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*This paper is for educational purposes only and is not intended as legal advice.*

**Data Centers in Delaware: A Policy Analysis**

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## **I. INTRODUCTION**

The rapid expansion of large-load data centers has introduced significant challenges for state energy regulation, especially when electricity demand already exceeds in-state generation capacity, forcing a state to rely on imported electricity from the regional grid to meet its energy needs.<sup>1</sup> This dynamic is particularly significant in Delaware, where increasing demand from large-load customers places additional pressure on an already import-reliant energy system.

The purpose of this memorandum is to serve as a policy guide for future data center-driven legislation in Delaware. This memorandum begins with an overview of the gaps in Delaware law, then continues by outlining key provisions of Delaware law governing renewable energy portfolio standards and large-load customers. The final section conducts a comparative analysis of enacted and proposed legislation across the country that requires large-load data centers to contribute to clean energy goals or otherwise ensure that their construction and operation align with local energy and environmental standards. Accordingly, the rapid expansion of large-load data centers reveals structural gaps in both Delaware's framework and those of other states, underscoring the need for adaptable, state-level regulatory reforms to address their economic, environmental, and regional impacts.

## **II. CURRENT DELAWARE LAW**

### **A. Gaps in Delaware's Regulation of Large-Load Data Centers.**

Delaware's authority over large-load development is shaped by the structure of the regional electric grid in which it operates, which directly affects how electricity is generated, transmitted, and ultimately paid for by consumers.<sup>2</sup> Delaware is part of the Eastern Interconnection, one of the

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<sup>1</sup> PJM Interconnection, *PJM Board Outlines Plans to Integrate Large Loads Reliably* (Jan. 16, 2026), <https://insidelines.pjm.com/pjm-board-outlines-plans-to-integrate-large-loads-reliably/>.

<sup>2</sup> Jacob Owens, *Delaware Explained: Electric Grid*, Spotlight Del. (Mar. 5, 2025), <https://spotlightdelaware.org/2025/03/05/delaware-explained-electric-grid/>.

four major grid systems in the United States, through which electricity flows across state lines within a broader regional network.<sup>3</sup> Electricity generated in other states may be transmitted into Delaware, and electricity generated within Delaware may likewise be exported to other states.<sup>4</sup> Thus, increased demand within Delaware triggers generation and infrastructure changes across the broader regional grid.<sup>5</sup> At the regional level, Delaware is part of PJM Interconnection, which manages bulk transmission and wholesale electricity across thirteen states.<sup>6</sup> As a result, decisions regarding large-load customers, such as data centers, are not limited to Delaware alone but instead influence regional market operations, pricing, and capacity planning.<sup>7</sup> Accordingly, although Delaware retains authority over the siting and approval of large-load data centers, its participation in the PJM regional grid limits its ability to independently control the impacts on rates and reliability.<sup>8</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* Electricity generated in states within the Eastern Interconnection may flow into Delaware, while electricity generated in western states, such as California, cannot. Due to Delaware’s participation in the Eastern Interconnection, electricity generated in other participating states may serve Delaware’s load, meaning that significant in-state demand growth can prompt generation or transmission development elsewhere in the regional market.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* As a result, decisions concerning generation, transmission, and wholesale market participation affecting Delaware are made within a multistate regulatory framework rather than solely at the state level. This regional interconnection is subject to periodic reliability assessments conducted by the North American Electric Reliability Corporation (NERC) pursuant to the Federal Power Act. See 16 U.S.C. §§ 824o–824q. As part of this process, NERC conducts an annual Long-Term Reliability Assessment (LTRA) to evaluate whether the grid can meet projected future demand over a ten-year planning horizon, including demand driven by high-energy users such as data centers. See N. Am. Elec. Reliability Corp., *Long-Term Reliability Assessment* 16–17 (2025), [https://www.nerc.com/globalassets/our-work/assessments/nerc\\_ltra\\_2025.pdf](https://www.nerc.com/globalassets/our-work/assessments/nerc_ltra_2025.pdf) (explaining methodology, including reliance on data from utilities, regional entities, and system planners, and projections of load growth, resource adequacy, and transmission capability). In this region, the PJM Interconnection includes the following jurisdictions: Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. See Fed. Energy Regul. Comm’n, PJM, <https://www.ferc.gov/industries-data/electric/electric-power-markets/pjm>.

<sup>7</sup> Owens, *Delaware Explained: Electric grid*, supra note 2.

<sup>8</sup> *Id.* Wholesale electricity prices and regional transmission planning are determined through PJM’s multistate market and planning processes, rather than by any single state. Although Delaware regulates retail rates through its Public Service Commission, those rates are significantly influenced by wholesale market outcomes and regional infrastructure costs allocated across the PJM system. As a result, the approval of large-load facilities may produce rate and reliability impacts that extend beyond the state’s direct regulatory control.

The PJM is responsible for coordinating bulk power transmission and also administering the wholesale electricity market across multiple states, including Delaware.<sup>9</sup> Delaware's participation in this regional market makes the composition of PJM's generation mix directly relevant to how electricity is supplied and priced within the state.<sup>10</sup> At the end of 2023, the PJM generation mix consisted primarily of natural gas (40%), nuclear (32.3%), and coal (20%), reflecting the primary sources used to meet electricity demand within the regional grid, with natural gas serving as the dominant marginal fuel used to meet increased demand.<sup>11</sup> Smaller contributions are derived from wind (3.8%), hydroelectric (1.9%), and solar (1.1%).<sup>12</sup> Delaware relies primarily on natural gas and other traditional energy sources, including nuclear and coal within the broader PJM mix.<sup>13</sup> As a result, increases in electricity demand, such as those driven by large-load data centers, are likely to be met by additional fossil fuel generation, particularly natural gas.<sup>14</sup> This, in turn, places an upward pressure on electricity costs for ratepayers while also undermining Delaware's statutory clean-energy goals.<sup>15</sup>

By comparison, Delaware's in-state electricity generation is far more heavily concentrated in a single fuel source, with natural gas accounting for approximately 83% of total in-state generation as of 2024.<sup>16</sup> This concentration makes Delaware more vulnerable to price fluctuations

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<sup>9</sup> PJM Interconnection, *supra* note 1. PJM serves approximately 67 million people across its regional transmission system.

