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AI Data Centers and Differing Accounts of the Buildout: Managing Gaps in the Record

I. Introduction

Imagine that the anchor tenant of a data center campus gives notice of force majeure under its lease, citing delays in the delivery of power. The same day, the same tenant says publicly that the project remains on schedule. The sponsor, whose portfolio company is developing the campus, says that the notice does not change the project's financial commitments, and the supplier of the campus's on-site power follows with a statement that it expects to deliver on the project's original schedule. In this scenario, *three* parties have given *four* accounts of *one project*, and each becomes part of the record against which the others may be scrutinized.

That record is the subject of this alert. Long before a data center campus is energized, its sponsor, developer, tenant, lenders, and investors commit billions of dollars on the expectation that power will arrive, equipment will be delivered, permits will issue, and the facility will be operating by a fixed date. Because so much depends on that schedule, the entities and individuals behind a project describe it again and again in leases and construction contracts, credit agreements, permit submissions, insurance claims, incentive negotiations, tax filings, public statements, and, for public companies, securities filings. These accounts are written by different people, for different audiences, under different rules. When a project is on track, they tend to tell the same story. But when a project falls behind, those stories may diverge. We call that divergence a gap between accounts, or simply a gap. It is not a securities-law concept: most of the accounts discussed in this alert are given to counterparties, lenders, insurers, and agencies rather than to the market, and the exposure they create does not depend on whether the speaker makes securities filings.

The point of this alert can be stated simply. Delay is common in this space. Delay typically needs to be explained, usually in writing, usually to several audiences at once, and more often than not before the facts are settled. Those explanations, read side by side, form the raw material of securities suits, regulatory inquiries, and criminal investigations, which—even if ultimately meritless—create significant expense and inconvenience for the target. In our experience, a prosecutor evaluating a potential false-statement case often begins with exactly that comparison, setting what a company told one audience against what it told another, because the gap between the two is frequently the best available evidence of what the company knew and when. A single misstatement may be an error. A notice blaming power delays, an investor statement that the

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project is on schedule, and an internal schedule showing a slip suggest that the speaker knew the facts and chose among them.

Gaps are not necessarily material or improper, and many have legitimate explanations. Most are closed, or never open, because contract counsel and disclosure committees catch them. This alert is about what happens when they are not. Gaps matter because they are what regulators, plaintiffs, and prosecutors look for, and because the documents that reveal them are already in the hands of counterparties, lenders, and agencies. The stakes are also rising. The accounts described in this alert are read not only by counterparties but by the SEC, the Department of Justice, state attorneys general, environmental and customs regulators, congressional committees on both sides of the aisle, whistleblowers and qui tam relators, and the securities plaintiffs' bar, all of whom have turned their attention to the data center buildout in recent months.

This alert builds on our earlier alerts on the financing, force majeure, and sovereign-risk dimensions of the data center buildout.[1] Part II explains how a single delay notice can create a cascade of records that may contain gaps that attract scrutiny from regulators, prosecutors, and plaintiffs. Part III summarizes the legal frameworks that can make such gaps consequential: the federal securities laws, which reach private placements as well as public offerings; the federal fraud and false statement statutes, including those protecting banks; the False Claims Act and its state analogues; and the customs, environmental, and other laws that govern statements made to the government. Part IV addresses how these frameworks fall on each participant in the ecosystem: AI companies and cloud providers, developers and sponsors, lenders and investors, contractors and suppliers, and the individuals who speak for them. Part V addresses how these participants can respond if an inquiry into a gap arrives, and Part VI sets out practical steps for finding gaps and closing them before a regulator, prosecutor, or plaintiff finds them first.

II. How a Delay Notice Can Create Gaps Across the Capital Stack

Data center projects can face delay at every stage. As we explained in our March alert, the inputs on which these projects depend have become scarce or contested. Utility interconnection can take years, lead times for transformers and switchgear have stretched far beyond historical norms, tariffs and export controls are changing the cost and availability of imported equipment, and local opposition has blocked or delayed tens of billions of dollars of development.[2] A May 2026 Goldman Sachs analysis found that only fifty to sixty percent of the capacity scheduled for the next one to two years is expected to come online on time, the North American Electric Reliability Corporation reported the same month that several regions have lowered their load forecasts to reflect the slower-than-expected pace at which large loads are arriving,[3] and a J.P. Morgan analysis

[1] *Client Alert: Emerging Litigation Risks in Financing AI Data Centers Boom*, QUINN EMANUEL URQUHART & SULLIVAN, LLP (Mar. 13, 2026) [hereinafter *Financing Alert*]; *Client Alert: Force Majeure and the AI Data Center Buildout: Allocating Risk in AI Data Center Contracts*, QUINN EMANUEL URQUHART & SULLIVAN, LLP (June 3, 2026) [hereinafter *Force Majeure Alert*]; *Client Alert: AI Data Center Buildout: Managing Sovereign and Regulatory Risk Through Investment Treaties*, QUINN EMANUEL URQUHART & SULLIVAN, LLP (June 30, 2026) [hereinafter *Treaty Alert*], all available at https://www.quinnemanuel.com/the-firm/publications/.

