BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Address Interconnection Reforms for Large Loads	)	Case 26-E-0045

COMMENTS OF EARTHJUSTICE ON THE DRAFT SCOPING DOCUMENT FOR A GENERIC ENVIRONMENTAL IMPACT STATEMENT

November 4, 2026

Matthew Silverman
Sasan Saadat
Vincent Nolette
Mandy DeRoche
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
212-284-8040
ssaadat@earthjustice.org

Table of Contents

Introduction 3

I. Recommendations to Strengthen and Clarify the Draft Scope 5

A. The Proposed Action in the Final Scope Should Be Broadened to Assess the Full Range of Impacts from Data Center Development Generally. 5

B. To Understand the Full Range of Adverse Impacts—and the Maximum Potential to Avoid Them—the Final Scope Must Include an Alternative with No New Data Center Development or Expansion 6

C. The Draft Scope Fails to Clearly Define the Roles of Potentially Interested Agencies and how the GEIS Will Address Their Actions 9

D. The GEIS Should Describe Potential Interconnection Reforms and Cost Allocation Methods in Greater Detail 11

II. The Following Potential Measures Should Be Evaluated in the Alternatives Analysis 13

A. Potential Interconnection Reforms 13

1. Resolving Duplicative and Speculative Interconnection Requests 13

2. Bring Your Own Clean Energy (BYONCE) and Storage 15

3. Minimum Billing Demand 16

B. Grid Flexibility 18

C. Ratepayer Protections – Large Load Rate Class 19

III. The Draft Scope Should Include Specific Requirements to Assure CLCPA and EJ Siting Law Compliance 20

A. The GEIS Must Address CLCPA Section 7(2) GHG Mandates 21

B. The GEIS Must Advance Environmental Justice for DACs and Tribal Nations, Including Compliance With CLCPA Section 7(3) and the EJ Siting Law 23

C. The GEIS Should Consider and Endorse a Comprehensive Permitting Mechanism to Ensure CLCPA Compliance 26

IV. The GEIS Must Carefully Consider Environmental Impacts of Data Center Construction and Operation 26

A. Air Pollution 26

B. Thermal Impacts: Heat Island Impacts and Receiving Water Impacts 27

C. Impacts on Water Resources 29

D. Impacts from E-Waste 32

E. Noise Pollution Impacts 33

F. Wildlife, Ecological and Habitat Impacts 35

Conclusion 36

Introduction

The speed and scale of the AI data center buildout across the United States has few historical parallels. They are among the most energy-intensive projects in human history, rivaling heavy industries like cement and steel production, but constructed at a far faster pace. And they are part of an unprecedented but highly uncertain investment cycle. By one estimate, investment in data centers has now surpassed all prior historical booms, including railroad investments during the Industrial Revolution.[1]

Instead of placing guardrails on developers, many states welcomed data centers with generous incentives, even as the detrimental environmental, energy, emissions, and community impacts from data center construction and operation grew increasingly well-documented. Those states are now experiencing buyer's remorse. Governor Hochul rightly recognized these risks when she issued Executive Order 62 ("EO") and paused the development of many large-scale data centers, acknowledging that "New Yorkers have expressed legitimate concerns regarding the potential impacts of the siting and operation of data centers on energy use." The Order directs the Department of Public Service ("DPS") "to assess the potential environmental impacts of the construction and operation of data centers in the State, including energy demand, water use and quality, air quality, disproportionate impacts on disadvantaged communities, and noise levels." Yet the Draft Scoping Document ("Draft Scope") frames the review around interconnection reforms and cost-allocation standards.[2] This raises a critical question: Why would the State confine the environmental review of potential impacts of AI data center development to the interconnection process?

The moratorium provides a rare opportunity to step back and examine the full range of potential impacts that AI data center construction and operation might have and the viable alternatives to avoid or sufficiently mitigate those impacts, if they exist at all.[3] For that to

---

[1] *See* Stijn Van Nieuweburgh, *Financing the AI Buildout*, Brookings Papers on Econ. Activity, at 1–5 (Draft Sep. 4, 2026), https://www.brookings.edu/wp-content/uploads/2026/09/4c_Van-Nieuwerburgh.pdf.

[2] *See* Letter from Sierra Club, Environmental Advocates NY, and Earthjustice re: Draft Scope, Case No. 26-E-0045 (Oct. 6, 2026).

[3] *See, e.g.*, DEC, Final Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program, Findings Statement 42 (June 2015), https://extapps.dec.ny.gov/docs/materials_minerals_pdf/findingstatehvhf62015.pdf (concluding that "there are no feasible or prudent alternatives that would adequately avoid or minimize adverse environmental impacts and that address the scientific uncertainties and risks to public health from [fracking]").

happen, the scope of the environmental review must be broadened to include all data center development impacts in New York State—from construction to operation and through decommissioning—and additional agencies must be given a more formal role in the process. Seven years after the enactment of the Climate Leadership and Community Protection Act ("CLCPA"), New York still faces substantial challenges in meeting the CLCPA's emissions-reduction mandates and the recent enactment of the Environmental Justice Siting Law ("EJ Siting Law")[4] places additional requirements on agency action. Decarbonizing the power sector poses a particularly difficult task. And AI data center development risks making that effort significantly more challenging, with significant stranded asset risks,[5] all while potentially exacerbating harms to disadvantaged communities that the law was designed to protect against, and which the EJ Siting Law is designed to prevent or mitigate. To ensure continued and full implementation of the CLCPA and the EJ Siting Law, this environmental review process must carefully examine whether and how AI data center construction and operation in New York can be reconciled with the State's climate and environmental justice obligations.

Earthjustice therefore submits these comments in response to the Draft Scoping Document for a Generic Environmental Impact Statement ("GEIS") for Data Centers and Large Electric Loads. We address several issues covering various components of the Draft Scope and recommend to the Commission pathways forward to ensure that the EIS captures the full extent of AI data center development and operations in New York State.

- Part I identifies structural flaws in the Draft Scope and recommends that the Commission: (1) analyze the full range of potential environmental impacts from data center construction and operation, and not merely those connected to interconnection reforms, (2) more specifically define the roles of relevant state agencies to better support development of the GEIS, and (3) describe the proposed action and alternatives to be

[4] ECL § 70-0118.

[5] One risk that will lead to stranded assets involves the overvaluation of AI. There is broad consensus that the AI industry is overvalued in the stock market which has created an investment "bubble." That bubble will "pop" if the companies that investors have poured hundreds of billions of dollars into fail to become profitable. Indeed, AI investment has been characterized as the "biggest economic bet in U.S. history." Konrad Putzier & Justin Lahart, *The AI Build-Out Is Becoming the Biggest Economic Bet in U.S. History*, Wall Street J. (Sep. 23, 2026), https://www.wsj.com/economy/the-ai-build-out-is-becoming-the-biggest-economic-bet-in-u-s-history-c60716dd. Losing this bet will have major financial implications that risks stranding additional assets due to companies being unable to maintain their infrastructure investments. Put another way, the AI spending frenzy has led to an overinvestment in physical assets, some of which will become underutilized or obsolete.

considered in greater detail, including an alternative with no new data center development or expansion;

- Part II analyzes several potential interconnection reforms and cost allocation standards the Commission should consider evaluating and adopting;
- Part III identifies the need for compliance with the CLCPA and EJ Siting Law and advises how analyses related to both should be included in the GEIS; and
- Part IV examines the potential environmental impacts from data center construction and operation and proposes frameworks to ensure their comprehensive evaluation.

I. Recommendations to Strengthen and Clarify the Draft Scope

A. The Proposed Action in the Final Scope Should Be Broadened to Assess the Full Range of Impacts from Data Center Development Generally.

We are concerned that the current description of the proposed action will lead to a myopic and deficient analysis. As currently configured, the proposed action evaluated in the Draft Scope is limited to the "promulgation of interconnection processes and cost allocation standards for large electric load customers."[6] The description then goes on to state that it will evaluate impacts resulting from these interconnection reforms "as well as" the impacts arising from the construction and operation of data centers, however this second clause is not considered as part of the proposed action.

The immediate risk posed by this configuration is that the GEIS will narrowly focus on how interconnection reforms affect data center development, while relegating a comprehensive assessment of the industry's impacts in the first instance. Doing so risks overlooking the broader implications of a transformative form of industrial development, implications which extend far beyond or even have nothing to do with grid management responses.

As just one major example, this narrow scope could fail to robustly assess the significant impacts related to data centers that forego a grid connection altogether.[7] Indeed, more than a quarter of all proposed data center development—constituting more than 90 GW of capacity—will be powered entirely by behind-the-meter power and would not fall under any

[6] Draft Scope at 3.
[7] *See, e.g.*, Michael Thomas, *Bypassing the Grid: How Data Center Developers Are Building Their Own Power Plants*, Cleanview, https://cleanview.co/reports/behind-the-meter-data-centers (last visited Oct. 19, 2026).

interconnection or cost allocation regime.[8] It is expected that 80% of this will be supplied by gas-fired power.[9] It would be unacceptable for the Commission's GEIS to fail to adequately evaluate the impacts of these developments because the scope centered primarily on interconnection reforms rather than the industry's development as a whole.

Even if the proposed action were to give equal consideration to the impacts of interconnection reforms "as well as" the impacts from all data center construction and operation, it is unclear why these should be bifurcated into two separate categories of impacts. Interconnection reforms are best viewed as a constitutive part of *managing* the impacts from data center construction and operation, rather than a separate action to be evaluated in parallel with the impacts of data center development.

Accordingly, Earthjustice recommends that the scope be broadened to focus on all data center development in the State generally, and that promulgation of interconnection and cost allocations be viewed as components of the list of mitigation measures and part of the alternatives analysis.

There is clear precedent for this structure. The State took a largely similar approach when scoping the GEIS for the cryptocurrency mining industry—another large electrical load that is similar in kind, though far smaller in scale, than hyperscale AI data center development.[10] In that context, the State described its proposed action broadly to evaluate the impacts of the industry as a whole, and then evaluated particular agency actions as part of its assessment of opportunities to avoid, minimize, or mitigate significant impacts. There is no legal basis to do so differently here.

B. To Understand the Full Range of Adverse Impacts—and the Maximum Potential to Avoid Them—the Final Scope Must Include an Alternative with No New Data Center Development or Expansion.

