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Data Centre Loads and Domestic Content Policy Define US Battery Storage Market's Future, Law Firm Says

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Vaughn H. Morrison

Vaughn Morrison, a partner in Troutman Pepper Locke's Energy Industry Group, was quoted in the October 20, 2025 *Energy Storage News* article, "[Data Centre Loads and Domestic Content Policy Define US Battery Storage Market's Future, Law Firm Says.](#)"

- Morrison highlights how companies are responding to the FEOC restrictions, as well as the pros and cons of integrating BESS with data centres.
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- "Battery storage emerged relatively unscathed from this budget reconciliation process, at least in the near and medium terms," Morrison says.
- "If you look at where the industry is now compared to where it was before the Inflation Reduction Act (IRA) was passed, when there were no tax credits for battery storage except to the extent paired with solar-plus-storage, the industry is much better off, for sure."
- Morrison hopes to see the industry grow, but acknowledges the current confusion companies are experiencing in maintaining eligibility requirements and navigating FEOC restrictions.
- "There are developers that are closely held, and that's the end of the discussion. Others are owned by hundreds of LPs, which is more complex. And then there are those who have publicly issued debt, multiple tranches of publicly issued debt over time. Going back and trying to figure out who it was sold to at the time of the issuance is just a Herculean task."
- John Leonti, a partner at Troutman, who contributed to the report with Morrison, notes, "The most prepared in the sector have acted nimbly to restructure supply chains, and key stakeholders are strengthening their close working relationships to share risk and collaboratively revise strategies."
- Morrison says a large focus has been placed on avoiding the need to restructure arrangements to allocate risk in the first place.
- This is complicated because if a taxpayer, potentially including a tax equity investor, is the "wrong type" of entity, it could lead to a disallowance.
- Morrison clarifies that when an FEOC holds too much of a taxpayer's debt, it can lead to disallowance. Consequently, some companies are considering including representations and covenants to shift the risk to the party best able to manage it.
- He says, "Our primary focus has been on negotiating risk allocation with suppliers and service contractors. This includes crafting contracts that may activate certain control categories, such as representations and covenants confirming that the counterpart is not, and will not become, a specified foreign entity."
- Morrison continues, "We've also dedicated significant effort to designing contracts that avoid triggering these categories, especially for clients with a more cautious approach. This involves removing affirmative licenses to prevent falling under licensing restrictions and adjusting clauses to ensure they are well within safe boundaries, providing greater certainty that these categories are not met."
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Morrison says that, perhaps crucially, to its relative sparing in the OBBBA, the storage industry has separated itself from the renewable energy industry, a “logical” decision, he notes.

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- Morrison says, “I think people have not totally figured out yet what role battery storage is going to play with data centres. There are some intuitive use cases, particularly around pairing storage with intermittent generation, which is so important to a lot of the hyperscalers. But we’ve not seen that deployed at the same scale as we have other technologies for purposes of behind-the-meter delivery to data centres. So, that’s still early days.”
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- Morrison explains, “If you’re just a general energy investor, then you probably just pivot to natural gas or data centres at that point. If you’re a battery storage developer, I think you’re focusing more on opportunities that are not as vulnerable to interconnection queue delays.”
- “We have already seen a good bit of that in PJM and ISO New England, where existing interconnects are repurposed for ancillary services or what have you, and then focus on behind-the-meter applications,” he continues.
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- Morrison says, “I think between the FEOC rules, the 45X credits and the domestic content bonus under the Inflation Reduction Act, what we’re seeing at the federal level is a unified market signal from both parties that domestic manufacturing is important, and it’s something that the federal government is investing in, regardless of who’s in power.”
- “If you’re in the business of building the only thing that the two political parties can agree on, that’s a good business to be in, for sure.”

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