[2] *Financing Alert*, *supra* note 1, Part VI.F (equipment lead times, interconnection delays, and the disputes they generate).

[3] *U.S. Data Center Power Demand Projected to Double by 2027,* GOLDMAN SACHS (May 20, 2026), https://www.goldmansachs.com/insights/articles/us-data-center-power-demand-projected-to-double-by-2027; N. Am. Elec. Reliability Corp., *2026 Summer Reliability Assessment* 1 (May 2026), https://www.nerc.com/globalassets/our-work/assessments/nerc_sra_2026.pdf.

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reported the following month found that more than sixty percent of the data center capacity planned for completion in 2027 was not yet under construction.[4]

These delays in a project's progress typically have to be explained. Construction and supply contracts commonly require notice of anticipated delays and requests for extensions of time. Leases, capacity agreements, and power arrangements often contain force majeure provisions that excuse or suspend performance upon notice of a qualifying event. Credit agreements generally require borrowers to report material developments under key project documents, and projects operating under permits or consent decrees may owe notices to regulators.[5] Whatever its form, a statement giving notice of a delay and seeking related relief generally must identify what caused the delay and show that the cause falls within what the agreement, permit, or decree excuses—often before the cause and duration of the delay are clear.

Force majeure provisions illustrate the problem. As we explained in our June 3 alert, they commonly set short deadlines and prescribe content.[6] One provision recently construed by a federal court required notice within seven days stating the nature of the event, its anticipated duration, and the steps being taken to minimize its effect.[7] A notice of that kind commits the sender, in writing and on a fixed date, to an account of what happened, when, and why. If the delay is later disputed, that account may be tested against what the sender did and wrote at the time: its internal schedules, its correspondence, its earlier reports, and its conduct before and after the claimed event.

Courts have made that comparison. In *Celularity Inc. v. Evolution Biologyx, LLC*, a distributor stopped paying for product it had ordered and, months later, invoked force majeure, citing Medicare reimbursement problems that had begun the previous November. The court struck the defense because the distributor's own conduct told a different story. After the problems began, the defendant kept ordering product, said it intended to "get current" once it closed a financing, and made a partial payment.[8] In *United States v. Sunoco, Inc.*, a Clean Air Act consent decree required Sunoco to eliminate non-emergency flaring at a refinery by a set deadline. Sunoco first sought more time on the ground that the necessary equipment was commercially unavailable. The day after regulators denied that request, Sunoco gave notice of force majeure on the same facts. The court found the notice defective, emphasizing that it was the first time Sunoco had claimed force majeure, although it had flagged the possible compliance issue at least six months earlier.[9] In both cases, the inconsistency between the notice and the record turned against the party that sent it.

A data center project can multiply the problem, because a single notice can reach across the capital stack. The tenant that gives notice, the developer and sponsor that pass it to lenders, insurers, and contractors, the contractors and suppliers that explain their part in it, and the lenders that report it to their own investors are all describing the same event, and each account is written by someone different, who has different incentives, and who may be operating under a different regulatory framework. If even one of these accounts diverges from the rest, the resulting gap can create exposure for everyone involved. And with lawmakers questioning the industry's pace of

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[4] Katherine Blunt, *America's Data-Center Build-Out Is Falling Way Behind Schedule,* WALL ST. J., June 3, 2026.
[5] *See United States v. Sunoco, Inc. (R & M)*, No. 03-4625, 2007 WL 1652266, at *2 (D.N.J. June 7, 2007) (describing a Clean Air Act consent decree under which the company gave the regulators notice of a force majeure situation).
[6] *Force Majeure Alert*, *supra* note 1, Part III (notice deadlines, required contents, and drafting).
[7] *Celularity Inc. v. Evolution Biologyx, LLC*, No. 23-cv-2135, 2026 WL 878345, at *13 (D.N.J. Mar. 30, 2026) (quoting the agreement's force majeure provision).
[8] *Celularity*, 2026 WL 878345, at *4-5, *16-17.
[9] *Sunoco*, 2007 WL 1652266, at *2-6 & n.7; *see also NextEra Energy Mktg., LLC v. Macquarie Energy, LLC*, No. 22 Civ. 1345, 2025 WL 2613756, at *6, *12-14 (S.D.N.Y. Sept. 10, 2025) (holding that a government order did not prevent performance where internal documents showed performance had already been halted).