The Draft Scope currently includes a "no action" alternative that forms a baseline for the GEIS evaluation by describing the likely impacts under a scenario where new large electric loads

[8] John Bangsund et al., Better Data Ctr. Project and Earthjustice, The AI Gas Rush: Risks and Implications of "Bring Your Own Power" 4 (Oct. 2026), https://earthjustice.org/wp-content/uploads/2026/10/the-ai-gas-rush-risks-of-byop_full-report-with-cover.pdf.
[9] *Id.*
[10] DEC, Final Public Scoping Document for GEIS on Cryptocurrency Mining Operations that use Proof-of-Work Authentication Methods to Validate Blockchain Transactions 2 (Apr. 2024) ("Thus, the purpose of the GEIS is to broadly consider the impacts of the industry as described in the legislation and not a particular operation.").

are subject to existing interconnection practices. We support the inclusion of this scenario, as it will enable the public to understand the potential of adverse impacts if the State were to take no incremental protective action.

Similarly, the Final Scope should include the opposite baseline to form the other "book-end" of potential environmental impacts—namely, a scenario where no new or expanded AI data center development is allowed to occur. This baseline will establish the environmental conditions of the State as they are today and illustrate the maximum potential for avoiding adverse impacts.

Again, DEC's Final Scope for the Cryptocurrency GEIS provides an instructive blueprint. There, the State followed a similar logical structure for its alternative analysis:

> As may be further developed or added to in the GEIS process, alternatives include the following:
>
> 1. No action alternative.
> 2. Transition of the industry to utilizing renewable or zero-emission energy resources for electricity.
> 3. Limit, or limit the expansion of, cryptocurrency mining operations that use proof-of-work authentication methods or require the use of alternative technologies that reduce energy consumption, such as proof-of-stake mining. Proof-of-stake verification is an alternative mechanism of securing cryptocurrency transactions that does not require machines to solve the same volume of complex puzzles, and hence uses only a small fraction of proof-of-work algorithms.[11]

Mirroring that logic in this context, the alternatives analysis for the present GEIS should be structured as follows:

1. No Action Alternative – this scenario would capture the full extent of adverse impacts that could arise from data center development in New York State with no incremental mitigation or management.
2. Data Center Development with Mitigation Measures – this scenario would evaluate the impact of continued data center development paired with new protections, including promulgation of interconnection and cost allocation reforms, sensitive land use buffers, water recycling requirements and use limits, noise and air quality protections, etc.

[11] *Id.* at 6.

3. No New Data Center Development or Expansion – forming the other "book-end" of the scope should be a scenario which limits the expansion of hyperscale data center development in the State. This scenario would effectively represent environmental impacts under an indefinite moratorium and constitute the maximum potential to avoid adverse environmental impacts.

Establishing a baseline scenario with no incremental data center development allows the GEIS to properly evaluate what impacts from new or expanded data centers are genuinely unavoidable. This scenario would also help reveal potentially significant indirect impacts data center development may have. The scale of data center investment is driving significant capital and resource re-allocation. Investors are warning about data centers "crowding out" investment in other sectors, such as residential real estate, health care, and other infrastructure.[12] Data centers demand is worsening supply chain delays and shortages for electrical components like switchgears and transformers that are critical to many clean energy and electrification projects.[13] Even the limited pool of skilled electrical workers is being diverted toward data centers.[14] Because of their massive scale and enormous financial backing, these projects are likely to out-bid other applications for scarce resources and workforce availability, creating disruption and delay for other state goals.

Evaluating an indefinite pause on data center construction could also help understand the risks and opportunities in pacing the buildout of new large loads to align with conditions on the grid. At the most recent technical conference, presenters from E3 revealed their extremely troubling finding that "incremental large-load growth beyond what is already projected would mean relying on additional gas generation" through 2035.[15] It is a well-known challenge for New York State that new load has been added faster than new generation, and large loads added to

[12] Jason Thomas, *Are Data Centers 'Crowding Out' Investment in Other Sectors?*, Carlyle (Jan. 13, 2026) https://www.carlyle.com/5-questions-for-2026-data-centers.
[13] Kavya Balaraman, *U.S. Power Companies Scramble to Secure Equipment as Surging Data Center Demand Strains Supplies*, Reuters (July 9, 2026), https://www.reuters.com/business/energy/us-power-companies-scramble-secure-equipment-surging-data-center-demand-strains-2026-07-09/.
[14] "Data centers, solar and wind interconnections, and transmission and distribution upgrades are all trying to hire from the same shrinking pool of electricians. Data centers are among the largest draws on that pool." Parker Tinsley, *America's Electrician Shortage: Causes, Impact, and How to Build Around It*, Giga Energy (Oct. 27, 2026), https://www.gigaenergy.com/blog/electrician-shortage-solution.
[15] E3 - Energize NY Development Analysis, Energize New York Technical Conference, at 32 [presentation slides] (Oct. 30, 2026).

date are already aggravating this situation.[16] Pausing the addition of enormous and high-capacity new loads until the State accelerates the interconnection of new, clean energy could mitigate some unavoidable harms from new development.

The Final Scope should ensure that the GEIS can evaluate the potential for an extended pause on new large load additions to allow for avoiding potentially significant impacts from insufficient new clean generation or resource diversion.

C. The Draft Scope Fails to Clearly Define the Roles of Potentially Interested Agencies and how the GEIS Will Address Their Actions.

The EO directs the DPS to conduct the GEIS in consultation with DEC and other "relevant state agencies and authorities," but does not provide further guidance on their roles in the GEIS process. The Draft Scope lists the Public Service Commission ("PSC" or the "Commission") as the lead agency for the GEIS, and identifies 11 "potentially interested agencies," which includes the New York State Department of Environmental Conservation ("DEC"). The Draft Scope also does not discuss these agencies' roles in the GEIS process, nor does it indicate what mandatory or discretionary actions these agencies may or may not take that are material to the GEIS. As formulated, the Draft Scope does not offer a comprehensible, let alone effective, process for involving non-PSC agencies. It is also not transparent to the public; there is no insight into what actions these interested agencies may take that are relevant to the GEIS, nor how they will contribute to the GEIS' development. Consequently, the Draft Scope's failure in this respect complicates and undermines meaningful public participation in the GEIS process, and this problem would extend beyond scoping if not adequately addressed in the Final Scope.

The draft scope therefore is inconsistent with the EO, which implemented a state-wide moratorium and frames the GEIS as a necessary step under the State Environmental Quality Review Act ("SEQRA") to broadly address the environmental concerns associated with data centers, not merely impacts that may be addressed by the PSC.[17] The EO is not only concerned

[16] *Electricity Prices Are Up in New York. What Are the Drivers?*, NYISO (Oct. 30, 2025), https://www.nyiso.com/-/electricity-prices-are-up-in-new-york.-what-are-the-drivers.

[17] The Draft Scope does not properly follow the text of the Executive Order. The EO clearly states that the scope of the GEIS is "the potential environmental impacts of the construction and operation of data centers in the State," while DPS is directed to use its existing large load interconnection docket—Case 26-E-0045—to more narrowly examine impacts associated with the interconnection of data centers. But the Draft Scope reverses the directive of

with the PSC and potential interconnection reforms. For example, it directs the DEC to hold in abeyance permits and approvals for construction or expansion of data centers until the GEIS is issued. And the EO does not speak to any parallel GEIS process, such as by another agency. Consequently, a natural reading of the EO suggests that the instant GEIS process is intended to cover the entire State government. To read it as limited to actions within the PSC's authority would lead to inadequate and inefficient results, such as potentially duplicative, consecutive, and piecemeal GEIS processes initiated by other agencies.

The EO does not indicate what non-PSC agencies are required to do in the GEIS process aside from "consultation." However, to further the EO's intent, at the scoping stage the PSC should ask all interested agencies to submit descriptions of potential actions that they are considering or planning to consider, as well as information concerning any SEQRA processes they anticipate initiating with respect to data centers. This would at least provide the PSC and the public with an understanding of what other agencies are doing and how the PSC's potential actions may interact with those of other agencies. It would also facilitate a single integrated GEIS process that holistically addresses issues, policies, and concerns spanning the jurisdiction of all interested agencies in a manner that would be consistent with the plain text of the EO.

More specifically, the DEC, as the state's environmental regulator and agency with the most significant relevant expertise, must play a major and well-defined role in the GEIS process. DEC's mission compels it to lead in protecting the environment from the myriad hazards and pollutants associated with data centers, as well as addressing climate impacts.[18] The DEC's actions with the similar cryptomining scoping and GEIS reinforce that expertise and experience. There are many actions, including in the realm of facility permitting and environmental regulations, that DEC could take to satisfy the mandates in the EO and that fall within the Draft Scope. As such, DEC should be deemed an "involved agency" under SEQRA,[19] rather than just

---

the EO, mistakenly claiming that the "proposed action is the development and promulgation of interconnection processes and cost allocation standards for large electric load customers, including but not limited to data centers." Draft Scope at 3.

[18] DEC's mission is "[t]o conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being." *About DEC*, https://dec.ny.gov/about (last visited Oct. 19, 2026).

[19] 6 NYCRR § 617.2(u) ("*Involved agency* means an agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an

another agency with an undefined potential interest. Additionally, as discussed below (Sections III(C) and IV(A)), the Draft Scope should define a significant role for the New York State Department of Health ("DOH") in assessing potential adverse health impacts from data centers and the actions and alternatives under consideration.

D. The GEIS Should Describe Potential Interconnection Reforms and Cost Allocation Methods in Greater Detail.

The narrow-proposed action in the Draft Scope contemplates interconnection reforms and cost allocation standards that the Commission has not specified with sufficient detail or clarity. At most, the Commission addresses general principles and potential policy mechanisms—e.g., "support[ing] the State's clean energy goals"[20] or "employing capacity-based charges"[21]—but refrains from clearly describing which potential interconnection reforms and cost allocation standards the GEIS will evaluate. Where the Draft Scope does identify five potential policy mechanisms, it falls short by (1) using non-committal language and (2) not explaining the contours of the mechanisms referred to. First, the Draft Scope does not even commit to evaluating these five possible interconnection reforms. Instead, during the GEIS process, the Commission "may consider" them.[22] But that is inapposite to the SEQRA scoping process. Its purpose "is to narrow issues and ensure that the draft EIS will be a concise, accurate, and complete document that is adequate for public review," not introduce additional uncertainty.[23] The current language leaves open the possibility that none of those five will be evaluated while a suite of other, currently unknown mechanisms, could be. The Commission should therefore clarify the range of policies and relevant associated parameters it *will* evaluate during the GEIS process.