<sup>10</sup> Owens, *Delaware Explained: Electric grid*, *supra* note 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See *PJM Interconnection*, *supra* note 1; Owens, *supra* note 2. Increased electricity demand from large-load customers is typically met through marginal generation resources within PJM's wholesale market, which are often natural gas fired units. As demand rises, higher cost generation is dispatched to meet load, increasing wholesale electricity prices, which are then reflected in retail rates paid by consumers. This additional demand is frequently met with fossil fuel generation, it may also impede progress toward state clean energy and emissions reduction goals.

<sup>16</sup> U.S. Energy Info. Admin., *Delaware State Energy Profile*, <https://www.eia.gov/states/DE/overview>.

and supply constraints associated with natural gas.<sup>17</sup> This disparity highlights Delaware’s limited generation diversity and increased dependence on both natural gas and imported electricity from the broader PJM region.<sup>18</sup> Uniquely, Delaware lacks sufficient in-state generating capacity, meaning it does not produce enough electricity to meet all of its demand and instead relies on power generated in other portions of the PJM region.<sup>19</sup> This reliance is particularly significant in the context of large-load data centers, which may further increase demand for natural gas generation or imported electricity, placing additional strain on regional infrastructure and pricing.<sup>20</sup>

Further illustrating Delaware’s limited in-state energy capacity, based on the most recent available data, the state had approximately 211.6 trillion British thermal units (BTUs) of total end-use energy consumption as of 2023, excluding losses, meaning the figure reflects actual energy use rather than energy lost during transmission or conversion.<sup>21</sup> This consumption profile reflects a continued reliance on traditional energy sources: coal (0.0%), natural gas (26.6%), petroleum (54.5%), renewable energy (1.0%), and electricity (17.9%).<sup>22</sup> These figures represent total energy consumption across all sectors, including transportation and heating, and therefore differ from the PJM generation mix, which reflects only electricity production at the regional level.<sup>23</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* Delaware consumes approximately eighty-one times more energy than it produces, indicating that the state lacks sufficient in-state generation capacity and therefore depends heavily on imported electricity and other energy resources from the broader regional grid. This dependence is significant because it subjects Delaware to regional market conditions and limits the state’s ability to independently control electricity pricing and supply in response to increased electricity demand, particularly demand associated with large-load data centers.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

Additionally, Delaware's largest generating facility is the Calpine Natural Gas Plant located in Edgemoor, Delaware, holding a capacity of 1,136 megawatts.<sup>24</sup> This capacity is significant as it demonstrates the scale of Delaware's existing infrastructure, and a single large-load data center may approach or exceed this level of demand, highlighting the substantial infrastructure implications associated with large-load development.<sup>25</sup> Although recent developments within the PJM have included the introduction of new data centers and other large loads, they have also raised concerns regarding grid reliability and affordability.<sup>26</sup> For example, Delaware receives approximately three-fifths of its electricity from out-of-state suppliers through the regional grid, meaning that increases in demand, such as those associated with large-load data centers, must be met through regional generation and infrastructure.<sup>27</sup>

This debate over the regulatory treatment of large-load data centers has continued even after the proposed development of a large-load data center in Delaware called Project Washington.<sup>28</sup> This ongoing uncertainty surrounding the treatment of large-load data centers has been reflected in recent stakeholder discussions, where state regulators, public advocates, and environmental organizations have questioned whether data centers properly qualify for existing RPS exemptions and have emphasized the need to clarify their obligations under Delaware law, particularly regarding cost allocation and renewable energy contributions.<sup>29</sup> Delaware's RPS currently requires that 40% of the electricity sold in the state come from renewable energy sources

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<sup>24</sup> Ethan Howland, *Calpine to Sell 3.5 GW in PJM to Avoid Market Power Concerns from Constellation Merger*, Utility Dive (Jan. 28, 2025), <https://www.utilitydive.com/news/calpine-constellation-merger-pjm-market-power/738451/>.

<sup>25</sup> *See id.*

<sup>26</sup> Owens, *Delaware Explained: Electric grid*, supra note 2.

<sup>27</sup> U.S. Energy Info. Admin., supra note 16.

<sup>28</sup> Jon Hurdle, *Lawmakers Seek to Shield Consumers as Data Centers Threaten Another Jump in Electric Rates*, Delaware Public Media (Feb. 6, 2026), <https://www.delawarepublic.org/show/the-green/2026-02-06/lawmakers-seek-to-shield-consumers-as-data-centers-threaten-another-jump-in-electric-rates>.

<sup>29</sup> Delaware Gen. Assemb., Joint Energy Comm. Meeting Materials (Feb. 27, 2026), <https://sg001-harmony.sliq.net/00329/Harmony/en/PowerBrowser/PowerBrowserV2/20260227/246/5885>.

by 2035, though certain large customers may qualify for exemptions, raising questions about whether data centers fall within those provisions.<sup>30</sup>

These discussions demonstrate that the application of Delaware’s RPS framework to large-load data centers remains legally and administratively unsettled, reinforcing regulatory gaps and inconsistent cost allocations.<sup>31</sup> State bills (S.B.) such as S.B. 205 introduce a new regulation for high-energy users by modifying the threshold framework for large-load customers.<sup>32</sup> This includes raising certain regulatory triggers from 30 megawatts (MW) to 100 MW, such that only large-load facilities are required to obtain a certificate to operate (COP) from the Commission.<sup>33</sup> The import of this threshold is that it determines which high-energy users are subject to enhanced regulatory oversight and cost allocation requirements.<sup>34</sup> However, this legislation has generated debate, as some argue it may hinder economic development, while others contend it is necessary to address rising electricity costs and declining grid reliability.<sup>35</sup> In particular, the legislation seeks to ensure that large-load customers, such as data centers, bear the greater share of the infrastructure and transmission costs associated with their significant energy demands, rather than shifting those costs to ratepayers.<sup>36</sup>

In January 2026, the PJM Board of Managers outlined a series of proposed modifications to its wholesale market rules and generation interconnection framework in response to rising demand, reliability concerns, and increasing wholesale electricity costs within the region,

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<sup>30</sup> U.S. Energy Info. Admin., *supra* note 16.