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development and securities plaintiffs already alleging that delays were known before they were disclosed, the many accounts of a single notice are where scrutiny may focus.

III. Why a Gap Between Accounts Can Carry Legal Consequences

The comparison between accounts of a delay matters because several bodies of law attach consequences to any gap between them. We summarize those bodies of law here so that the discussion as to each participant in Part IV can refer back rather than repeat them.

Securities laws. The federal securities laws do not require a company to disclose everything material, and silence absent a duty to disclose is not misleading.[10] But a duty arises when a rule calls for the information,[11] when a company speaks and its statement would be misleading without more, and when the company or its insiders trade.[12] A statement that was accurate when made can become misleading as events intervene,[13] and the safe harbor for forward-looking statements does not protect projections accompanied by cautionary language that is itself misleading in light of historical fact.[14] Exposure increases in an offering. Under Sections 11 and 12(a)(2) of the Securities Act, plaintiffs need not prove scienter, and the SEC may proceed under Section 17(a)(2) on a showing of negligence.[15] Private companies are not outside of this framework. Rule 10b-5 applies to private placements and secondary transactions, so a private developer or cloud provider that raises capital while a project is falling behind faces the same questions about what its investors were told.[16]

Fraud and false statement statutes. Criminal exposure arises when a factual assertion is material and knowingly false. The wire fraud statute reaches such statements made to obtain money or property,[17] and after *Kousisis v. United States*, a defendant who induces a transaction under materially false pretenses may be convicted whether or not it sought to cause the counterparty a net economic loss.[18] Statements to banks carry particular exposure. It is a crime to knowingly make a false statement to influence a federally insured institution on a loan, including a renewal, extension, deferment, or substitution of security, and materiality is not an element; the bank fraud statute separately reaches schemes to obtain a financial institution's property by false pretenses.[19] Where an offense affects a financial institution, the limitations period for bank fraud, false statements to banks, and wire fraud is ten years rather than five.[20] Knowingly false

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[10] *Basic Inc. v. Levinson*, 485 U.S. 224, 239 n.17 (1988).
[11] *See Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 264-65 (2024) (explaining that although pure omissions of required facts are not actionable under Rule 10b-5(b) absent a misleading statement, omissions of such facts remain actionable under Section 11).
[12] *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 186 n.3 (2015); *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44 (2011); *Chiarella v. United States*, 445 U.S. 222, 230 (1980).
[13] *Compare In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993) ("We agree that a duty to update opinions and projections may arise if the original opinions or projections have become misleading as the result of intervening events."), *with Stransky v. Cummins Engine Co.*, 51 F.3d 1329 (7th Cir. 1995) (declining to "impos[e] a duty to update.").
[14] 15 U.S.C. §§ 77z-2(c), 78u-5(c); *see, e.g.*, *Slayton v. Am. Exp. Co.*, 604 F.3d 758, 769-70 (2d Cir. 2010).
[15] 15 U.S.C. §§ 77k, 77l(a)(2), 77q(a)(2); *Aaron v. SEC*, 446 U.S. 680, 697 (1980) (Section 17(a)(2) does not require proof of scienter).
[16] 15 U.S.C. § 78j.
[17] 18 U.S.C. § 1343; *Neder v. United States*, 527 U.S. 1, 23 (1999) (materiality is an element of the federal mail, wire, and bank fraud statutes).
[18] *Kousisis v. United States*, 605 U.S. 114, 118 (2025).
[19] 18 U.S.C. §§ 1014, 1344; *United States v. Wells*, 519 U.S. 482 (1997).
[20] 18 U.S.C. § 3293.

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statements to federal agencies may be charged under the general false statements statute, and the Clean Air Act separately criminalizes false material statements in documents required under the Act.[21] The False Claims Act reaches false certifications made to obtain or retain federal funds, and many states have analogues.[22] Customs law criminalizes the entry of goods by false statement, imposes civil penalties for fraudulent and negligent violations, and allows underpaid duties to be pursued as reverse false claims.[23]

Whistleblowers and self-disclosure. The SEC pays awards for original information that leads to enforcement and prohibits impeding communication with the agency, including through confidentiality agreements.[24] The Department of Justice has identified trade and customs fraud as an enforcement priority.[25] Its Corporate Enforcement and Voluntary Self-Disclosure Policy reserves its most favorable treatment for companies that self-report before the Department learns of the conduct elsewhere, then cooperate and remediate; reporting only to a regulator generally does not count.[26]

Two points follow. First, these statutes attach to the statement, not the forum. The same account of a delay can be a securities disclosure, a statement to a lender, and a statement to a regulator all at once, and it may be judged under each regime. Second, several of them carry limitations periods long enough that a notice written today may be read by investigators who were not in office when it was sent and whose enforcement priorities may differ from today's.

