

HB 233 – Residential Customer Protections from Large Energy Use Facilities

DPA Position: Support

DPA supports House Substitute 1 for HB 233, which establishes a comprehensive set of cost protections for existing customers, particularly residential and small business customers, from the impacts of large energy use facilities like data centers. DPA strongly supports the improvements and appreciates the cooperation and leadership of the legislative sponsors to bring these important changes forward.

Overview

HB 233, filed in 2025, correctly anticipated the need for large load tariffs to address the massive growth of large energy use facilities like data centers. This has only become clearer as the implications on capacity costs, energy costs, transmission infrastructure, and risks to reliability from data center load growth have become apparent. For example, the PJM Interconnection Independent Market Monitor has concluded that data center load growth has already caused more than \$23 billion in extra costs in the capacity market.

Since HB 233's introduction, however, the data center sector has evolved rapidly and new policy responses have followed.

At the regional level, in July 2025, PJM started the first of two "critical issue fast paths" for data center load, seeking to establish its processes for data centers.

At the federal level, major policy developments have included a Statement of Principles between the White House Council on Energy Dominance and the Governors of all PJM states, followed by Ratepayer Protection Pledge by hyperscale data center developers. Together these (1) emphasize the obligation of data center developers to bear fully new distribution, transmission, generation, and capacity costs they cause, and to not shift those costs to existing customers, particularly residential customers and (2) require the states to ensure those principles are realized.

House Substitute 1 for HB 233 seeks to do exactly that: ensure that any large energy use facilities, like hyperscale data centers, fully bear the costs of new distribution and transmission infrastructure and the increased costs they cause in the capacity market and do not shift those costs to other customers.

Provides A Comprehensive Set of Cost Protections for Existing Customers from Any New Large Energy Use Facility in Delaware

- Requires direct assignment of any costs caused by large energy use facilities to be assigned to that facility and not to any other customer.
- Large energy use facilities will have their own class of electric service.

- The large load tariff will require large energy use facilities to enter into electric service agreement (ESA) and a transmission service agreement (TSA) to protect other customers from stranded assets or cost shifts.
- Large energy use facilities cannot connect to the grid until the tariff is in place and the facility has approved ESA and TSA.
- In deciding on applications, the Commission will consider whether all costs attributable to the large energy use facility are being paid by that facility, whether other customers are at risk of cost shifts, impacts on the delivery of safe, adequate, and reliable service to other customers, whether the facility will use local workers at a prevailing wage, whether a community benefits agreement has been established, whether the facility developer has demonstrated experience and expertise, and broader impacts on the economy, ratepayers, State policy, and other Delawareans.

Sets Clear Processes, Timelines, and Standards for Large Energy Use Facilities to Interconnect in Delaware

- In evaluating an application, facilities that bring their own generation will be viewed positively.
- Applications must be acted on within 90 days of submission, which can be extended a further 90 days for good cause.
- Applications must include studies and documentation as prescribed by the Commission, but which must include impact on transmission, transmission infrastructure upgrades, electricity use, electricity source, curtailment, backup power, facility lifespan, and potential impacts on electricity costs and grid reliability.

Protects Existing Customers, Particularly Residential and Small Business Customers

- Directly assigns infrastructure, capacity, transmission, and interconnection caused by new large load facilities and require bonding or guarantees to protect other customers.
- Requires large energy use facilities to enter into transmission service agreements, and bonding or guarantees, to ensure other customers are protected from stranded transmission infrastructure. Minimum terms of the TSA include:
 - Adequate financial security and guarantees or bonding to cover the obligations of the TSA.
 - Long-term contract (fifteen years after load ramp, with load ramp no more than 5 years) to protect customers from stranded asset risk.
 - Five-year notice of termination.
 - Demand floor of 90% of contract capacity.
 - Ability to amend TSA to conform with changes at FERC or PJM.
- Requires large energy use facilities to enter into electric service agreements, and bonding or guarantees, with take-or-pay requirements, minimum terms, clear load and ramp, clear exit procedures, and enforceable curtailment requirements, and other protections. Minimum terms of the ESA include:
 - Long-term contract (fifteen year minimum).

- Obligate the large energy use facility to pay a minimum of 90% of contract capacity of distribution, capacity, and supply (if appropriate) costs, regardless of usage.
- In service date and load ramp period.
- Exit procedures, including five-year notice of termination, and exit fees to offset costs of termination.
- Separation of critical load.

Requires Load Shed and Curtailment

- Requires the Public Service Commission to develop a load shed protocol consistent with any PJM process, that requires the curtailment of large energy use facilities before other facilities, unless the large energy use facility has brought new in-State power generation, and differentiates between critical and other loads.

Establishes and Incremental Cost Test to Ensure Large Energy Use Facilities are Paying Their Fair Share

- Establishes an incremental cost test (ICT) to ensure any large energy use facility pays its fair share and does not shift costs to other customers.
- The ICT will include impacts to capacity costs, locational marginal prices, transmission costs, and distribution costs.
- If the ICT identifies that a large energy use facility is imposing costs on other customers, the terms of the ESA can be modified to capture those costs and prevent cost shift to other customer classes.

Grandfathers Existing Customers

- Grandfathers existing large customers, like industrial facilities, that have served as key drivers of Delaware's economy without the impact on our electric grid now being caused by large energy use facilities.

Support for Low-Income and Environmental Policies

- Requires large energy use facilities to pay an increased contribution to the low income fund and green energy fund and pay other non-by-passable charges.

Supports Accurate Load Forecasting

- At the regional level, ensuring increased costs caused by large energy use facilities for capacity or other PJM markets do not get improperly allocated to other customers will require accurate load forecasting and accurate tracking of large energy use facilities in each state.
- Allows the Commission to establish a large energy use facility registry if needed for load forecasting, bring-your-own-capacity, or connect-and-manage, as implemented by PJM.