<sup>31</sup> *Id.*

<sup>32</sup> S.B. 205, 153d Gen. Assemb., Reg. Sess. (Del. 2025); S.A. 1 to S.B. 205, 153d Gen. Assemb., Reg. Sess. (Del. 2026) (requiring large-load facilities exceeding specified thresholds to obtain a certificate to operate from the Delaware Public Service Commission).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

including reforms aimed at improving how large loads are studied, interconnected, and integrated into the grid to maintain system reliability.<sup>37</sup> Although PJM administers the regional wholesale market, Delaware law independently governs the treatment of retail electricity consumers within the state, creating a regulatory divide between regional market control and state-level oversight of ratepayer impacts.<sup>38</sup> Relatedly, proposed House legislation establishing a large-load rate class reflects a similar effort to ensure that high-energy users are charged rates that more accurately reflect the costs they impose on the system.<sup>39</sup>

## **B. Delaware’s Energy Regulatory Framework and the Resulting Gaps in Oversight of Large-Load Data Centers.**

The rapid expansion of large-load data centers exposes significant compliance and regulatory gaps under Delaware’s energy, environmental, and utility frameworks, as illustrated by the recently proposed Project Washington.<sup>40</sup> The Renewable Energy Portfolio Standards Act,

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<sup>37</sup> PJM Interconnection, *supra* note 1. The PJM Board’s proposal was followed by an accelerated stakeholder process to address the rapid integration of large-load consumers, including data centers, as well as additional measures such as enhanced load forecasting, accelerated generation interconnection procedures, and a backstop generation procurement mechanism for short-term reliability. The proposal also contemplated the potential continuation of wholesale price floor and ceiling mechanisms (“price collar”) in the upcoming capacity auction.

<sup>38</sup> *Id.* (explaining that the Delaware Public Service Commission regulates electricity regulation within the state).

<sup>39</sup> See H.B. 233, 153d Gen. Assemb. (Del. 2026).

<sup>40</sup> Jon Hurdle, *State Board Upholds Environmental Denial of Delaware City Data Center*, Del. Pub. Media (Mar. 26, 2026), <https://spotlightdelaware.org/2026/03/26/delaware-city-data-center-environmental-denial-upheld-by-state-board/>. Project Washington is a proposed 1.2-gigawatt hyperscale data center by Starwood Digital Ventures, with projected energy usage exceeding double that of all Delaware homes combined. *Id.* The facility is expected to span over six million square feet and include approximately 516 backup diesel generators. See *Project Washington*, <https://projwashington.com/> (last visited Apr. 6, 2026). The project has drawn significant criticism due to its location within Delaware’s Coastal Zone, which “protects the sensitive coastal areas of Delaware by prohibiting new heavy industrial development and regulating certain other uses through a permitting program.” Sierra Club Del., *Starwood’s Project Washington Coastal Zone Act Appeal* (Mar. 2026), <https://www.sierraclub.org/delaware/blog/2026/03/starwood-s-project-washington-coastal-zone-act-appeal>. The Delaware Department of Natural Resources & Environmental Control (DNREC) determined that the project constituted prohibited heavy industrial use, explaining that “a system of backup generation that incorporates more than five acres of storage tanks is not at all typical” and that the proposal “appears to be entirely unprecedented.” Del. Dep’t of Nat. Res. & Env’t Control, *Coastal Zone Act Status Decision: Starwood Digital Ventures (Project CZA-448SD)*, Notice No. CCE20260043 (Feb. 4, 2026), <https://documents.dnrec.delaware.gov/Admin/Public-Notices/CCE20260043/Status-Decision.pdf>. The Coastal Zone Industrial Control Board subsequently upheld the denial on appeal. Josephine Peterson, *Delaware’s Largest Data Center Proposal Takes Another Blow*, Del. Online (Mar. 26, 2026), <https://www.delawareonline.com/story/news/local/2026/03/26/delaware-largest-data-center-proposal-takes-another-blow/89287953007/>.

codified in 26 Del. C. §§ 351–362, later amended by Senate Bill 33, is “intended to establish a market in Delaware for electricity from renewable sources and to lower the cost of renewable energy to consumers. The Act allows utilities to meet their portfolio standards by buying renewable energy credits (RECs) and solar renewable energy credits (SRECs) from wind, solar and other renewable sources.”<sup>41</sup> Further, as part of the RPS, Delaware requires 40% of Delaware’s electricity sales come from an eligible renewable source by 2035.<sup>42</sup> This framework also includes an Alternative Compliance Payment (ACP) of \$25 per megawatt-hour (MWh) for noncompliance.<sup>43</sup> These developments have been facilitated through statutory provisions and regulatory standards that were not originally designed to address high-demand data center loads.<sup>44</sup> Most notably, these developments implicate the Large Consumer Exception and the revised prudence standard for utility cost recovery.<sup>45</sup>

Large-load data centers also present environmental compliance risks, particularly where diesel backup generation and large-load fuel storage are proposed.<sup>46</sup> As demonstrated in *In re Starwood Ventures*, diesel generator arrays and associated fuel tanks constitute prohibited heavy