IV. Where Each Participant May Face Exposure

The sections that follow take each participant in turn and ask the same two questions: which accounts of a delay does this participant give, and against what will those accounts later be compared?

A. AI Companies and Cloud Providers

The AI companies and cloud providers that anchor the data center buildout give notices to developers, landlords, and lenders, file financial statements and tax returns, and speak to investors and local officials. Many are public companies whose statements go to the market, though private companies that raise capital can face much of the same potential exposure.

A periodic report may be misleading in light of a private account of the same facts, such as a notice to a counterparty or an internal schedule.

Risk factors deserve particular attention, because a warning that a project may be delayed reads differently once a delay has actually occurred. In its 2019 settlement with Facebook, the SEC alleged that risk disclosures presenting the misuse of user data as hypothetical were misleading when the company knew that misuse had already occurred.[27] A tenant whose risk

[21] 18 U.S.C. § 1001(a); 42 U.S.C. § 7413(c)(2)(A).
[22] 31 U.S.C. §§ 3729–3733; *see also, e.g.*, N.M. Stat. Ann. §§ 44-9-1 to 44-9-14.
[23] 18 U.S.C. § 542; 19 U.S.C. § 1592; 31 U.S.C. § 3729(a)(1)(G).
[24] 15 U.S.C. § 78u-6; 17 C.F.R. § 240.21F-17(a).
[25] Memorandum from Matthew R. Galeotti, Head of the Criminal Division, U.S. Dep't of Justice, *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime* (May 12, 2025).
[26] *See* U.S. Dep't of Justice, *Corporate Enforcement and Voluntary Self-Disclosure Policy*, 2 n.5 (Mar. 10, 2026).
[27] Press Release No. 2019-140, SEC, Facebook to Pay $100 Million for Misleading Investors About the Risks It Faced From Misuse of User Data (July 24, 2019), https://www.sec.gov/newsroom/press-releases/2019-140.

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factors describe delay as something that *could* happen, while it tells its landlord that a delay-causing event has already occurred, invites the same argument.

Accounting estimates present the same problem in a different form. Among the most consequential estimates in this industry is the useful life of a server and the GPUs inside it, which determines depreciation expense. Because GPUs are among the largest input costs of a data center, a small change in that estimate can have a large effect on reported results.[28] When a company's servers are left sitting idle while a project is delayed, that delay can bear on the hardware's useful life. Under GAAP and IFRS, a company needs to assess whether or not there are indicators of impairment, and, under some circumstances, may need to perform impairment testing when events indicate that the carrying value of long-lived assets exceeds fair value, calling into question recoverability.[29] Gartner estimated last month that more than $3.5 trillion of AI infrastructure spending could be exposed to impairment by the end of 2030, because it expects that most cloud providers will not recover their investments before the current generation of chips is replaced.[30] The SEC has pursued useful-life manipulation before, alleging that Waste Management's senior officers extended the lives of garbage trucks and assigned unsupported salvage values to meet earnings targets.[31] A company that finds no impairment indicator while invoking force majeure over the same delay, or while its own capacity plans assume an earlier replacement cycle, may open the kind of gap this alert describes.

B. Developers and Sponsors

Developers and sponsors sit at the center of the web. They receive tenants' notices and pass them to lenders, insurers, and contractors, and they speak directly to investors, regulators, officials, and communities. Each conversation is a separate account.

Statements to regulators are a matter of record from the day they are made, and delay is often what puts them to the test. When grid interconnection slips, a developer that wants to hold its schedule may bridge the gap with on-site generation, and the air permit applications, compliance reports, and notices that generation requires create a record of what the operator said about the site. Regulators compare that record with what the facility is actually doing. Virginia's environmental regulator has proposed a consent order requiring the operator of a Leesburg data center to pay about $2.5 million after a substation failure forced a data center to run sixty-two generators for seven days and exceed its permitted limits; the order rests on data the operator itself reported.[32] New Jersey fined the developer of a Vineland site about $1.07 million after inspectors found dozens of natural gas generators running without permits, months after the developer had submitted and then withdrawn an air permit application; the developer described

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[28] McKinsey & Company, *The Cost of Compute: A $7 Trillion Race to Scale Data Centers* (Apr. 28, 2025), https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/the-cost-of-compute-a-7-trillion-dollar-race-to-scale-data-centers.

[29] *See* FASB ASC 360-10-35-21 (events or changes in circumstances indicating that the carrying amount of long-lived assets may not be recoverable); IFRS Found., IAS 36, *Impairment of Assets* ¶ 9 (requiring an entity to assess at the end of each reporting period whether there is any indication that an asset may be impaired).