Second, the five potential reforms listed should be explained in greater detail. For example, it is unclear how the potential environmental impacts associated with a "capacity-based charge" can be properly evaluated without more explanation. A "capacity-based charge" could refer to a number of capital commitments related to the capacity of a proposed project. Does the

---

action, then it is an 'involved agency' notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced. The lead agency is also an 'involved agency.'").

[20] Draft Scope at 4.

[21] *Id.* at 5.

[22] *Id.*

[23] DEC, *The SEQR Handbook*, at 100 (4th ed. 2020); *see also* 6 NYCRR § 617.8(a), (d).

proposed policy refer to a one-time upfront fee corresponding to the capacity of the proposed project? If so, fewer data centers may request interconnection if the cost exceeds a certain dollar amount which would, in turn, impact the associated environmental impacts of large load construction and operation. Introducing firm capital commitments has had material impacts on speculative load requests.[16] But the details matter. And here, the Draft Scope leaves the public guessing as to the definition of "capacity-based charge" and what considerations would go into setting one. The other four potential reforms suffer from the same issue. There is also no discussion of potential cost allocation standards nor insight into the Commission's process for developing them.[24]

As a result, the Draft Scope does not provide a clear roadmap for evaluation of policy mechanisms—it raises more and more questions. Will the evaluation of generation or storage procurement focus on clean energy, or will it also consider the procurement of fossil fuel generation? Will the evaluation of grid flexibility or curtailment policies include a discussion of virtual power plants? The scoping process was designed for this type of narrowing of issues. By not providing enough detail concerning potential reforms or standards, the public cannot meaningfully comment on the Draft Scope. To adequately engage the public in the environmental review process, the Draft Scope should specify how it may reform the interconnection process for large loads so that the public can comment on the potentially significant impacts associated with various reform options. Providing a well-defined range of policy interventions and explanation of how they will be evaluated would go a long way toward "allow[ing] open discussion of issues of public concern."[25]

Finally, although the EO concerns data centers with 50 MW capacities or greater, the Commission should expand its scope to include data centers 25 MW and above. In addition to being in line with other jurisdictions,[26] this threshold would capture a larger share of data centers

[24] *See generally* Nina Peluso et al., Energy Futures Grp., *Large Load Cost Allocation: Framework for States to Reduce Cross-Subsidization and Risk to Existing Customers* (Sep. 24, 2026), https://earthjustice.org/wp-content/uploads/2026/09/large-load-cost-allocation-framework-for-states-to-reduce-cross-subsidization-and-risk-to-existing-customers.pdf (examining breakdowns in the existing cost-allocation framework and proposing potential solutions).
[25] SEQR Handbook, *supra* note 23, at 100.
[26] *See* Comments of Earthjustice and Sierra Club on the Motion of the Commission to Address Interconnection Reforms for Large Loads at 11, PSC Case No. 26-E-0045 (May 13, 2026) ("Earthjustice & Sierra Club May 13 Comments").

represented in NYISO's public interconnection queue[27] and, consequently, more comprehensively address the environmental impacts from their construction and operation.

II. The Following Potential Measures Should Be Evaluated in the Alternatives Analysis

A. Potential Interconnection Reforms

1. Resolving Duplicative and Speculative Interconnection Requests

The GEIS should analyze how interconnection reform and cost allocation standards might impact duplicative and speculative interconnection requests from data center developers. Due to the size of large-load projects, these requests can distort load forecasting and infrastructure planning. According to the Draft Scope, data centers account for over 12 gigawatts (GW), or 88%, of the total 14 GW large-load interconnection queue.[28] New York State is working to help bring online additional generating resources and enhance the grid to ensure reliable, safe, and affordable energy. But the current queue is not an accurate reflection of committed projects, and it stands to decrease, possibly significantly, with the introduction of interconnection reforms and cost allocation standards that have been successful in other jurisdictions.

There are insufficient disincentives to deter data center developers from submitting load interconnection requests for the same project in multiple states. This is true even if a developer has no intention of developing all the projects.[29] These conditions have led to duplicative and speculative requests that may get approval but are ultimately abandoned by the developer—so called "phantom" data centers—which will lead to stranded assets and potentially exorbitant costs for New York ratepayers.[30] Introducing regulatory requirements for each large load interconnection request can discourage such requests. In 2025, for example, AEP Ohio

---

[27] *See Interconnection Process*, NYISO, https://www.nyiso.com/interconnections (last accessed Oct. 29, 2026) (navigate to "Interconnection Queue" under "Useful Links").
[28] Draft Scope at 3.
[29] *See* Emma Penrod, *Large Load Tariffs Could Streamline Interconnection by Shrinking Queues: Enverus*, Utility Dive (Dec. 18, 2025), https://www.utilitydive.com/news/large-load-tariffs-could-streamline-interconnection-by-shrinking-queues-en/808190/ (quoting energy analyst Adam Robinson, "Anyone with an acre of land they think they could put a data center on is putting in an interconnection request . . . [y]ou get everybody joining the interconnection queue, and then the utilities have to spend time and resources doing studies and building infrastructure when those projects aren't going to get developed.").
[30] Jennifer Hiller, *'Phantom' Data Centers Are Demanding More from the Power Grid Than They Need*, Wall St. J. (Oct. 13, 2026), https://www.wsj.com/business/energy-oil/phantom-data-centers-are-demanding-more-from-the-power-grid-than-they-need-77e322bb.

reportedly halved its forecast after approving a large-load tariff that included high up-front costs and fixed costs.[31] To help identify legitimate projects, the Texas Public Utilities Commission recently adopted a rule requiring, *inter alia*, large loads to pay a $100,000 study fee and post financial security of $50,000 per megawatt of requested peak demand for new interconnection requests.[22] The Commission should endeavor to evaluate how different load interconnection reforms and cost allocation standards may impact the data center interconnection queue in New York and to collect and publish data from the regulated utilities and public power agencies in the state for a fuller understanding of projects in the queue to avoid wasting resources on unnecessary studies and grid infrastructure at risk of becoming stranded. The GEIS should evaluate how a defined range of reforms would affect forecasted demand and the associated need for grid infrastructure investment.

With respect to other possible regulatory reforms, the Commission should evaluate how the following requirements might alleviate speculative and duplicative interconnection requests:

- A robust pre-application process that permits a developer to obtain information about the projected requirements for load interconnection at a particular site after submitting a reasonable fee.
- An affidavit submitted by the large-load interconnection applicant, signed by a company officer, that includes supporting documentation demonstrating that the applicant has site control, or the option for site control, for the site at issue. The affidavit should also include an attestation that the applicant has a good faith intention to develop the project described in the interconnection application and has not submitted any other interconnection requests for the same project.
- As part of the interconnection application, an up-front non-refundable fee that covers the costs associated with application review and engineering studies so that other ratepayers are not forced to subsidize those costs.
- Execution of a binding letter of intent, along with the posting of substantial collateral (i.e., high enough to ensure serious commitment from developers), once the interconnection study is complete.

[31] Penrod, *supra* note 29 (noting that AEP Ohio "reportedly slashed its interconnection queue from 30 GW to just 13 GW" after implementing a data center tariff).

2. Bring Your Own Clean Energy (BYONCE) and Storage

It is critical that the Draft Scope include additional details on clean energy and attendant storage systems that should be considered in the GEIS to assure that data centers do not rely on polluting fossil fuel generation.[32] The Draft Scope contains one sentence indicating that the GEIS should consider certain policies that may be useful in considering actions, alternatives and mitigation, including "[r]equiring large load customers to procure their own dedicated generation or storage resources."[33] This, if not properly managed, would conflict with the CLCPA, EJ Siting Law, and the Environmental Rights Amendment[34] ("ERA"). Indeed, simply requiring data centers to "bring their own power," if implemented with fossil fuel generation, would have substantial impacts on people and the planet not only worsening climate change, but harming the health of nearby communities, including those already burdened by historical and ongoing disinvestment, environmental injustice, and extractive industry.[35] However, the unprecedented demand for power for AI data centers, while raising such concerns, has provided the Commission with a pivotal opportunity to launch the clean energy transition by focusing on innovative solutions that move us away from our dependence on fossil fuels that pollute our air and accelerate climate change. But the Draft Scope does not provide sufficient direction as to renewable energy and storage solutions that should be considered.[36]

Fortunately, the Commission possesses ample information that it can rely upon to strengthen the Draft Scope. Many parties and the public have already submitted comments supporting clean energy requirements paired with battery storage. For example, Earthjustice and the Sierra Club submitted joint comments in this proceeding on May 13, 2026, and reply comments on June 15, which detailed our recommendations for requiring data centers to bring their own new clean energy and necessary storage capacity.[37] We have also described

---

[32] An extreme example is xAI's recent installation of 27 unpermitted methane gas turbines to power a massive data center in South Memphis, Tennessee. Those turbines have the potential to release "up to 180 tons of fine particulate matter, 500 tons of carbon monoxide, and 19 tons of formaldehyde—a toxic, cancer-causing chemical—each year." Earthjustice, *Illegal Pollution from Data Center Power Plants Shouldn't Harm Our Communities. We're Suing xAI*, https://earthjustice.org/case/xai-illegal-gas-power-plant-data-center-colossus (last accessed Oct. 17, 2026).

[33] Draft Scope at 5.

[34] *See* N.Y. Const., art. 1, sec. 19.

[35] *See* Bangsund et al., *supra* note 9, at 27.

[36] Indeed, renewable energy is only mentioned once in the entire Draft Scope, on the last page in a brief section entitled "Effects on the Use and Conservation of Energy Resources."

[37] Earthjustice & Sierra Club May 13 Comments; Reply Comments of Earthjustice and Sierra Club on the Motion of the Commission to Address Interconnection Reforms for Large Loads at 10–13, 13 n.49, PSC Case No. 26-E-0045

opportunities to build and strengthen a clean grid through implementing grid enhancing technologies ("GETs") and advanced transmission technologies ("ATTs").[38]

We noted that to ensure that the use of renewable energy truly meets the demand caused by a large load, the renewable energy requirements should adhere to "three pillars" for assuring clean energy use. These are that renewable energy use is (1) incremental to existing generation, (2) geographically deliverable to the same region of the grid, and (3) matched in time to the same hour that the power is consumed.[39] Consequently, the Draft Scope should specifically include an evaluation of the environmental and public health benefits associated with onsite or incremental clean energy and storage requirements for data centers. Such an approach would also be consistent with the CLCPA's greenhouse gas ("GHG") reduction requirements.