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<sup>41</sup> 26 Del. C. §§ 351–362. Under this framework, municipal utilities and rural electric cooperatives may opt out of the RPS if they demonstrate equivalent compliance under an alternative program. Database of State Incentives for Renewables & Efficiency (DSIRE), *Renewables Portfolio Standard (RPS)* (Del.), <https://programs.dsireusa.org/system/program/detail/1231> (last visited Apr. 6, 2026). The statutes also provide that entities with peak loads exceeding 1,500 kW may qualify for exemption. 26 Del. C. §§ 351–362. However, whether large-load data centers fall within this exemption remains contested. The Delaware Public Service Commission has also begun considering additional regulation of such facilities, including a proposed “large load” tariff applicable to energy consumers exceeding 25 MW. Holly Quinn, *Delaware Electricity Regulators Are Considering New Pricing Rules for Data Centers: Here’s What to Know*, Technical.ly (Mar. 3, 2026), <https://technical.ly/civics/delaware-large-load-tariff-data-center-costs/>. Data centers frequently exceed this threshold, and the proposed tariff is intended to address the costs associated with their substantial energy demands. *Id.* The costs of serving large-load customers may have indirect effects on residential consumers, particularly where increased demand influences regional wholesale electricity prices within PJM Interconnection. *Id.* (Noting that “serving a very large customer may require new substations, transmission upgrades or other infrastructure projects that can cost millions of dollars or more,” raising questions as to whether such costs will be borne by ratepayers or large-load customers.)

<sup>42</sup> 26 Del. C. § 354.

<sup>43</sup> DSIRE, *supra* note 41; 26 Del. C. § 358.

<sup>44</sup> 26 Del. C. § 353(b); 26 Del. C. § 307.

<sup>45</sup> 26 Del. C. §§ 210, 307, 353(b).

<sup>46</sup> *See* 7 Del. C. ch. 70 (Delaware Coastal Zone Act); 7 Del. Admin. C. § 101 (defining heavy industry and tank farm uses within the Coastal Zone).

industry uses or tank farms under the Delaware Coastal Zone Act (CZA).<sup>47</sup> This is significant because many large-load data centers rely on extensive backup power systems to ensure uninterrupted operations, potentially bringing them within the scope of these regulatory restrictions.<sup>48</sup> Significant projected nitrogen oxide emissions, diesel storage, and associated hazardous waste streams further heighten regulatory scrutiny under state environmental law.<sup>49</sup>

The Commission must implement renewable energy portfolio standards for retail electricity sales in Delaware, which apply to all such sales except those made to industrial customers with a peak demand in excess of 1,500 kilowatts.<sup>50</sup> The initial purpose of this exemption did not contemplate the mass development of large data centers.<sup>51</sup> As a result, the State now faces an imbalance, as these large energy users are exempt from Renewable Portfolio Standard (RPS) obligations.<sup>52</sup> In practice, this exemption allows large-load data centers to increase electricity demand without a corresponding obligation to support renewable energy generation under the RPS framework.<sup>53</sup> As a result, the costs of maintaining and expanding the energy system may fall disproportionately on other consumers, including residential ratepayers, who remain subject to RPS requirements and associated costs.<sup>54</sup>

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<sup>47</sup> *In re Starwood Digital Ventures*, Coastal Zone Act Status Decision (Del. Dep't of Nat. Res. & Env't Control 2026) (concluding that a proposed data center campus including 516 diesel generators and associated fuel tanks constituted a prohibited tank farm and heavy industry use under the CZA).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* (Noting projected nitrogen oxide emissions ranging from 25 to 616 tons annually, large-scale diesel storage exceeding two million gallons, and additional environmental risks associated with backup generation and battery systems).

<sup>50</sup> 26 Del. C. § 353(b).

<sup>51</sup> *Id.* The Large Consumer Exception defines eligibility solely by peak demand, exempting industrial customers exceeding 1,500 kW from RPS compliance. As applied to modern hyperscale data centers, this load-based exemption removes some of the State's largest electricity consumers from renewable procurement obligations, substantially altering the practical operation of the RPS framework.

<sup>52</sup> *Id.*

<sup>53</sup> 26 Del. C. § 353(b).

<sup>54</sup> 26 Del. C. § 353(b); 26 Del. C. § 358 (establishing Renewable Portfolio Standard requirements and associated compliance mechanisms for retail electricity sales not subject to exemption).

In addition to determining whether large-load data centers are subject to renewable energy obligations, Delaware law also governs how the costs of serving these facilities are allocated.<sup>55</sup> Under the revised prudence standard, the Commission evaluates whether, at the time the utility undertook a large or expensive project, the decision was reasonable.<sup>56</sup> If so, the utility may recover its costs from ratepayers; if not, the utility risks disallowance and may be unable to recover those expenditures.<sup>57</sup> This represents a departure from the prior Business Judgment Rule, under which utility decisions were generally upheld so long as they were made in good faith.<sup>58</sup> Under the Business Judgment Rule, unless there was a clear indication of fraud or abuse of discretion, there could not be a restriction on cost recovery, even if such recovery was later determined to be inefficient or excessive.<sup>59</sup> In practice, such a shift determines whether the substantial infrastructure costs associated with serving large-load data centers are borne by utilities and ultimately passed on to Delaware consumers through increased electricity rates.<sup>60</sup>

In Delaware, the revised prudence standard is relatively new and there is limited precedent interpreting its scope, leaving substantial room for interpretation.<sup>61</sup> The new prudence standard as amended by S.B. 59 and reflected in 26 Del. C. §§ 201(e)(1) and 307(a) reflects a shift toward greater scrutiny of utility expenditures.<sup>62</sup> This shift presents a direct reallocation of the “risk to the utility for capital expenditures.”<sup>63</sup> For example, if Project Washington is built, the Commission’s application of this prudence review will determine whether the financial burden ultimately falls on

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<sup>55</sup> 26 Del. C. § 307.

<sup>56</sup> *Id.* (explaining that the amendment replaces the business judgment rule with a prudence standard that permits disallowance of imprudently incurred costs).

<sup>57</sup> *Id.*

<sup>58</sup> Dawn Kurtz Crompton, *Delaware’s Recent Shift to the Prudence Standard Likely to Reshape Utility Cost Recovery*, JD Supra (Jan. 2026), <https://www.jdsupra.com/legalnews/delaware-s-recent-shift-to-the-prudence-5375056/>.

<sup>59</sup> *Id.*

<sup>60</sup> 26 Del. C. § 307.