[30] Press Release, Gartner, Inc., Gartner Says Over $3.5 Trillion of AI Infrastructure Spending Could Be Exposed to Impairment by the End of 2030 (Oct. 14, 2026) (estimating that AI data center owners would need $8.5 trillion in cumulative revenue through 2030 to cover announced spending, financing costs, and a 12% return on invested capital, against no more than $3.6 trillion in attributable revenue), https://www.gartner.com/en/newsroom/press-releases/2026-10-14-gartner-says-over-us-dollars-three-and-a-half-trillion-of-artificial-intelligence-infrastructure-spending-could-be-exposed-to-impairment-by-the-end-of-2030.

[31] *SEC v. Buntrock*, Litigation Release No. 17435 (Mar. 26, 2002), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-17435.

[32] Va. Dep't of Env't Quality, Proposed Order by Consent, Microsoft Corp. (Leesburg data center) (signed by Microsoft Sept. 3, 2026; public comment through Oct. 14, 2026); *see DEQ Requires Microsoft to Pay $2.5M for Leesburg Data Center Air Pollution*, Loudoun Now (Sept. 2026), https://www.loudounnow.com/news/deq-requires-microsoft-to-pay-2-5m-for-leesburg-data-center-air-pollution/article_1ea7d005-5c94-43d8-95ec-0cf060e13cbe.html (describing the dispute over emissions calculations).

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the generators as a temporary measure while the site moved to a permanent power source.[33] Reporting obligations are also multiplying. New York has paused permits for large data centers while it develops a new framework,[34] and Texas has ordered an audit of every project in its grid interconnection queue.[35] Each new filing is another account in which a gap can appear, and because it is made to the government, it carries the false statement and False Claims Act exposure described in Part III. For foreign investors, abrupt changes of this kind can also raise the treaty questions we addressed in our June 30 alert.[36]

Statements to the public and local officials can be tested in the same way. Local opposition can hold up the approvals a project needs, so the effort to win community support can decide whether a project stays on schedule. That effort produces its own record, including public comments, advertising, and agreements with local communities. If an approval is contested and the project falls behind, the developer may need to explain the delay to its lenders and counterparties, and that explanation can be read against what it told officials and residents along the way. While some developers have asked local officials to sign nondisclosure agreements about their projects, which can keep what a developer told those officials out of public view, Congress has begun to examine those agreements. In September, the top Democrat on the House Judiciary Committee wrote to four large technology companies seeking information about them,[37] and in October, a yearlong Senate investigation reported that four of the seven companies it examined routinely sought such agreements during data center development.[38] Inquiries of that kind can bring a developer's statements to officials into public view, where they can be read against any later explanation of delay.

Developers and sponsors may face particular exposure when they **raise capital**, because offering liability does not require scienter. The abandoned V.C. Summer nuclear expansion shows where a gap between a project's internal schedule and its public one can lead. The SEC alleged

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[33] *In re DataOne*, EA ID No. PEA260001 – 75894, Admin. Ord. & Notice of Civ. Admin. Penalty Assessment (N.J. Dep't of Env't Prot. Sept. 22, 2026) (finding DataOne's Vineland facility failed to comply); *New Jersey Fines DataOne $1.07 Million for Unpermitted Generators*, YAHOO (Sept. 23, 2026), https://www.yahoo.com/news/us/articles/jersey-fines-dataone-1-07-173211365.html (reporting that inspectors first observed the generators on July 29 and that the equipment had not been at the site during the agency's prior inspection); *One of East Coast's Largest Data Centers Accused of 'Violating Federal Law'*, FLOODLIGHT (Aug. 2026), https://floodlightnews.org/new-jersey-data-center-federal-violation/ (reporting, based on public records, that the state found deficiencies in the developer's air permit application for gas engines and that the developer withdrew it in May); *Vineland Data Center Accused of Operating Natural Gas Generators Without Permit*, WHYY (Aug. 2026), https://whyy.org/articles/vineland-new-jersey-data-center-gas-generators-permit/ (reporting the state's statement that no permit had been issued and no application submitted for the generators); *New Jersey's Largest Data Center Fined $1.07 Million for Air Pollution Violations in Vineland, Cumberland County*, 6ABC (Sept. 2026) (quoting the developer's statement), https://6abc.com/post/vineland-data-center-fined-107-million-air-pollution-violations/19859640/; *State Fines DataOne $1M for Pollution, Permit Violations Involving Vineland Data Center*, ROI-NJ (Sept. 23, 2026) (quoting the agency's commissioner stating that the action shows that data centers "will not be constructed or operated with impunity in this state"), https://www.roi-nj.com/2026/09/23/politics/state-fines-dataone-1m-for-pollution-permit-violations-involving-vineland-data-center/.