3. Minimum Billing Demand

In addition to the five interconnection policy mechanisms listed in the Draft Scope, the GEIS should also consider minimum demand charges equal to at least 90% of contracted capacity in its evaluation of potential cost allocation standards.[40] Minimum demand billing usually requires data centers to pay a certain percentage of their contracted capacity or billing demand, regardless of actual usage.[41] As explained by the Berkeley Lab, they "ensure a baseline level of revenue recovery and [] mitigate the risk of underutilization."[42] Put another way, higher minimum billing demands protect other ratepayers from paying for investments built to serve the requested capacity of data centers and other large loads. These provisions have become standard practice for large-load tariffs and, with respect to higher minimums, other states provide precedent for their adoption: Kentucky's PSC approved a 90% minimum monthly billing

(June 15, 2026) ("Earthjustice & Sierra Club June 15 Reply Comments") (collecting public comments supporting on-site renewable energy paired with battery storage).

[38] Bangsund et al., *supra* note 9, at 26 n.63.

[39] Additionally, in considering any incentives for onsite renewable energy and storage, the GEIS should consider limiting any incentives offered for flexibility or other grid services to zero-emission solutions, and prohibit incentives for and limit reliance on back-up fossil fuel combustion that causes local air pollution and accelerates climate change.

[40] *See* Earthjustice & Sierra Club May 13 Comments at 14.

[41] *See* Natalie Mims Frick et al., Berkeley Lab & The Brattle Grp., Electricity Rate Designs for Large Loads: Evolving Practice and Opportunities 2026 Update 3 (Aug. 2026), https://eta-publications.lbl.gov/sites/default/files/2026-08/rate_designs_large_loads_2026.08.10.pdf (listing "[m]inimum billing demand" as an "[e]stablished practice" of large load tariffs.").

[42] *Id.* at 5.

demand for Kentucky Power's large-load tariff;[43] AEP Ohio has implemented an 85% minimum billing demand for data centers;[44] and Indiana Michigan Power Company's proposal includes both a 90% minimum demand as well as a minimum charge that incorporates energy-related riders.[45]

As explained in our prior comments in this proceeding, to protect customers from unreasonable cost shift, the Commission should charge a 90% minimum billing demand as the floor and combine minimums with twenty-year contract terms.[46] Even implementing both of those provisions, however, may not fully protect other ratepayers. For example, Caroline Palmer, an expert witness in Consumer Energy's large load tariff case in Michigan, calculated minimum generation revenues for the area's expected 2.65 GW data center load under various tariff parameters and estimated that incremental generation capital costs would still be $1.7 billion higher than generation revenues with a combined 90% minimum billing demand and twenty-year contract terms.[47] In Kentucky, the potential difference between a 1,000 MW customer's yearly billing demand at 60% versus 90% was estimated to be $72.7 million.[48] If the 60% minimum billing demand had been adopted, that amount would have shifted to other ratepayers, in addition to the costs associated with stranded infrastructure investments and contracted energy and capacity.[49]

[43] *See* Final Order, Ky. PSC Case No. 2024-00305 (Mar. 18, 2025). More specifically, the tariff charges 90% of the customer's highest established demand.
[44] *See* Opinion & Order Adopting the Joint Stipulation and Recommendation Filed by Various Parties, Ohio PUC Case No. 24-508-EL-ATA (July 9, 2025).
[45] In the Matter of the Application of Indiana Michigan Power Company for Approval of Modifications to its Large Power Tariff – Tariff LP, Mich. PSC Case No. U-21859 (Sept. 30, 2026), https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs00002XsJzPAAV (charging 90% of the customer's contract capacity or 90% of the customer's highest established billing demand during the past 11 months).
[46] Earthjustice & Sierra Club May 13 Comments at 14.
[47] *Id*; Rebuttal Testimony and Exhibit of Caroline Palmer at 9, Mich. PSC Case No. U-21859 (July 9, 2025), https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs00000yaMM5AAM.
[48] *See* Comments of Appalachian Citizens' Law Center, Kentucky Conservation Committee, and Kentucky Resources Council on Kentucky Power Company Application for Approval for Revisions to its Industrial General Service Tariff at 10–11, Ky. PSC Case No. 2024-00305 (Jan. 21, 2025), https://psc.ky.gov/pscscf/2024 cases/2024-00305/Public Comments/20250121_Appalachian Citizens' Law Center, Kentucky Conservation Committee, and Kentucky Resources Council Public Comment.pdf.
[49] *Id.*

We thus recommend that the Commission consider a minimum billing demand of at least 90% of contracted capacity, though a minimum billing demand of greater than 90% may better protect other ratepayers from the uncertainty of data center demand.[50]

B. Grid Flexibility

The Final Scope should directly address the potential for significant trade-offs between incentivizing grid flexibility and promoting reliance on back-up or behind-the-meter fossil fuel generation. Flexibility has been touted as a way to reduce the impact that new data centers will have on the grid and could be an important element in reducing the threat that the data center boom currently poses to our climate and affordability goals. But as a practical matter, the vast majority of on-site generation used by data centers today to offset a portion or all of their grid reliance has relied on burning fossil fuels at the expense of our climate and communities living near these customers.[51] Continuation of this status quo with the PSC's endorsement or acquiescence would be inconsistent with CLCPA Sections 7(2) and (3), the EJ Siting Law, and the ERA.

Therefore, the evaluation of mitigation measures related to grid flexibility should be strictly limited to zero-emission solutions. The PSC has an obligation to ensure incentives for on-site generation or demand response do not perversely incentivize unjust and environmentally harmful use of fossil gas or diesel back-up generators. Zero-emission load flexibility options, like on-site renewable energy and battery storage, virtual power plants, and novel forms of demand response in AI operations should be promoted. However, incentives such as relaxed tariff provisions or interconnection incentives for projects promising load flexibility or other grid services must not allow for reliance on combustion-based solutions.

In addition, incentives for flexibility should be paired with enforceable commitments backed by penalties sufficient to deter noncompliance. Studies estimating assumed levels of flexibility are not necessarily based on economic conditions required to guarantee curtailment. One expert estimated that when data centers are down, it costs technology companies about

[50] *Id*. (recommending the same).
[51] Arcelia Martin, *Data Centers' Use of Diesel Generators for Backup Power Is Commonplace—and Problematic*, Inside Climate News (Nov. 12, 2025), https://insideclimatenews.org/news/12112025/data-center-diesel-generatorsnoise-pollution/.

$9,000 per minute.[52] Accordingly, the Final Scope's assessment of flexibility as a mitigation measure must be paired with realistic considerations for enforcement and binding curtailment provisions.

C. Ratepayer Protections – Large Load Rate Class

The Final Scope should clarify each of the best practices for tariff design and cost recovery provisions available to mitigate ratepayer and financial risks.

At a minimum, this must include the creation of a new rate class for data centers and other similar large energy users that allows the Commission to ensure that existing customers do not bear the full range of costs associated with interconnecting and serving these large loads. The new large load class must allow for tracking and direct assignment of all incremental generation, transmission, and distribution costs, along with assigning a fair share of embedded costs. Embedded cost allocation requires careful consideration, because the enormous and concentrated loads of data centers can also increase operating costs through congestion, increased risk of local outages, and rising fuel prices.[53]

Furthermore, to guard against significant costs associated with stranded asset risk, the tariff terms for this rate class should meet or exceed the most protective standards adopted in other jurisdictions. In addition to the minimum billing demand outlined above, this includes:

- Minimum contract lengths of 20 years;
- Establishing minimum notice periods of 42-months for early contract termination or capacity reduction;
- Establishing exit fees and contract capacity reduction fees equal to the difference between costs placed into rates less the revenues received from the customers;
- Upfront payment for minimum transmission demand charges;
- Upfront payment for interconnection fees and study costs; and

[52] Laila Kearney, *Stressed US Grid Forcing Data Centers to Get More Flexible*, Reuters (Mar. 26, 2026), https://www.reuters.com/sustainability/boards-policy-regulation/ceraweek-stressed-us-grid-forcing-data-centers-getmore-flexible-2026-03-26/.

[53] Nina Peluso et al., Energy Futures Grp., Large Load Cost Allocation: Framework for States to Reduce Cross-Subsidization and Risk to Existing Customers (Sept. 24, 2026), https://earthjustice.org/wp-content/uploads/2026/09/large-load-cost-allocation-framework-for-states-to-reduce-cross-subsidization-and-risk-to-existing-customers.pdf.

- Generation portfolio requirements that align with CLCPA targets through incremental new generation (aligned with the three pillars) to ensure that CLCPA compliance costs are not shifted to other ratepayers.

III. The Draft Scope Should Include Specific Requirements to Assure CLCPA and EJ Siting Law Compliance

The Draft Scope states that it will address "whether and how the proposed action impacts the achievement of the [CLCPA] goals,"[54] but fails to provide any framework or information on how this analysis will be conducted. Advancing CLCPA and EJ Siting Law[55] compliance should be a critical part of the GEIS, but the Draft Scope's limited references to the CLCPA frame it as mere consideration, rather than a legal mandate.

New York enacted the CLCPA in 2019, recognizing that climate change is adversely affecting New York and finding that a statewide reduction in GHG emissions will reduce those adverse effects.[56] The CLCPA mandates transformative change in the fossil fuel-dominated energy sector. The CLCPA requires steep statewide emissions reductions starting this decade.[57] To achieve these requirements, the Legislature ordered all state agencies to evaluate each permit, license, or other administrative decision or approval through the lens of the CLCPA.[58]

In meeting its responsibilities under the CLCPA Section 7(2), the PSC must consider whether its actions are inconsistent with or will interfere with achieving the CLCPA greenhouse gas reduction targets, and if so, to provide a detailed justification and identify alternatives or mitigation.[59] The PSC, under Section 7(3) must also analyze the effects of its decisions to ensure that they do "not disproportionately burden disadvantaged communities"[60] ("DACs") and must affirmatively "prioritize reductions of greenhouse gas emissions and co-pollutants" in

[54] Draft Scope at 4.
[55] The Draft Scope fails to mention, let alone address, the EJ Siting Law.
[56] Climate Leadership and Community Protection Act (CLCPA) § 1(2)(a), 2019 N.Y. Sess. Laws Ch. 106 (S. 6599).
[57] ECL § 75-0107(1).
[58] Specifically, CLCPA Section 7(2) directs that: "In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law."
[59] CLCPA § 7(2).
[60] CLCPA § 7(3).