<sup>61</sup> *Id.*

<sup>62</sup> S.B. 59, 152d Gen. Assemb., Reg. Sess. (Del. 2023); *see also* 26 Del. C. §§ 201(e), 307.

<sup>63</sup> *Id.*

ratepayers or remains with the utility.<sup>64</sup> Under this framework, utilities may structure supply arrangements for large-load data centers outside of the RPS while still seeking cost recovery through prudence standards, raising concerns about whether the Commission’s review sufficiently protects the objectives of the RPS program.<sup>65</sup> This creates a potential gap in which large-load data centers can drive substantial infrastructure investment without a corresponding guarantee that the associated costs will not be passed on to ratepayers, or that average consumers will be protected from increased electricity bills.<sup>66</sup> S.B. 59 further reinforces this framework by permitting adjustments to rate base, operation, and maintenance costs, or other expenditures where a utility fails to demonstrate prudence.<sup>67</sup> It is important to note that this prudence standard does not apply universally; rather, it applies to the Electric Distribution Companies (EDCs) subject to these regulatory requirements.<sup>68</sup> These regulations require demonstrated reliability, safety, and performance metrics for major categories of spending.<sup>69</sup>

Requirements of the RPS must be outlined in the supplier’s annual report, and those who fail to comply must contribute to the Delaware Green Energy Fund through ACP payments of \$25 per MWh of shortfall, while the solar ACP (SACP) is \$150 per MWh.<sup>70</sup> Despite these requirements, large-load data centers that qualify for the Large Consumer Exception may avoid direct participation in this framework, further reinforcing a disconnect between increasing energy consumption and the renewable energy obligations, borne by other consumers.<sup>71</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*; see 26 Del. C. § 351(b). The RPS declares that renewable energy development benefits the public at large and that suppliers and consumers share an obligation to develop a minimum level of renewable resources in Delaware’s electricity supply portfolio. *Id.*

<sup>66</sup> 26 Del. C. § 307; 26 Del. C. § 353(b).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> DSIRE, *supra* note 41; 26 Del. C. § 358.

<sup>71</sup> 26 Del. C. § 358; 26 Del. C. § 353(b).

### C. Regulatory, Financial, and Environmental Risks of Large-Load Data Centers.

Large-load data centers raise regulatory questions under Delaware’s Renewable Energy Portfolio Standards (RPS) framework, particularly in relation to the Large Consumer Exception, which applies to “industrial customers” with a peak demand exceeding 1,500 kW.<sup>72</sup> Although modern data centers far exceed this threshold, the statute does not define whether such facilities qualify as “industrial customers.”<sup>73</sup> The provision was enacted prior to the emergence of high-demand, utility-scale data centers and does not account for their unique load characteristics or operational structure.<sup>74</sup> As a result, the application of the Large Consumer Exception to data centers depends on how regulators interpret the term “industrial customer,” including whether it encompasses large-load digital infrastructure facilities.<sup>75</sup> This interpretive gap affects how RPS obligations are allocated, particularly where a facility may be exempt from direct compliance while still contributing to overall system demand.<sup>76</sup> This creates a structural gap in Delaware’s clean energy framework, because increasing energy consumption is not matched by a corresponding obligation to support renewable generation. As a result, high-demand facilities may avoid this obligation despite increasing statewide electricity demand.<sup>77</sup> This risk is further compounded by recent regulatory conditions, including the temporary freeze of certain RPS requirements, which may limit the effectiveness of renewable compliance mechanisms.<sup>78</sup> This exemption, as previously noted, raises the risk of additional fossil generation and undermines the emission reduction

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<sup>72</sup> See 26 Del. C. § 353(b).

<sup>73</sup> Hurdle, *State Board Upholds Environmental Denial*, supra note 40 (finding that Project Washington is projected to require approximately 1.2 gigawatts of electricity, far exceeding the 1,500 kW threshold set forth in 26 Del. C. § 353(b)).

<sup>74</sup> *Id.*

<sup>75</sup> 26 Del. C. § 353(b).

<sup>76</sup> 26 Del. C. § 351, 26 Del. C. § 353(b).

<sup>77</sup> 26 Del. C. § 307.

<sup>78</sup> U.S. Energy Info. Admin., supra note 16.

objectives codified in 26 Del. C. § 351.<sup>79</sup> Additionally, the application of the revised prudence standard in the context of large-load data centers remains uncertain, particularly with respect to how infrastructure costs will be allocated between utilities and ratepayers.<sup>80</sup>

If such a project as Project Washington is approved, ratepayers may bear long-term costs that are associated with fossil generation buildout or transmission expansion, because utilities may seek to recover these infrastructure investments through electricity rates.<sup>81</sup> Rapid growth from data centers creates forecasting uncertainty, increasing the risk of overbuilding fossil generation to meet speculative demand.<sup>82</sup> Utilities may default to constructing new gas-fired plants or delaying local retirements to meet capacity obligations triggered by new load.<sup>83</sup> Where large customers are exempt from RPS compliance, the resulting generation mix may shift toward fossil resources while the associated costs are distributed across ratepayers.<sup>84</sup>

Any effort to narrow the Large Consumer Exception or to impose direct renewable procurement obligations on large data centers may implicate federal preemption under the Federal Power Act, particularly where state action affects wholesale pricing or capacity market participation, and may also raise constitutional concerns.<sup>85</sup> Since PJM Interconnection administers the Federal Energy Regulatory Commission (FERC)-regulated wholesale electricity market, State measures that effectively alter wholesale pricing structures or capacity market participation could raise preemption issues under the Federal Power Act.<sup>86</sup> Accordingly, attempts to regulate data

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<sup>79</sup> 26 Del. C. § 351.

<sup>80</sup> 26 Del. C. § 307.

<sup>81</sup> *Id.*

<sup>82</sup> Jeremy Fisher et al., *Demanding Better: How Growing Demand for Electricity Can Drive a Cleaner Grid* 7 (2024), <https://www.sierraclub.org/sites/default/files/2024-09/demandingbetterwebsept2024.pdf>.

