power & Data Centers

The Pulse of Infrastructure Developers & Investors



SCAN TO DOWNLOAD
THE POWERING PROGRESS
SURVEY REPORT

Investors Are Optimistic



89% believe that the pace of investment in AI-driven data centers is sustainable for the next one to five years.

THANK YOU

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