

Business & Practice

Data Center Rush Poses Conflicts for Law Firms With Energy Ties

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The data center boom is a conflict minefield for law firms that count major utilities among their top clients.

Three of the largest firms in Texas—Vinson & Elkins, Baker Botts, and Jackson Walker—are go-to advisers for large regulated utilities Oncor Electric Delivery Co., CenterPoint Energy, and Texas-New Mexico Power. They are now among a slew of firms representing AI data center developers and hyperscalers building multibillion-dollar facilities that require massive amounts of electricity from the state's power grid.

"There's a whole host of conflicts that can result," said John Browning, a former appeals court judge in Dallas. "Law firms in Texas want to cash-in on the business opportunities, but at the same time they also have to navigate that very difficult tightrope of keeping their existing utility clients happy."

The utilities are experiencing unprecedented demand for infrastructure development to meet increasing calls from industry, including data centers. That creates revenue and opportunity, but it's also fueling concerns over the strained power grid and public policies regulating large loads of connection. Utilities need to manage how to serve the state's growing population and industries, while tech giants are asking to plug-in now and get power fast.

Vinson & Elkins and Baker Botts declined to comment, while Jackson Walker did not respond to comment requests. The firms appear for now to be navigating potential conflicts by steering data center projects largely outside of their utility clients' service areas, according to available public information.

V&E is a longtime legal adviser for Dallas-based Oncor, the state's largest utility delivering power to more than 13 million customers. The firm also represents Fermi Inc., an AI-focused real estate company co-founded by former energy secretary Rick Perry. The company, which raised nearly \$683 million when lawyers from Vinson & Elkins helped it go public last year, is building an 11-gigawatt data center in the Texas Panhandle.

Baker Botts has represented Houston-area CenterPoint and its predecessors for more than a century, according to the firm, and in February steered a \$2.6 billion debt securities deal. The firm's lawyers are advising on data center projects throughout the state, including helping LandBridge Co. on a definitive agreement for a development on 2,000 acres in West Texas.

Jackson Walker has long advised TNMP in a wide range of regulatory matters, including rate change requests and related litigation. The firm last year helped CloudBurst Data Centers Inc. make a "behind the meter" deal to receive natural gas directly from pipeline operator Energy Transfers to power its data center campus in San Marcos, near Austin.

Lawyers at other firms said they are using conflict waivers to get ahead of ethics issues and opting out of certain matters when that pits clients on opposing sides. But firms could be forced to pick sides as the state imposes new regulations on data centers' power use.

"There's potentially conflicting viewpoints on where the data center should be located, how it will be interconnected to the grid, and who should pay for it," said Gina Warren, a University of Houston Law Center professor who previously represented utility companies as a lawyer at Perkins Coie. "It definitely creates a conflict with meeting energy demands, current demands and future demands, and it's questionable whether interests of the utility companies will align with interests of the AI data centers."

Client Loyalty

Texas is likely to soon surpass Virginia as the country's leading AI data center hub. The Lone Star State, which is still reckoning with a blackout during a deadly 2021 winter storm, is expecting to provide more than 40 gigawatts of power to data centers by 2028, per a recent study from Bloom Energy. One gigawatt can energize about 700,000 homes per year.

Two large law firms with deep Texas roots—Haynes Boone and Norton Rose Fulbright—now require clients to sign advanced conflict waivers to head off potential ethics issues in data center work.

Dallas-founded Haynes Boone has put up "guardrails" and "ethical walls," separating certain practices to avoid potential conflicts, according to Jeff Moerdler, chair of the firm's data center and digital infrastructure group. The firm also advised on Fermi's IPO last year.

"You can't be on both sides of the same matter, even with different lawyers," said Moerdler, a New York lawyer who joined Haynes Boone in January. "There are some firms that do that. My position, and I believe Haynes Boone's position, is we don't do that."

Moerdler and Ammad Waheed, a partner in Norton Rose's Houston office, said most clients agree to sign waivers.

"Everyone understands that they would rather have counsel that is well versed in the realities of data center transactions than perhaps ending up with law firm counsel that maybe aren't as familiar with this rapidly evolving industry," Waheed said.

Even if firms don't cross ethical lines, they may risk alienating certain clients by taking on others with competing interests, according to Browning, the former judge.

"For a lack of a better way of putting it, you don't want to piss off your existing clients," he said. "Client loyalty is a big consideration. Not just actual loyalty, but also the perception of loyalty."

Other prominent firms active in data center work—Latham & Watkins, Kirkland & Ellis, Clifford Chance, and Bracewell LLP—declined to comment or did not respond to comment requests.

'Pick a Side'

Rising power demands to develop AI technologies have already increased the need for utilities and data center companies to more frequently negotiate over infrastructure, supply, reliability, and cost.

Texas Gov. Greg Abbott (R) last year signed a law overhauling the regulation of large power users and those who use behind-the-meter systems to generate their own power. The law directs the Public Utility Commission of Texas to enact new rules to ensure that data centers and others pay their fair share and to limit their impact on the grid.

Major utilities, hyperscalers, and other energy market players are pushing to shape those regulations. Their views partially converge but often differ, putting law firms in a tricky spot.

"You're not going to see a lot of cross-over there with firms," said Carrie Collier-Brown, a partner at Husch Blackwell. "They kind of have to pick a side."

Husch Blackwell has advised on several data center projects and represents utilities across the country. But Collier-Brown said she is "never representing" utilities in matters concerning the Electric Reliability Council of Texas, the state's power grid operator, and the PUC, which regulates electric utilities.

"It's going to be challenging for law firms that have big relationships with utilities to take on the power part of AI development—the interconnection, and the power sales work—if their utility clients have public policy concerns with those types of projects," Collier-Brown said.

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