<sup>83</sup> Fisher et al., *supra* note 82, at 7.

<sup>84</sup> Fisher et al., *supra* note 82, at 5.

<sup>85</sup> *See* 16 U.S.C. § 824 (establishing FERC jurisdiction over wholesale sales and interstate transmission while reserving retail authority to the states); *see also* 16 U.S.C. §§ 824o–824q (establishing a federal reliability framework enforced by FERC through NERC).

<sup>86</sup> *See* 16 U.S.C. § 824.

center energy consumption at the state level must be carefully structured to avoid intrusion into federally regulated wholesale markets.<sup>87</sup> Taken together, these risks illustrate that Delaware’s current legal framework leaves a regulatory gap, allowing large-load data centers to impose significant environmental and financial burdens without a clearly defined or consistently applied regulatory obligation to mitigate those impacts.<sup>88</sup> Additionally, the temporary freeze on portions of the RPS compliance structure limits the ability of the program to scale alongside increasing electricity demand, thereby weakening its effectiveness in ensuring that new large-load customers contribute to renewable energy development.<sup>89</sup>

#### **D. Recommendations for Addressing Regulatory Gaps.**

Due to the statutory gap created under the Large Consumer Exception, Delaware should consider narrowly tailoring the exemption to address large data centers, particularly those whose energy demand materially alters statewide load projections.<sup>90</sup> Rather than eliminating the exemption entirely, the General Assembly could adopt a modified compliance framework requiring large-load customers to support new renewable generation, consistent with the policy objectives set forth in 26 Del. C. § 351 et seq.<sup>91</sup> Such an approach would better align large-load growth with Delaware’s clean energy goals while preserving regulatory flexibility, an area not directly addressed in current legislative proposals.<sup>92</sup>

Additionally, the Public Service Commission should apply heightened scrutiny under Delaware’s revised prudence standard when evaluating infrastructure investments undertaken to

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<sup>87</sup> See Fed. Energy Regul. Comm’n, <https://www.ferc.gov/>; PJM Interconnection, *supra* note 1.

<sup>88</sup> *Id.*

<sup>89</sup> U.S. Energy Info. Admin., *supra* note 16.

<sup>90</sup> 26 Del. C. § 353(b).

<sup>91</sup> 26 Del. C. § 353(b); 26 Del. C. § 351 et seq.

<sup>92</sup> 26 Del. C. § 351.

serve large-load customers.<sup>93</sup> Since utilities may recover prudent costs from ratepayers under 26 Del. C. § 307, careful review is necessary to ensure that fossil generation buildout or transmission expansions associated with data center development do not undermine the emissions-reduction objectives of the RPS or improperly shift long-term financial risk onto Delaware consumers.<sup>94</sup> Accordingly, the regulation of large-load data centers presents not merely a developmental issue, but a critical conflict point for Delaware’s broader energy and environmental regulatory framework.<sup>95</sup>

### **III. DATA CENTER LAWS AND POLICY OUTSIDE DELAWARE**

Of course, Delaware is not the only state confronting the issues posed by the rapid expansion of large-scale data centers. Throughout the country, states and localities have proposed, and have already passed, laws that directly address data center construction and operation. State and local legislators have taken a variety of approaches, from imposing temporary moratoriums to providing tax incentives to ensure that data centers are built and operate in the most environmentally-friendly manner possible. All of the forthcoming legal and policy approaches are feasible for Delaware, and each has its own utility.

#### **A. Temporary Moratoriums.**

Data center development throughout the country has shown that these projects have a tremendous effect on local communities. The water usage, power usage, and the potential of these data centers to pollute are unprecedented.<sup>96</sup> Large-scale data centers have been placed on a

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<sup>93</sup> See 26 Del. C. § 358 (addressing cost recovery mechanisms under the RPS framework).

<sup>94</sup> 26 Del. C. § 307 (2024); see *id.* § 351 (explaining renewable energy and emission-reduction objectives).

<sup>95</sup> 26 Del. C. § 351.

<sup>96</sup> See generally Jenna Ruddock, *The Real Race for an AI Moratorium: Stopping Data Centers*, Tech Policy Press (Dec. 17, 2025), <https://www.techpolicy.press/the-real-race-for-an-ai-moratorium-stopping-data-centers/>.

“regulatory fast-track”<sup>97</sup> of reduced “[f]ederal regulatory burdens”<sup>98</sup> spurred by newfound encouragement by the federal government. Today, the consequences of such deregulation are becoming more apparent. As such, an increasingly common legislative tool to “pump the brakes” is the enactment of a temporary pause, or moratorium, on data center development.

While placing a temporary moratorium on data center construction is hardly a permanent solution to potential data center construction writ large, such a measure is nonetheless a useful stop-gap. A number of states and counties<sup>99</sup> are either considering, or have already implemented, temporary moratoriums on new data center construction to give states and power utility commissions the time to study the power consumption of any proposed projects, as well as their inevitable impacts on the local environment.<sup>100</sup> A bill making its way through the Georgia General Assembly would implement a state-wide halt on data center construction that would last until March 1, 2027.<sup>101</sup> Two counties in Georgia, Douglas and Clayton counties, have already enacted temporary moratoriums.<sup>102</sup> State legislators in Pennsylvania are also seeking to enact a temporary

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<sup>97</sup> *Id.*

<sup>98</sup> Exec. Order No. 14318, 90 C.F.R. 35385 (July 23, 2025) (“It will be a priority of [the Second Trump] Administration to facilitate the rapid and efficient buildout of [data center] infrastructure by easing Federal regulatory burdens.”).

<sup>99</sup> See *infra* notes 103-112 and accompanying text.

<sup>100</sup> Senator Bernie Sanders and U.S. Representative Alexandra Ocasio-Cortez’s proposed federal data center moratorium puts the value of such measures quite succinctly: “Leading experts and industry leaders have warned about catastrophic consequences from unchecked [data center] development and deployment . . . .” See Artificial Intelligence Data Center Moratorium Act, Sen. ELT26209 MNT, 119th Cong. (2026).