DACs.[61] Similarly, the EJ Siting Law requires state agencies conducting an EIS under SEQRA to determine whether the proposed action causes or increases any disproportionate pollution burden in a DAC.[62] These requirements apply to this proceeding, in which the Commission will ultimately approve a GEIS.[63] The CLCPA are EJ Siting Law are not merely aspirational. To meet the CLCPA's mandates to reduce greenhouse gases, and to avoid and ameliorate impacts on DACs, all state agencies must implement these laws diligently.

A. The GEIS Must Address CLCPA Section 7(2) GHG Mandates

The Draft Scope includes a CLCPA component in the Impact on Air section, which indicates that the GEIS will examine "how the proposed action may affect the attainment of the statewide greenhouse gas emissions limits established under the CLCPA."[64] This proposed CLCPA assessment is too narrow to provide useful guidance for the GEIS. By limiting the evaluation to the "proposed action", it is unclear if the assessment will include the serious impacts of construction and operation of data centers on meeting the CLCPA's GHG reduction requirements. If all 12 GW of data centers in NYISO's interconnection queue were powered with new combined cycle natural gas plants, which have an average emission rate of approximately 800 lb. CO2/MWh,[65] and operated round the clock, the supporting generation could release than 38 million tons of carbon dioxide per year.[66] This would increase total annual GHG emissions in

[61] *Id.* "Co-pollutants" are non-greenhouse gas air pollutants that are also produced by greenhouse gas emission sources. ECL § 75-0101(3).
[62] 6 NYCRR § 617.9(b)(5)(iii)(j) (as amended June 2026).
[63] The PSC has recognized that it is "the Legislature's intent that Section 7(2) of the CLCPA be broadly construed," and that "[t]he same analysis applies to Section 7(3) of the CLCPA." *See* Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements at 69–70, N.Y. PSC Case Nos. 19-G-0309, 19-G-0310, & 18-M-0270 (Aug. 12, 2021); *see also id.* at 70 ("Commission orders in rate cases fall within the ambit of Section 7(2)'s application to 'other administrative approvals,' notwithstanding the absence of a direct correlation to any item provided in the list of examples, as such list is preceded by the phrase 'including, but not limited to.'"); *Matter of Clean Air Coal. of W. N.Y., Inc. v. N.Y. Pub. Serv. Comm'n*, 249 A.D.3d 1446, 1451 (3d Dep't 2026) (applying Section 7(2) of the CLCPA broadly to cover PSC declaratory rulings).
[64] Draft Scope at 9.
[65] Andover Tech. Partners, CO2 and NOx Emissions from Natural Gas Combined Cycle and Natural Gas Combustion Turbine Power Plants 1–2 (2023), https://www.andovertechnology.com/wp-content/uploads/2023/09/CO2-and-NOx-from-NG-plants.pdf.
[66] 12,000 MW * 800 lb. CO2/MWh * 1 metric tonne/2,204.62 lb. * 8,760 hr/year = 38,145,349 tons.

New York by almost 11%,[67] erasing most of the progress New York has made to reduce its GHG emissions.[68] This is not an option for New York's future.

Furthermore, the GEIS must evaluate the risk that large loads pose to diversion of existing or expected clean energy from other end uses that would impede achievement of CLCPA goals. It is crucial that the GEIS not stop its assessment of GHG impacts at the point of the direct power consumption claimed by the data center or large load. Instead, the GEIS should investigate claims of renewable energy or hydropower use to determine the extent to which such significant new demand increases create indirect increases to the marginal emissions-intensity of the grid. Moreover, the GEIS should analyze whether these diversions of existing hydro- or renewable power will drive up the financial or logistical barriers to procuring new clean energy for CLCPA compliance. Even if large loads are relying on CLCPA-compliant or zero emission resources, if those resources are presently serving the public at large, then the public could be forced to fund replacement resources.

In particular, the Commission should closely scrutinize the risk that data centers will aggravate existing geographic disparities in New York's grid and prolong reliance on fossil fuel generators downstate. The upstate grid is approximately 87% powered by non-fossil fuel energy while the downstate grid is more than 80% fossil fueled.[69] Based on current reviews of the NYISO Interconnection Queue, most proposed large data center projects are being sited upstate, in Zones A–E. This is unsurprising, given that besides their need for enormous amounts of energy, data centers are relatively less geographically constrained than many other kinds of load. Thus, they are likely to locate upstate where power is relatively cheaper, cleaner, and more abundant. The GEIS must give careful attention to how this pattern of development could obstruct efforts to deliver more clean energy to the downstate region and thereby defer retirement of fossil fuel generators or the uptake of electric alternatives to fossil fuel end uses.

It is critical that the CLCPA analysis, whether contained in an "Impact on Air" section of the GEIS or elsewhere, contain a detailed analysis of potential GHG and co-pollutant emissions

[67] DEC, 2025 Statewide GHG Emissions Report: Summary Report at v, https://dec.ny.gov/sites/default/files/2024-12/summaryreportnysghgemissionsreport.pdf (last modified June 3, 2026) (38.1 mmt CO2/354.06 mmt CO2 = 0.107, representing a 10.7% increase from 2023 statewide emissions).
[68] *Id.* at v (gross 2023 GHG emissions in New York have declined by 14.8% since 1990).
[69] *See* NYISO, 2026 Power Trends: Annual Grid & Markets Report 49 (July 6, 2026), https://www.nyiso.com/documents/d/guest/2026-power-trends.

under a broad range of alternatives scenarios. Such an assessment should include interconnection reforms, construction and operation of data centers, and also consider harm avoidance and mitigation measures.

B. The GEIS Must Advance Environmental Justice for DACs and Tribal Nations, Including Compliance With CLCPA Section 7(3) and the EJ Siting Law

In drafting the GEIS, DPS should be mindful of well-established principles of environmental justice and community engagement. A fundamental tenet of environmental justice is equal participation of affected communities at all levels of decision-making. But the current truncated scoping comment period is a poor start for community engagement. The Commission and interested agencies must ensure that DACs are meaningfully engaged throughout the GEIS process, and this should include public hearings and technical conferences as the study progresses and following the release of a draft GEIS. For example, DPS should consult and apply the Frontline Framework Community Data Center Guiding Principles developed by NAACP.[70]

It is critical that the Final Scope *mandate* appropriate consideration of the full range of potential impacts to DACs. While the Impact on Air section of the Draft Scope states that it "shall" address GHG emissions in the context of the CLCPA, for DACs it states that this "section *may*" also evaluate air impacts on DACs (emphasis added). Section 18, Socioeconomics, Environmental Justice, and DACs also problematically uses permissive "may" language for identifying DACs and considering impacts. Given that these are the only two sections specifically addressing DACs, it is critical that Final Scope require these inquiries by using the terms "shall" or "will."

With respect to CLCPA Section 7(3), the Commission and interested agencies, through this GEIS process, must ensure that their actions do not disproportionately burden DACs. Reductions in GHG emissions and co-pollutants should be prioritized in DACs, and the GEIS must carefully assess not just interconnection reforms but potential impacts to DACs from construction and operation of data centers. The Draft Scope briefly, but insufficiently, mentions DACs and environmental justice in several sections: (III) General Scoping Considerations, (5)

[70] *Frontline Framework Community Guiding Principles*, NAACP, https://naacp.org/resources/frontline-framework-community-guiding-principles (last visited Nov. 3, 2026).

Impact on Air, and (18) Socioeconomics, Environmental Justice, and DACs. However, the Draft Scope contains very little detail on the nature of these assessments and whether the Commission or interested agencies intend to engage with DACs in the GEIS process.

The Draft Scope must also explicitly include compliance with the EJ Siting Law, which DEC has touted as a "nation leading law [that] requires the consideration of impacts and existing burdens in disadvantaged communities to ensure no community bears a disproportionate pollution burden and seeks to actively reduce any such burden for all communities."[71] It is critical that the Draft Scope address EJ Siting Law compliance and procedures through which adverse environmental impacts to DACs can be avoided.[72]

In particular, the GEIS must examine the significant potential for data center development to increase air pollution and other harms posed to DACs by on-site fossil fuel generators, including back-up generators. Many back-up or behind-the-meter generators evade regulatory oversight by the Commission under the standard interconnection process. Indeed, many developers are bypassing other remaining legal safeguards such as air permits through project segmentation that allows them to remain just under legal thresholds, or by targeting unincorporated regions with limited zoning or land use approvals.

Furthermore, it is critical that the GEIS examine the potential for significant and cumulative impacts from these projects on DACs. As explained above, data center development can indirectly exacerbate air pollution and environmental injustice in DACs by exacerbating geographic generation disparities in New York's grid. By creating significant new demand upstate, data centers can create new barriers to connecting clean energy generation to densely populated communities downstate that currently host old, highly polluting fossil fuel peaker plants. To assess whether and how new data center developments perpetuate reliance on peaker

[71] *The Environmental Justice Siting Law*, DEC, https://dec.ny.gov/environmental-protection/environmental-justice/the-environmental-justice-siting-law (last visited Nov. 3, 2026).

[72] Notably, DEC has implemented a Disadvantaged Community Assessment Tool for agencies to use when conducting SEQRA actions. Its purpose is to "help lead agencies assess disproportionality and consider whether a potentially affected disadvantaged community (DAC) has an increased likelihood of experiencing a moderate to large impact based on existing burdens or vulnerabilities as compared to relevant non-DACs as required under the Environmental Justice Siting Law." *Disadvantaged Community Assessment Tool: Assessing Comparative Burdens and Vulnerabilities in Disadvantaged Communities*, DEC, https://storymaps.arcgis.com/stories/7f0ffdde675e4e3788632c1b4cce6c0a (last visited Nov. 3, 2026).

plants in Zones J and K, the GEIS will have to look beyond interconnection reforms to existing patterns of geographic development as well as impacts to overall peak demand.

The GEIS must also carefully assess potential environmental and cultural impact to Tribal Nations.[73] Indigenous people and their interests are only mentioned in one sentence in Draft Scope, which merely indicates that the GEIS "may" include a discussion of certain potential impacts. This is insufficient. Notably, many planned data centers may operate in areas where Tribal Nations have legally protected interests. Assessment of potential impacts in areas where tribes have current, ancestral, cultural, or other interests must begin by meeting the principles of Free, Prior, and Informed Consent ("FPIC"): consent sought voluntarily and without coercion, sufficiently in advance of any authorization or activity, informed by information shared both before and throughout the process and reached through each Tribal Nation's own customary decision-making processes.[74] Early, ongoing engagement and consultation with Tribal Nations with a current or ancestral connection to the region, is a baseline requirement. Should adjacent Tribal Nations seek it, a formal and mutual Tribal engagement protocol can be established.

