

Press Coverage | December 3, 2025

How Energy Scarcity Is Changing Data Center Deals

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[Carl H. Bivens](#)

Carl Bivens, a partner in Troutman Pepper Locke's Real Estate Practice Group, was quoted in the December 3, 2025 *Law360* article, "[How Energy Scarcity Is Changing Data Center Deals](#)."

Carl Bivens, a partner with [Troutman Pepper Locke LLP](#) who advises energy and digital infrastructure clients, said delay risk is the biggest commercial issue that's negotiated in data center development deals.

When energy isn't supplied by a certain date, hyperscalers typically want the option to receive liquidated damages based on how much rent they pay, and a termination right after a certain amount of time passes. But lenders and investors in the project usually object to a potential lease termination, Bivens said.

As a result, more attention is being focused on provisions that free parties from liability due to unforeseen circumstances, known as force majeure clauses, he noted.

"It goes back to the negotiations of the force majeure provisions, because the developer wants as many carveouts from the schedule based on things that are outside their control, including utility delays, to then push out the schedule to then not have the liquidated damages kick in, or not have a termination right kick in," Bivens said.

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