<sup>101</sup> H.B. 1012, 2025 Gen. Ass., Reg. Sess. (Ga. 2026).

<sup>102</sup> Joshua Whitman & Rick Dent, *Southeast data center surge comes with opportunities and many tradeoffs*, THE ATLANTA JOURNAL-CONSTITUTION (Dec. 5, 2025), <https://www.ajc.com/opinion/2025/12/southeast-data-center-surge-comes-with-opportunities-and-many-tradeoffs/>.

halt on data center construction until 2029.<sup>103</sup> State legislatures in Michigan<sup>104</sup>, Minnesota<sup>105</sup>, Maryland<sup>106</sup>, New Hampshire<sup>107</sup>, New York<sup>108</sup>, and Oklahoma<sup>109</sup>, South Carolina<sup>110</sup>, South Dakota<sup>111</sup>, Vermont<sup>112</sup>, and Virginia<sup>113</sup> have likewise proposed temporary moratoriums. Some of these proposed bills, such as South Carolina’s and South Dakota’s, simply purport to enact temporary pauses on new data center construction.<sup>114</sup> Others, such as New Hampshire’s and New York’s, go a step further, proposing the creation of a commission to study the environmental impacts of data centers, as well as data centers’ impacts on gas and electricity rates.<sup>115</sup>

Ohio presents a compelling example and demonstrates how these temporary moratoriums may be used to create better-informed legislation. Ohio previously enacted a data center moratorium that expired in July 2025. After the moratorium expired, the Public Utilities Commission of Ohio announced a new ruling requiring “large new data center customers to pay for a minimum of 85% of the energy they are subscribed to use—even if they actually use less—to cover the costs of infrastructure needed to bring electricity to those facilities.”<sup>116</sup> American Electric Power Company, Inc.’s utility unit in Ohio (“AEP Ohio”) approved the Public Utilities Commission’s ruling, specifically because it requires data centers to “shoulder[ ] the costs of grid improvements required to meet data centers’ energy demands.”<sup>117</sup> AEP Ohio also requires a “load

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<sup>103</sup> Memorandum from Senator Katie Muth to all Pennsylvania Senate Members, Protecting Pennsylvania Communities: Statewide Moratorium on Data Center Development (Feb. 12, 2026) (“By enacting a three-year moratorium, this legislation would require Pennsylvania decision makers to take time to do meaningful research and planning that should have been done before this data center development rush began. It is a pause to require state agencies to conduct real impact studies and put clear rules in place that are based on health and safety standards, not industry standards. The moratorium would also ensure that local governments and emergency response officials have the necessary time to fully assess the impacts of data center development and to enact protections to ensure the residents all across this state are protected from corporate exploitation and industrial health harm.”).

<sup>104</sup> H.B. 240, 2026 H.R., Reg. Sess. (Mich. 2025).

<sup>105</sup> S.B. 4298, 2025 Sen., Reg. Sess. (Minn. 2025).

<sup>106</sup> H.B. 120, 2025 Gen. Assemb., Reg. Sess. (Md. 2026).

<sup>107</sup> H.B. 1265, 2026 H.R., Reg. Sess. (N.H. 2026).

<sup>108</sup> S.B. 1488, 2026 Sen., Reg. Sess. (Ok. 2026).

<sup>109</sup> S.B. 9144, 2025 Sen., Reg. Sess. (N.Y. 2026).

<sup>110</sup> H.B. 5286, 2025 H.R., Reg. Sess. (S.C. 2025).

<sup>111</sup> S.B. 232, 2026 Sen., Reg. Sess. (S.D. 2026); H.B. 1301, 2026 H.R., Reg. Sess. (S.D. 2026).

<sup>112</sup> S.B. 205, 2025 Sen., Reg. Sess. (Vt. 2025).

<sup>113</sup> H.B. 1515, 2026 H.R., Reg. Sess. (Va. 2026).

<sup>114</sup> See *supra*, notes 103-104.

<sup>115</sup> See *supra*, notes 100-101.

<sup>116</sup> Laura Arenschiold, *AEP Ohio Proposal on Data Centers to Protect Ohio Consumers Adopted by PUCO*, American Electric Power Company, Inc. (July 9, 2025), <https://www.aep.com/news/stories/view/10327/>.

<sup>117</sup> *Id.*

study fee,”<sup>118</sup> for all prospective data centers in areas that AEP Ohio services.<sup>119</sup> Without the valuable time that the Ohio legislature, AEP Ohio, and the Public Utilities Commission of Ohio took to study the local impacts of data center construction, such legislation may not have been so responsive.

**Table 1.** AEP Ohio’s Calculation of Load Study Fees for Proposed Data Center Development

| kW Capacity Request      | Study Fee |
|--------------------------|-----------|
| >25,000 kW to <50,000 kW | \$10,000  |
| 50,000 kW to <100,000 kW | \$50,000  |
| 100,000 kW and greater   | \$100,000 |

**B. Maintaining State Energy Goals and Emissions Standards.**

While temporary moratoriums may buy states valuable time to enact data center legislation, they are inherently short-term solutions. Several states have taken the next step by enacting legislation that meaningfully addresses the environmental impact of data center construction and operation, while also requiring data centers to offset the inordinate amount of power they consume.

Three states in the Midwest—Michigan, Minnesota, and Illinois—have taken a somewhat different approach, implementing new tax incentives to attract data center construction to meet their respective clean energy goals. The Michigan Tax Act was recently amended and now requires, *inter alia*, that for a data center to satisfy clean energy requirements for sales and use tax exemptions, “the [data center] facility [must] procure[ ] or will procure clean energy as described in . . . [Michigan’s] clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1051, equivalent to 90% of the facility’s forecasted electricity usage on an annual basis

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<sup>118</sup> Letter from AEP Ohio to its customers, (Nov. 7, 2025) (“The load study process had two primary objectives: . . . The first objective was assessing the extent to which regional transmission investments would be required to support the New Data Center Projects. . . . The second objective was to develop a local service plan for each New Data Center Project, identifying the local system upgrades needed to connect the data center to the transmission network.”).