When assessing data center impacts in areas significant to Tribal Nations, the GEIS must evaluate measures to avoid harm to Tribal communities. This includes impacts to cultural resources such as (but not exclusive to) ceremonial, archeological, and ancestral sites, culturally vital wildlife species, waterways, vistas, landscapes, structures, geological formations, and any other cultural resource. A determination by each Tribal Cultural Resource Department or Council may not be superseded by any other government. As Tribal communities have been and continue to be disproportionately harmed by industrial and energy development and the resulting influx of temporary workers, robust community safety measures should be developed in consultation with the affected Tribal Nations to avoid circumstances such as human trafficking and Missing and Murdered Indigenous People (MMIP).[75]

---

[73] *See* Draft Scope at 10 (Impact on Historical and Archeological Resources).
[74] Indigenous Env't Network & Oil Change Int'l, Indigenous Resistance Against Carbon 3 (Aug. 2021), https://www.ienearth.org/wp-content/uploads/2021/09/Indigenous-Resistance-Against-Carbon-2021.pdf; Food & Agric. Org. of the UN, *Free Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities* 15–16 (Jan. 1, 2016), https://openknowledge.fao.org/server/api/core/bitstreams/8a4bc655-3cf6-44b5-b6bb-ad2aeede5863/content.
[75] *See* Yurok Tribal Court, How to Protect Native Women, Girls, and People in Humboldt & Del Norte County as Offshore Wind Enters the Region: MMIP Prevention Planning and Recommendations (June 21, 2023),

C. The GEIS Should Consider and Endorse a Comprehensive Permitting Mechanism to Ensure CLCPA Compliance

As explained above, depending on where and how they are constructed, it is currently possible for some data centers to evade any discretionary permitting by DEC. Given the significant potential cumulative environmental, health, energy, and climate impacts of data center development in New York, no data center should evade all permitting. Subjecting data centers to an appropriate degree of permitting is critical to ensuring that there are meaningful climate and environmental justice reviews required by the CLCPA. In considering such a permitting process, the GEIS must avoid recommending processes through which developers can segment permit reviews by splitting a project or related projects into multiple permit applications to speed up or evade rigorous environmental reviews.[76] Instead, mandatory permit reviews would ensure that the state has the opportunity to evaluate data centers' consistency with statewide greenhouse gas emission limits and consider justification and mitigation measures for the facilities and their energy consumption, as well as ensuring that data centers do not cause disproportionate burdens on disadvantaged communities. The GEIS should consider establishing a uniform permitting process that would apply to all large data centers. DEC could lead such a process and include permit consultation with DOH, the Commission and other relevant agencies. This would also ensure that the individual and cumulative impacts of data centers do not jeopardize water resources or sensitive habitats, and that waste disposal, noise, and other facility practices do not harm the environment or public health.

IV. The GEIS Must Carefully Consider Environmental Impacts of Data Center Construction and Operation.

A. Air Pollution

In addition to the GHG emissions associated with data centers, which were discussed above in reference to CLCPA compliance, the GEIS must also consider the full range of air

https://lostcoastoutpost.com/loco-media/loco-media/blog/post/37499/How+to+Prevent+MMIP+and+Protect+Native+Women+Girls+and+People+in+Humboldt++Del+Norte+County+as+Major+Development+Projects+Come+Into+the+Region27+%28002%29.pdf.

[76] Bangsund et al., *supra* note 8, at 53–55, 64–65, 93 (examples of project segmentation), 98. Particular care should be given to whether segmentation of project components could lead to an incomplete impact analysis, as this can reduce the level of required public review and pollution control requirements. Additionally, such segmentation can impact what local approvals are triggered.

pollutants associated with powering data centers. Generators, such as those often fueled by diesel, emit a broad range of air pollutants, including particulate matter, nitrogen oxides, carbon monoxide, sulfur dioxide and volatile organic compounds, and such emissions are well known to cause or contribute to a broad range of serious adverse health effects.[77] In the absence of a mandate for all data centers to operate on clean energy resources, there would be significant air pollution and attendant adverse health effects if such facilities rely on fossil fuel combustion.[78] We recommend that the Commission engage the DOH Center for Environmental Health and major public health research institutions, to conduct a study of data centers' air pollutant health impacts, as well as other potential health risks posed by data centers and all power generation sources supplying them. Further, the GEIS should recommend that DEC assess impacts from air pollutants in DEC permitting decisions for data centers.

The GEIS should also include parameters for assessing whether, where, and to what extent the construction and operation of new data centers will impact Clean Air Act National Ambient Air Quality Standards ("NAAQS") attainment statuses for criteria pollutants in New York and surrounding states. To the extent that data centers cause or contribute to NAAQS exceedances, they should be subject to additional permitting scrutiny by DEC and any other permitting agency.

B. Thermal Impacts: Heat Island Impacts and Receiving Water Impacts

The GEIS should examine thermal impacts resulting from data centers, including those that impact surrounding communities, species, and waterbodies. Large data centers have been found to create or contribute to heat islands, warming nearby areas by up to 16 degrees

---

[77] *See* NYLPI Initial Comments at 5, PSC Case No. 26-E-0045 (May 13, 206); Peter Adams, *Using Diesel Generators to Power the AI Revolution Would Kill Hundreds of Americans a Year*, The Conversation (May 6, 2026), https://theconversation.com/using diesel-generators-to-power-the-ai-revolution-would-kill-hundreds-of-americans-a-year-280892 ("We found that using diesel generators rather than grid electricity would cause significant amounts of fine particulate matter pollution that would be dangerous to people's health. The exact results varied with each simulation and with a range of assumptions about emissions from diesel generators. But in general, we found that using backup diesel generators this way would cause about 500 more premature deaths per year in the U.S. compared with getting the same electricity from the central grid.").

[78] Better Data Center Project, *Diesel Generators at Data Centers, Status, Impacts and Protective Practices* at 15–20 (Mar. 2026), https://betterdatacenterproject.com/wp-content/uploads/2026/03/Diesel-Generators-at-Data-Centers-Status-Impacts-and-Protective-Practices.pdf; Earthjustice, *The AI Gas Rush: Risks and Implications of "Bring Your Own Power"* at 4–5, 22–23, 32 (Oct. 2026), https://earthjustice.org/wp-content/uploads/2026/10/the-ai-gas-rush-risks-of-byop_full-report-with-cover.pdf.

Fahrenheit.[79] This is particularly concerning for DACs, many of which already were subject to urban heat island impacts absent any data centers. Excessive data center thermal pollution, on top of rising temperatures from climate change, can aggravate illnesses, particularly for vulnerable communities and for those with chronic medical conditions.[80] Consequently, having a data center nearby may be the determining factor for an individual in deciding whether it is safe to go outside or not.

In connection with the Databank Orangeburg Phase 2 DEIS scope, the State recently highlighted these well-established risks that flow from data center related thermal impacts.[81] There, the Attorney General's Office discussed the potential creation or contribution to heat islands, and attendant potentially serious "heat-related illnesses which can rapidly progress and worsen underlying health conditions, such as cardiovascular disease, diabetes, mental health conditions, and asthma" and that these impacts are particularly worrisome for individuals for sensitive populations.[82] The GEIS should carefully consider such potential thermal impacts and should delineate roles for DEC and the Department of Health to consider environmental and public health implications, health monitoring, and harm avoidance and mitigation. This is an area where detailed consideration under the EJ Siting Law is particularly important, as thermal impacts are likely to arise in the greater context of other environmental and public health hazards impacting DACs.

---

[79] Andrea Maroni et al., *The Data Heat Island Effect: Quantifying the Impact of AI Data Centers in a Warming World* (Mar. 2026), https://www.researchgate.net/publication/403073048_The_data_heat_island_effect_quantifying_the_impact_of_AI_data_centers_in_a_warming_world; Laura Paddison, *Scientists Have Found an Alarming Environmental Impact of Vast Data Centers* (Mar. 30, 2026), https://www.cnn.com/2026/03/30/climate/data-centers-are-having-an-underrported.

[80] Riya Bhatia, *How Do Data Centers Impact Public Health?*, Union of Concerned Scientists (Oct. 7, 2026), https://blog.ucs.org/guest-commentary/how-do-data-centers-impact-public-health/.

[81] Off. of the N.Y. State Att'y Gen., *Comments to Draft Environmental Impact Statement (DEIS) Scoping Document for Databank Orangeburg Phase 2 (LGA-4)* at PDF 4–5 (Sept. 9, 2026), https://www.orangetown.com/wp-content/uploads/2026/09/73.15-1-19-Databank-Correspondence-on-the-Scoping-Document.pdf.

[82] *Id.* at PDF 5, nn.1–2 (citing *e.g.* Sailor, D. J.. Abolhassani, S. S, and Martin, E. P.. *Data Center Waste Heat as an Emerging Urban Thermal Hazard*; *First Field Measurements of Neighborhood-Scale Air Temperature Impacts*, ASME. J. Eng. Sustain. Bldgs. Cities, (May 2026), https://doi.org/10.1115/1.4071922; Marinoni, Andrea, et al. *The data heat island effect quantifying the impact of AI data centers in a warming world* (Apr. 21, 2026); Kristie L Ebi et al., *Hot Weather and Heat Extremes: Health Risks*, 398 The Lancet 698 (2021), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01208-3/fulltext).

Thermal impacts from data centers may also impact local water bodies and wetlands, and flora and fauna.[83] The discharge of heated water from data center cooling systems and power sources can have significant adverse impacts on aquatic resources and species. For example, thermal discharges can reduce dissolved oxygen levels, stress fish and aquatic organisms, promote algae blooms, and cause long term changes to an aquatic environment.[84] The GEIS must carefully consider the benefits and harms associated with different cooling systems in terms of their energy demand, GHG and co-pollutant emissions, water usage and thermal impacts. Evaluation of effective and environmentally protective cooling technologies may be highly context specific, but some general important considerations include: (1) energy demand and attendant GHG and air pollutant emissions (including whether such demand can be met with on-site clean energy and CLCPA 7(2) implications); (2) water loss (i.e. from evaporation or otherwise); (3) use of contaminants in the cooling process and potential discharge and disposal concerns for waste water; (4) heated air emissions and thermal impacts from air-based or other cooling systems; (5) noise or other environmental impacts; and (6) impacts of such technologies on DACs.[85] The GEIS should assess the full range of cooling options and their attendant risks and benefits, and form recommendations that protect sensitive habitats and populations, including DACs, from thermal impacts from data centers and associated power generation. The GEIS should also recommend that thermal impacts be specifically considered in all DEC data center permitting decisions.