[34] N.Y. Exec. Order No. 62 (July 14, 2026); Press Release, Office of the Governor of N.Y., First Statewide Moratorium on New Hyperscale Data Centers Launched by Governor Kathy Hochul (July 14, 2026), https://www.governor.ny.gov/news/first-statewide-moratorium-new-hyperscale-data-centers-launched-governor-kathy-hochul.

[35] Letter from Greg Abbott, Governor of Texas, to Thomas Gleeson, Chairman, Public Utility Commission of Texas, and Pablo Vegas, President and Chief Executive Officer, ERCOT (Aug. 3, 2026).

[36] *Treaty Alert*, *supra* note 1, at Part VI.B (regulatory volatility and incentive reversals).

[37] Press Release, H. Comm. on the Judiciary Democrats, Ranking Member Raskin Probes Big Tech's Use of Non-Disclosure Agreements to Prevent Local Officials From Discussing Data Center Projects With Constituents (Sept. 30, 2026) (describing letters to four large technology companies), https://democrats-judiciary.house.gov/media-center/press-releases/ranking-member-raskin-probes-big-tech-s-use-of-non-disclosure-agreements-to-prevent-local-officials-from-discussing-data-center-projects-with-constituents.

[38] Nik Popli, *Exclusive: Senate Investigation Challenges Big Tech's Case for AI Data Centers*, TIME (Oct. 8, 2026) (describing a report by the offices of Senators Warren, Van Hollen, and Blumenthal, based on information requested from seven data center companies, and reporting that four of them routinely sought nondisclosure agreements during data center development), https://time.com/article/2026/10/08/senate-investigation-ai-data-centers/.

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that the expansion's developer touted construction progress in its filings, earnings calls, and regulatory testimony while knowing internally that the schedule was unachievable, and that those statements helped it sell $1 billion in bonds.[39] The developer and its subsidiary paid more than $130 million in penalties and disgorgement, and because the statements were knowing, a criminal prosecution followed. Two former senior executives pleaded guilty to conspiracy to commit mail and wire fraud and were sentenced to prison, as was an executive of a contractor connected to the project.[40] That the project was nuclear rather than digital is beside the point. The conduct was a schedule that those inside knew to be unachievable, described to those outside as on track.

Statements to lenders and insurers can carry especially sharp exposure. In a project financed by a syndicate of banks, a developer that repeats an inaccurate account of a delay to obtain a waiver, forbearance, or amendment risks converting a commercial misstatement into a financial-institution offense with a ten-year limitations period—one that could be pursued by a future administration with different enforcement priorities. Builder's risk, delay-in-startup, and business-interruption coverage turn on the cause and timing of a delay, and a claim built on an inaccurate causal account is a statement made to obtain money like any other. Materials provided to rating agencies may likewise be scrutinized if a rating is later challenged and investors say they relied on it.

C. Lenders and Investors

Lenders, credit funds, and equity sponsors receive most of the accounts described above, but they also speak to their own investors and investment committees, and they face exposure of their own in three forms.

The first is valuation. A tenant's delay flows through to the developer's ability to perform, and from there to the value of the loans and equity that financed the project. Where the collateral is the hardware itself, the lender's position already rests on an estimate: a borrower's assumption about the useful life of its GPUs can drive how funds value GPU-backed loans.[41] A lender that holds a borrower's delay notice while telling its own investors that the exposure is performing has created a gap of its own.

The second is trading. Trading while a gap is open raises concerns across the capital stack, not only in the securities of the party that gave notice.[42] The SEC's first "shadow trading" case, *SEC v. Panuwat*, rested on trading in the securities of a company with a "market connection" to the material nonpublic information the defendant possessed.[43] A lender that receives a force majeure notice holds information about the tenant, the developer, the sponsor, and the equipment suppliers at once.

The third is diligence. An investor that funds a project on one account of its schedule and later learns of another may have a claim against the author of the gap. But it may also be asked what diligence it did with the documents it already had. Comparing a counterparty's notices, lender

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[39] Complaint ¶ 3, *SEC v. SCANA Corp.*, No. 3:20-cv-00882-MGL (D.S.C. filed Feb. 27, 2020), https://www.sec.gov/files/litigation/complaints/2020/comp24751.pdf; Litigation Release No. 24976, *SEC v. SCANA Corp.* (Dec. 3, 2020) (announcing settlement under which SCANA agreed to pay a $25 million civil penalty, and SCANA and South Carolina Electric & Gas Co. agreed to pay $112.5 million in disgorgement plus prejudgment interest), https://www.sec.gov/litigation/litreleases/2020/lr24976.htm.

[40] *See* Press Release, U.S. Att'y's Off. for the Dist. of S.C., Fourth and Final V.C. Summer Executive Sentenced for Misconduct in Connection with Failed Nuclear Construction Project (Nov. 21, 2024), https://www.justice.gov/usao-sc/pr/fourth-and-final-vc-summer-executive-sentenced-misconduct-connection-failed-nuclear (describing the sentences of two former SCANA executives and a former Westinghouse executive).