C. Impacts on Water Resources

The Draft Scope requires identification of water resources and a discussion of certain potential impacts on them resulting from the proposed action.[86] Mentioned also are the impacts on water resources from data center "water consumption, use, discharge, or other activities that may affect water quality, quantity, temperature, or use[,]" but the Draft Scope does not fully

[83] *Id.* at PDF 5, n.5 (citing Smith, Melinda D*, The ecological role of climate extremes: Current understanding and future prospects*. J. Ecol. 99. 651-655. (April 2011); Robert Teskey et al., *Responses of Tree Species to Heat Waves and Extreme Heat Events*, 38 Plant, Cell and Environment 1699-1712 (2015)).
[84] Univ. of Georgia Coll. of Agric. and Env't Sci., *Understanding How Data Centers Impact Surface and Ground Waters* (June 10, 2026), https://fieldreport.caes.uga.edu/wp-content/uploads/generated-pub-pdfs/TP-121.pdf.
[85] *See* All. for the Great Lakes, *A Finite Resource, Managing the Growing Water Needs of Data Centers, Critical Minerals Mining and Agriculture in the Great Lakes Region* at 17–18 (Aug. 2025), https://greatlakes.org/wp-content/uploads/2025/08/AGL_WaterUse_Report_Aug2025_Final.pdf.
[86] Draft Scoping Document at 8.

commit to their evaluation.[87] By themselves, interconnection reforms and cost allocation standards only indirectly impact water resources to the extent such reforms influence the number of data centers constructed. That analytical process, however, would flip environmental review on its head by shoehorning the evaluation of potential impacts into interconnection reforms and cost allocation standards.[88] As we have advised throughout these comments, the GEIS should therefore acknowledge the limitation of its proposed action and explicitly evaluate the potential impacts from the construction and operation of data centers across New York on water.[89] This discussion should incorporate both direct and indirect consumption and discharge of water. Well-positioned agencies, like the DEC, should participate in this analysis.

Data centers can directly consume enormous amounts of water for on-site cooling that results in significant water pollution.[90] In light of this, the GEIS should consider how different technologies can mitigate the use and discharge of water from data centers. Data centers cool racks of servers through various methods. Some methods, like open loop evaporative cooling, use more water, while others, like dry cooling, consume less water directly but require more electricity.[91] As described in the previous section, the GEIS should assess the different cooling methods and the various technological approaches for each, and compare the associated environmental and energy impact tradeoffs of each to determine which method and technology best protects the environment and aligns with the CLCPA. Additionally, several states, recognizing the potentially significant water impacts of data centers, have enacted certain planning and permitting requirements for data center developers.[92] To help mitigate water resource impacts, the GEIS should also consider further regulation, beyond existing regulations that data centers may be subject to, for water resource interaction with data centers, including water assessments and withdrawal rules, per gallon water rates paid to host municipalities, water

[87] *Id*.
[88] *See supra*, Sec. II(a).
[89] *Id*.
[90] *See Understanding How Data Centers Impact Surface and Ground Waters*, *supra* n. 84 at 6-8.
[91] *See generally*, Ahmed A. Alkrush et al., *Data Centers Cooling: A Critical Review of Techniques, Challenges, and Energy Saving Solutions*, Int'l J. of Refrigeration, Vol. 160 (2024), https://doi.org/10.1016/j.ijrefrig.2024.02.007 (reviewing "traditional as well as state-of-the-art data centers cooling techniques.").
[92] *See, e.g.,* Cal. Leg., Assem. B. 2469 (2026) (Cal. 2025) (requiring a water supply assessment from a data center applicant before permits can be issued); Fla. Stat. § 373.262 (prohibiting the issuance of a permit to a large-scale data center applicant for an allocation of water "if the proposed use of the water is harmful to the water resources of the area or is prohibited by the applicable local government zoning regulations and comprehensive plan" and requiring a water assessment and conservation plan for all permit applications requesting an allocation of an average daily flower of 100,000 gallons or more).

scarcity rules, limits on thermal discharges to water bodies, and stringent pollution limits on discharges (e.g., standards for chemical additive and forever chemicals). Finally, the GEIS should investigate the potential cumulative impacts on water resources resulting from data center clustering.[93]

Impacts on water resources from per- and polyfluoroalkyl ("PFAS") are less well-known than other data center impacts and should be addressed in the GEIS. PFAS present significant risks to public health. The EPA has previously found that "virtually no level of exposure [for two PFAS compounds] in drinking water is safe[,]"[94] and the International Agency for Research on Cancer, part of the World Health Organization, has classified certain PFAS compounds as carcinogenic to humans.[95] Data centers use PFAS primarily to cool servers (and to suppress fires).[96] Depending on the type of cooling method employed, data centers risk releasing PFAS and other chemicals into water sources, where they may end up in drinking water, water used for agricultural applications, or aquatic habitats.[97] If a hyperscale data center uses the two-phase immersion method, a facility can contain hundreds of cooling tanks, totaling thousands of liters of dielectric fluid.[98] Release of PFAS can occur from leaks and when cooling tanks need to be replaced, risking further accumulation of forever chemicals in the environment, including water sources. And data centers may start relying more on PFAS-based cooling methods as they are advertised as cheaper alternatives to other cooling methods.[99] Accordingly, the GEIS must address PFAS in its discussion of the potential impacts of the proposed action on surface and

---

[93] *See* Quinn Glabicki, *When Data Centers Cluster Together, How Dirty Are They? One County Wants Answers*, N.Y. Times (Oct. 1, 2026), https://www.nytimes.com/2026/10/01/climate/data-center-pollution-study-pennsylvania.html.
[94] Tom Perkins, *EPA quietly backtracks on claims US has phased out toxic Pfas compounds*, The Guardian (Oct. 18, 2026), https://www.theguardian.com/environment/2026/oct/18/epa-pfas-compounds-toxins.
[95] *See IARC Monographs Volume 135: Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS)*, Int'l Agency for Rsch. on Cancer (Feb. 14, 2025), https://www.iarc.who.int/news-events/iarc-monographs-volume-135-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos/.
[96] *See* Andie May Hardin, *Data Centers Are Contributing to PFAS Forever Chemical Pollution*, Env't and Energy Study Inst. (Apr. 9, 2026), https://www.eesi.org/articles/view/data-centers-are-contributing-to-pfas-forever-chemical-pollution.
[97] *See Understanding How Data Centers Impact Surface and Ground Waters*, *supra* n. 84.
[98] Lenny Siegel, *Forever Chemicals Cool Data Centers*, Ctr. for Pub. Env't Oversight, at 2 (June 29, 2026), https://cpeo.org/pubs/ForeverDataCenters.pdf.
[99] *See* Damien Gayle, *'Tidal Wave' of PFAs Being Launched to Satisfy AI Industry, Campaigners Warn*, The Guardian (Sep. 14, 2026), https://www.theguardian.com/environment/2026/sep/14/pfas-firms-tidal-wave-forever-chemicals-ai-industry-demand-datacentres (explaining a "two-phase immersion cooling" system where "servers are immersed in a pool of Pfas with a low boiling point … [and a]s the hardware gets hot, the fluid boils, drawing heat away as vapour. That rises to a water-cooled condensing coil at the top of the tank, cools back to a liquid state and re-enters the cycle.").

groundwater resources and pathways of mitigation, including exclusion of PFAS in facility construction and operation.

Wetlands are one of New York's most important ecosystems—they improve water quality, protect against flooding, help refill water sources, provide habitat for local and migratory wildlife, and sequester carbon.[100] The Draft Scope includes mention of potential impacts to wetlands, and the GEIS should carefully consider how data center construction and operation may be harmful to their preservation, protection, and conservation.[101] As part of this discussion, the GEIS should consider impacts to currently protected wetlands as well as additional wetlands that the DEC's 2022 amendment to the Freshwater Wetlands Act will ultimately bring under agency protection.[102] Developers may have a heightened interest in constructing data centers in undeveloped areas with relatively inexpensive land which may increase pressure to develop data centers within or near wetlands. For both, potential wetland impacts from construction include filling, grading, and removal of vegetation, and data center development and operation could affect wetland water levels, temperature, and drainage patterns due to water discharges from the facilities.[103] The GEIS should also discuss the indirect potential impacts from the construction and operation of data centers in adjacent areas, uplands, and other waters.

D. Impacts from E-Waste

Toxic e-waste is one of the fastest growing waste streams in the world,[104] and AI data centers produce massive amounts of it.[105] For facilities to come online, developers must outfit them with infrastructure for cooling and power generation, networking, energy storage, and computing hardware. Rapid technological advancement means that these components,

---

[100] *See Freshwater Wetlands Program*, https://dec.ny.gov/nature/waterbodies/wetlands/freshwater-wetlands-program (last visited Nov. 3, 2026) (describing the benefits of wetlands); *Why are Wetlands Important?*, https://www.epa.gov/wetlands/why-are-wetlands-important (last updated July 2, 2026).
[101] Draft Scope at 8.
[102] *See* ECL § 24-0107.
[103] *See Wetland Disturbance and Impact*, Md. Dep't of Env't Conserv., https://mde.maryland.gov/programs/water/wetlandsandwaterways/aboutwetlands/pages/disturbance.aspx (last visited Nov. 3, 2026).
[104] *Electronic Waste (E-Waste)*, World Health Org. (Oct. 1, 2024), https://www.who.int/news-room/fact-sheets/detail/electronic-waste-(e-waste).
[105] *See* Eric McCormick, *Datacenter Rush Will Create 'Tsunami' of Discarded Electronics, Report Says*, The Guardian (Sep. 16, 2026), https://www.theguardian.com/world/2026/sep/16/datacenters-pollution-electronics; Peng Wang, et al., *E-waste Challenges of Generative Artificial Intelligence*, 4 Nature Computational Sci. 818 (2024), https://doi.org/10.1038/s43588-024-00712-6.

particularly microchips, face continuous obsolescence.[106] Accordingly, millions of tons of AI data center infrastructure will become waste sooner than typically expected. Exposure to this waste, which often contains toxins like mercury, lead and forever chemicals, presents significant health and ecological risks.[107] Depending on the scale of the AI data center buildout, New York could become inundated with e-waste, making enforcement of existing state laws and regulations more challenging. E-waste from an AI data center buildout could end up in landfills, for example, where the discarded components risk leaching heavy metals and PFAS into the ground, air, and water sources in or near communities. These potential consequences cannot be adequately captured by examining the impacts from interconnection reforms and cost allocation standards alone.