[41] *See GPU-Collateralized Debt Explained: AI Financing Risks*, QUARTZ (May 2026) (reporting that GPU-collateralized loans embed assumptions about residual value and utilization).

[42] *United States v. O'Hagan*, 521 U.S. 642, 653 (1997); 17 C.F.R. § 240.10b5-2(b)(1).

[43] *SEC v. Panuwat*, No. 4:21-cv-06322 (N.D. Cal.) (jury verdict Apr. 5, 2024).

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reports, and public statements at the outset, and again at each waiver request, can help protect the investor against both.

D. Contractors and Suppliers

Contractors and suppliers speak to developers and tenants about delivery dates, to their own suppliers about lead times, and to customs and export authorities about what they import and export and to whom. **A request for an extension of time, a delay claim, or a change order** is an account of what caused a delay and what it cost, and it is a statement made to obtain money that can create fraud or false-statement exposure.

Tariffs are a recurring source of gaps. As we noted in our June 3 alert, parties often characterize them as governmental acts within a force majeure clause.[44] A supplier that tells a developer a delay was caused by new tariffs on transformers from a particular country, while its customs entries declared the same equipment to be of a different, lower-duty origin, may have created the central exhibit in a customs fraud case, and the Department of Justice has made that category of case a priority.[45]

E. The Individuals Who Sign

Every account described above is signed or approved by someone. Officers of public companies certify periodic reports and may not mislead auditors,[46] and an executive who signs a notice, lender certificate, permit submission, or customs declaration can be charged under the same false statement and fraud statutes as the company. For example, the V.C. Summer executives referenced above were sentenced for statements made in their companies' names.

V. How to Respond if an Inquiry Arrives

Once a gap draws attention, the response is itself another account. A congressional letter is a request rather than compulsory process, but a subpoena can follow, and a change in control of either chamber brings subpoena power to new committees. Anything produced to a committee can become public, as the Senate inquiry described above illustrates, and a knowingly false statement in a committee investigation is a crime under the same statute that governs statements to agencies.[47] State attorneys general typically proceed by civil investigative demand under statutes that differ in their deadlines and confidentiality protections, and because most courts have rejected selective waiver, a production in one inquiry may waive privilege in the next.[48] A company that receives an inquiry from Congress or a state attorney general may benefit from considering early who will speak for it, whether a litigation hold is needed, how its response squares with its other accounts of the project, and, because a production may become public or waive privilege in a later inquiry, what it is prepared to produce and what it will withhold.

Inquiries from agencies and prosecutors raise the same issues in sharper form. A company's first responses to investigators, such as a response letter, a white paper, or an attorney

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[44] *Force Majeure Alert*, *supra* note 1, at Part II (tariffs and sanctions under force majeure clauses).
[45] See Press Release, U.S. Dep't of Justice, Assistant Attorney General Colin M. McDonald Issues Memorandum on the National Fraud Enforcement Division's Corporate Enforcement Priorities (Oct. 1, 2026), https://www.justice.gov/opa/pr/assistant-attorney-general-colin-m-mcdonald-issues-memorandum-national-fraud-enforcement-0.
[46] See 15 U.S.C. § 7241; 18 U.S.C. § 1350; 17 C.F.R. § 240.13b2-2.
[47] 18 U.S.C. § 1001(c)(2); *see also id.* § 1505.
[48] *See, e.g.*, *In re Pacific Pictures Corp.*, 679 F.3d 1121, 1126-27 (9th Cir. 2012); *In re Qwest Commc'ns Int'l Inc.*, 450 F.3d 1179, 1192 (10th Cir. 2006).

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presentation, frame how investigators read everything produced afterward, and a factual assertion in one of them that the documents later contradict can become a second gap, sometimes more consequential than the first. Before sending a first response, a company may benefit from checking each factual assertion against the underlying documents and its earlier statements about the project, and from considering with counsel whether any earlier statement needs correction.

Individual and corporate interests can also diverge. A company seeking cooperation credit will generally be expected to provide facts about the people involved, so individuals who face an inquiry may benefit from considering early whether they need separate counsel and what indemnification and advancement rights they have.

VI. How to Find and Close Gaps Before Someone Else Finds Them

Gaps can often be identified early and closed, either by correcting an account before it reaches others or by documenting why a difference between accounts is legitimate. A gap found early can be addressed before anyone relies on it; one found later must be explained under scrutiny. Six steps accomplish most of the work of finding them first.

First, inventory the accounts and establish the route. For each significant project, identify every place the project and its equipment are described: contracts and notices, lender reporting, insurance submissions, tax returns, financial statement estimates, permit application and compliance reports, incentive certifications, and executive statements. Assign an owner to each. Define in advance how force majeure and other delay notices bearing on the project reach the disclosure committee (or, at a private company, its equivalent), the general counsel and, where appropriate, the board, and apply the protocol to notices received from contractors as well as notices sent.

Second, settle on one account of each material fact and reconcile public statements to it. What caused a delay, when it began, what mitigation was undertaken, what a facility is for, and how long its equipment will last should be settled once, supported by records, and used consistently in notices, lender reporting, insurance claims, tax filings, financial statement estimates, and impairment analyses. When the facts change or a notice is sent, the disclosure committee or its equivalent should reconsider existing statements about schedule, cost and delivery, risk factors that describe delay as hypothetical, and any pending offering. If the company concludes that a notice is protective and does not change its expectations, it should document the basis for that conclusion at the time.

Third, draft every notice and filing for every reader. Assert only facts the company can support; distinguish among obligations that are prevented, delayed, and unaffected; claim no more relief than the clause provides; and say candidly where the event and its effects are still being assessed.[49] The reader to draft for is not the counterparty but the investigator who may compare the notice with the rest of the record years later.

Fourth, structure privilege and preservation deliberately. The analysis behind a significant statement is likely to be among the most closely examined documents in a later dispute or investigation. Because it often serves business and legal purposes at once, whether it is privileged can be uncertain, and sharing it with lenders, insurers, or co-venturers can put that protection at

[49] *Force Majeure Alert*, *supra* note 1, Part III (drafting notices and the risk that an overbroad notice is treated as a repudiation).

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risk. Decide at the outset how it will be prepared and who will direct it. The duty to preserve documents arises when litigation or an investigation is reasonably anticipated, which can be well before a claim is filed. When a notice or change in position is contemplated, consider whether a litigation hold is required.

Fifth, control trading. Public companies should consider blackout periods for insiders who know of a contemplated notice, review pending Rule 10b5-1 plans and planned repurchases or offerings, and coordinate the timing of disclosure. Lenders and funds should confirm wall-crossing procedures, update restricted lists, and review trading in the securities of the tenant, the sponsor, and economically linked companies.

Sixth, evaluate correction and self-disclosure promptly. If internal review shows that a notice, public statement, lender communication, tax filing, permit submission, or customs filing was inaccurate, assess with counsel the obligations to correct and disclose. The value of self-disclosure under DOJ's policy depends on reaching the Department first, and that window can close without notice.

Figure 1 summarizes these steps by stage.

Checklist for Reconciling the Accounts of an AI Data Center Project		
1	**Before Any Significant Statement**	Inventory every account of each project across contracts, notices, lender reporting, insurance, tax, financial statements, permits, incentives, and public statements. Assign an owner to each account and define how it reaches the disclosure committee, the general counsel, and the board. Document the basis for key estimates, including equipment useful lives and schedule assumptions. Confirm information-barrier, wall-crossing, and restricted-list procedures for project information.
2	**When a Statement Is Contemplated**	Route the draft notice, filing, or position through the disclosure committee and document the review. Reconcile it against public statements, risk factors, tax positions, estimates, and pending offering documents. Settle on a single, documented account of the underlying facts. Decide whether the underlying analysis will be privileged and/or whether it will be shared. Consider whether a litigation hold is required, and whether to impose insider blackouts and review Rule 10b5-1 plans, repurchases, and offerings.
3	**After Accounts Change**	Use the same account with lenders, insurers, rating agencies, suppliers, tax and customs authorities, and regulators. Revisit estimates, risk factors, and impairment analyses as the facts develop. Review customs filings, permit submissions, and government certifications for consistency. Review trading by insiders, the company, and recipients around significant developments. Draft settlement and confidentiality terms consistent with SEC whistleblower rules. Evaluate correction and self-disclosure promptly if the record does not reconcile.

Figure 1: Steps for finding and closing gaps in AI data center projects

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VII. Conclusion

Over the life of an AI data center, its developer, tenant, lenders, contractors, and investors describe it many times, each at a different moment and for a different reader. The same facts can be described differently in each, often for legitimate reasons, and nowhere more often than when a project falls behind. But with state officials, legislators, securities plaintiffs, and, increasingly, prosecutors looking closely at the industry, the chance that a difference will be found and acted on is increasing. Companies and individuals that compare the accounts of a project and correct any difference between them, or document why one exists, will be best positioned when the comparison is made by someone else.

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Quinn Emanuel advises AI companies, developers, sponsors, lenders, contractors, and the individuals who speak for them at every stage: before a notice or filing is made, while a gap is being closed, and in any proceeding that follows, whether brought by a counterparty, a regulator, a legislative committee, or a prosecutor. Companies and individuals that would like to discuss how these principles apply to a specific project are welcome to contact the authors:



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