The GEIS should therefore evaluate how the proposed action would impact e-waste accumulation and disposal under different buildout scenarios and assess the resulting risk of harmful exposure to environmental resources and communities across the state, especially communities sited near landfills. It should also examine opportunities that AI data centers have to increase transparency about their operations and mitigate e-waste generation, such as practices that extend equipment life, track disposal of hazardous materials in discarded equipment, and disclose details about equipment-related replacements schedules and anticipated e-waste generation.[108]

E. Noise Pollution Impacts

The Draft Scope requires the Commission to evaluate the potential noise pollution impacts from data center construction and operation.[109] Data centers can produce unrelenting operational noise originating from their cooling systems, fans, onsite electricity generation and backup diesel generators that can be heard thousands of feet away. And because the noise is frequently, though not always, concentrated in low frequencies (c-weighted decibels, which most

[106] *See* Gideon Lewis-Kraus, *Computer Chips Are the Most Magnificent Things Humanity Has Ever Made*, The New Yorker (Oct. 19, 2026), https://www.newyorker.com/magazine/2026/10/26/computer-chips-are-the-most-magnificent-things-weve-ever-made (observing Moore's Law as applied to microchips, which holds that the technology doubles in sophistication every two years).
[107] Sarker M. Parvez et al., *Health Consequences of Exposure to E-Waste: An Updated Systematic Review*, 5 Lancet Planet Health E905 (2021), https://doi.org/10.1016/S2542-5196(21)00263-1.
[108] *See, e.g.*, Casey Crownhart, *AI Will Add to the E-waste Problem. Here's What We Can Do About It.*, MIT Tech. Rev. (Oct. 28, 2024), https://www.technologyreview.com/2024/10/28/1106316/ai-e-waste/.
[109] Draft Scope at 11.

noise ordinances, where they exist, typically do not address) and continues unabated 24 hours a day, it stands out from other urban or intermittent sounds.[110] Impacted community members have described the pollution as a constant "high-pitch whining" and expressed shock at "how much it's changed our lives."[111] This unique noise pollution can interfere with local host community members' ability to use and enjoy their land and land across their community. It also poses public health risks—noise pollution can raise cortisol levels, reduce sleep quality, harm concentration, and lead to hearing loss.[112] Indeed, the potential harm from data center noise pollution has increased communities' concerns about, and opposition to, their siting, resulting in lawsuits.[113]

The GEIS should carefully examine the potential noise pollution impacts on local host communities, and the full slate of mitigation measures available to reduce noise from data center construction and operation. This survey should include a review of state authority to implement noise regulations[114] and a discussion of recommended mitigation requirements, based on their effectiveness, related to low frequency-specific decibel limits, equipment and building soundproofing measures, facility setback and equipment placement, landscaping techniques and best practices, and choice of cooling systems. As part of the GEIS, outreach should be conducted in communities experiencing noise from data centers or similar loud facilities, such as

---

[110] *See* Kate Grumke, *How Data Center Noise is Different from Regular Noise Pollution, According to a St. Louis Scientist*, St. Louis Pub. Radio (Sep. 24, 2026), https://www.stlpr.org/health-science-environment/2026-09-24/st-louis-scientist-data-center-noise-pollution; Tommy N. Turner, *A Noise Limit on Data Centers is Only as Good as its Measurement* (Oct. 27, 2026), https://www.planetizen.com/features/138741-noise-limit-data-centers-only-good-its-measurement.

[111] WXYZ-TV Detroit | Channel 7, *Neighbors Say Noise from Michigan Data Center is 24/7 and Upending their Lives*, at 0:40–0:45, 2:25–2:30, Youtube (July 23, 2026), https://www.youtube.com/watch?v=9wDr2dec474.

[112] Grumke, *supra* note 110; *see also* Joshua Ulan Galperin, *Noise Law*, 15 Mich. J. Env't. & Admin. L. 59, 67 (2025) ("The consequences of excessive noise exposure are dramatic. The more obvious effects of noise include hearing loss, sleep disturbance, and irritation that leads to inefficiency or 'reduction in performance.' The National Institute on Deafness and Other Communication Disorders reports that loud noise is to blame for 10 million cases of hearing loss in the United States, which is roughly 1/3 of all cases. Additional health consequences of noise include heart and hormonal problems, mental health disorders, delayed language development, and decreased learning performance."); Quiet Cmtys., *Fact Sheet: AI Data Center and Cryptocurrency Mining Noise*, https://static1.squarespace.com/static/6409eeb077fb7962345ddc03/t/6a3ab8bb9bd351566732e276/1782233275885/Data+Center+fact+sheet+with+logo.pdf (last visited Nov. 3, 2026); Miguel Yañez-Barnuevo, *Communities Are Raising Noise Pollution Concerns About Data Centers*, Env't. and Energy Study Inst. (Mar. 23, 2026), https://www.eesi.org/articles/view/communities-are-raising-noise-pollution-concernsabout-data-centers.

[113] *See, e.g.,* Jessica Glenza, *'It's All You Can Hear': New Jersey Lawsuit Takes on Datacenter's Noise Pollution*, The Guardian (Aug. 28, 2026), https://www.theguardian.com/us-news/2026/aug/28/datacenters-sound-pollution-lawsuits.

[114] *See, e.g.*, ECL § 3-0301(1)(i) (In carrying out the environmental policy of the state, "the commissioner shall have power to . . . [p]rovide for prevention and abatement of all water, land and air pollution including, but not limited to, that related to . . . noise[.]"); 6 NYCRR § 360.19(j) (regulating noise from waste management facilities).

cryptocurrency operations. This outreach should include engagement with the North Tonawanda community who have been plagued by severe noise pollution from the crypto operation at the Fortistar fracked gas plant.[75] Further, the GEIS should evaluate how potential noise pollution impacts may be affected by data center clustering, including how decibel thresholds applied to individual data centers may cumulatively elevate noise impacts due to clustering.[115]

F. Wildlife, Ecological and Habitat Impacts

The Draft Scope includes several sections that relate to assessing potential impacts on plants, animals, land, agricultural resources, aesthetics, open space and recreation, and critical environmental areas. However, these sections provide almost no detail with respect to the nature of these assessments, and whether and how DEC and other agencies will support them.

The Final Scope must require a detailed assessment of the myriad impacts that can flow from data center development, which can damage and fragment habitats and large swaths of undeveloped land.[116] Before data center construction begins, entire habitats may be impacted or removed, including forests, grasslands, wetlands, or farmland.[117] This is especially concerning because data center developers often seek to combine multiple facilities and create data center "campuses" that can occupy thousands of acres. For example, in Virginia, over 340 data centers totaling 63 million square feet of data center space and occupying roughly 7,200 acres of land had already been built through 2024, not including additional development since.[118] Clearing land for data centers raises grave concerns and potential irreversible damage to forests, endangered and threatened species, wetlands and waters bodies, and other habitats and natural

---

[115] *See* Vincent M. Nolette, *Community Benefits Agreements and Data Center Development*, Climate Law: A Sabin Center Blog (May 28, 2026), https://blogs.law.columbia.edu/climatechange/2026/05/28/community-benefits-agreements-and-data-center-development/ (explaining that individual facility decibel thresholds do not necessarily protect against cumulative noise impacts).

[116] *See* S. Env't L. Ctr., Getting it Right: Local Approaches to Data Center Development 3 (Jan. 2026), https://www.selc.org/wp-content/uploads/2026/01/SELC-Data-Center-Development-Report-All-0126_F.pdf; *The Data Center Boom is Upon Us, What Will it Mean for Water-Dwelling Animals?,* Defs. of Wildlife (Sept. 30, 2026), https://defenders.org/blog/2026/09/data-center-boom-upon-us-what-will-it-mean-water-dwelling-animals (discussing habitat loss and noting that a planned date center in Utah could cover thousands of acres).

[117] *See* Elan Justice Pavlinich, *The Dangers of Data Centers*, Env't Health Project (Feb. 27, 2026), https://www.environmentalhealthproject.org/post/the-dangers-of-data-centers; Prya Bisambhar, *How AI data Centers are Affecting Wildlife*, The Animal Reader, (July 10, 2026), https://www.theanimalreader.com/2026/07/10/how-ai-data-centers-are-affecting-wildlife/.

[118] S. Env't L. Ctr., *supra* note 116, at 3.

resources. Additionally, power lines, noise, and artificial light generated by data centers can pose special hazards to birds and other species.[119]

When determining the potential locations for new data centers, there must be a comprehensive siting assessment process to understand a potential data center's proximity and relationship to sensitive ecological receptors *and* to avoid adverse impacts. This includes areas with: high natural resource value including wetlands and riparian habitats, water availability concerns, imperiled species and other sensitive natural resources.[120] Such assessments should ensure that potential impacts on threatened or endangered species (whether under federal or state listings) are carefully evaluated. The GIES should ultimately recommend policy mechanisms for conducting such assessments.

Furthermore, the Final Scope, and GEIS process overall, must ensure that adequate resources and expertise are deployed to fully consider potential impacts in these areas and to develop appropriate policy mechanisms for addressing these areas in relevant state government approval and permitting stages.

Conclusion

States before New York that opened their doors for unchecked data center build out have since experienced tremendous buyer's remorse. To learn from these experiences, and not repeat them, it is critical to have a Scope of Work that produces a GEIS that is strongly protective of New Yorkers' health and environment. It is essential that the GEIS properly consider the broadest range of potential environmental and public health impacts, ensure compliance with the CLPCA and EJ Siting Law, and properly define roles for all relevant agencies in conducting the GEIS. We look forward to further participating in the GEIS process and thank you for your consideration of these comments.

[119] *See* Ambika Kandasamy, *More Data Centers, More Environmental Problems?*, National Wildlife Federation (Sept. 24, 2025), https://www.nwf.org/Magazines/National-Wildlife/2025/Fall/Conservation/AI-Data-Centers.
[120] Aimee Delach, *The Data Center Boom is Upon Us, What Will it Mean for Water-Dwelling Animals*, Defenders of Wildlife (Sept. 30, 2026), https://defenders.org/blog/2026/09/data-center-boom-upon-us-what-will-it-mean-water-dwelling-animals.