<sup>119</sup> *Data Center Tariff*, American Electric Power Company, Inc., <https://www.aepohio.com/company/about/rates/data-center-tariff/> (last visited Feb. 17, 2026).

...”<sup>120</sup> This forces data centers in Michigan to secure a meaningful clean-energy supply to receive sales-and-use-tax benefits.

Illinois requires that data centers become carbon neutral within two years of being placed into service to receive use tax exemptions, requiring them to eliminate or at least offset greenhouse gas emissions from electricity consumption.<sup>121</sup> Alternatively, the data center can also seek certification from one or more state green building standards.<sup>122</sup> Minnesota law similarly requires that large-scale data centers meet “sustainable design” or “green building standards” within three years of being placed into service.<sup>123</sup> Furthermore, Minnesota also requires the state’s public utilities to consider how providing electricity to large-scale data centers affects state energy standards and offers,<sup>124</sup> as well as providing for a “clean energy and capacity tariff . . . requir[ing] the participating customers to pay all proportional costs associated with the addition of the new clean energy or capacity resources, including any utility costs caused by the addition of the new clean energy or capacity resources to the grid.”<sup>125</sup>

A recently enacted Minnesota bill requires in-state utilities to charge a clean energy tariff to data center companies. The bill requires the collection of “an annual fee from the qualified large-scale data center . . . .”<sup>126</sup> The total fee (ranging from \$2,000,000 to \$5,000,000) “is based on the qualified large-scale data center's peak demand the utility arranges to serve, reflecting the qualified large-scale data center's peak demand forecast provided to the utility . . . .”<sup>127</sup> The money collected

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<sup>120</sup> Mich. Comp. Laws Ann. § 205.54ee (West 2025).

<sup>121</sup> Ill. Comp. Stat. Ann. § 605-1025 (West 2025).

<sup>122</sup> *Id.*

<sup>123</sup> Minn. Stat. Ann. § 297A.68 (West 2025).

<sup>124</sup> Minn. Stat. Ann. § 216B.1622 (West 2025).

<sup>125</sup> Minn. Stat. Ann. § 216B.1623 (West 2025).

<sup>126</sup> H.F. 16, 94th Legis., 1st Spec. Sess. (Minn. 2025).

<sup>127</sup> *Id.*

from the fee is deposited in an “energy and conservation account,” the money in which may be appropriated “to conduct energy conservation, weatherization, and associated activities . . . .”<sup>128</sup>

Furthermore, Minnesota state law requires that power plants whose maximum output exceeds 50MW must obtain a “certificate of need,” which requires an entity to demonstrate that the infrastructure for power production is necessary and that no cheaper, cleaner alternative exists.<sup>129</sup> In 2025, the Minnesota Public Utilities Commission (“Minnesota PUC”) halted construction on a data center proposed by Amazon in Becker, Minnesota. As part of the project, Amazon proposed a “fleet” of 250 backup diesel generators that would have had a maximum power output rivaling a nuclear generation station.<sup>130</sup> The proposed 250 backup diesel generators were estimated to produce approximately 600MW of power. Amazon petitioned the Minnesota PUC for an exemption to the “certificate of need” requirement, which the Minnesota PUC denied.<sup>131</sup> Similarly, the Maryland Public Service Commission (“Maryland PSC”) declined to exempt a proposed construction for 168 3MW diesel generators (504 MW aggregate) from Maryland’s Certificate of Public Convenience and Necessity (“CPCN”) requirement for its emissions standards.<sup>132</sup> The Maryland PSC denied the exemption request, finding that in aggregate

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<sup>128</sup> *Id.*

<sup>129</sup> Minn. Stat. Ann. § 216B.243 (West 2025); see also Walker Orenstein, *Amazon must prove it needs 250 diesel generators at Becker data center, Minnesota utility regulators say*, Minn. Star Tribune (Feb. 28, 2025), <https://www.startribune.com/amazon-must-prove-it-needs-250-diesel-generators-at-becker-data-center-minnesota-utility-regulators-say/601229504>.

<sup>130</sup> See David Chernicoff & Matt Vincent, *Minnesota PUC Says No to Amazon’s Bid to Fast-Track 250 Diesel Generators for Data Center*, Data Center Frontier (Mar. 7, 2025), <https://www.datacenterfrontier.com/energy/article/55269574/minnesota-puc-says-no-to-amazons-bid-to-fast-track-250-diesel-generators-for-data-center/>.

<sup>131</sup> See Order Requiring Certificate of Need and Granting Exemption from Certain Data Center Requirements, No. PT-7151/CN-24-435, (Minn. Pub. Utilities Comm’n. 2025) <https://efiling.web.commerce.state.mn.us/documents/%7B6062F295-0000-CF1C-96AE-61D59FA827E4%7D/download?contentSequence=0&rowIndex=2>.

<sup>132</sup> See Provision Order Granting in Part and Denying in Part Applicant’s Request for Rehearing, No. 90830, (Md. Pub. Serv. Comm’n. 2023), <https://www.pscmaryland.com/wp-content/uploads/Order-No.-90830-Provisional-Order-on-Rehearing-ML-302893-1.pdf>. (“the [Maryland PSC] may exempt from the PUA § 7-207 CPCN requirement construction of a generating station designed to provide on-site generated electricity if (1) the capacity of the generating station does not exceed 70 megawatts, and (2) the electricity that may be exported for sale from the

the project exceeded the 70 MW exemption cap and ordered the data center to proceed through the full CPCN process.<sup>133</sup>

These laws are directly analogous to the currently proposed Delaware Senate Bill 205 “requir[ing] any person or entity seeking to begin the business of using 30 megawatts (MW) of electricity or greater to first obtain a Certificate to Operate (“COP”) from the Public Service Commission.”<sup>134</sup> Minnesota’s “certificate of need” requirement and Maryland’s CPCN requirement both act as checks on data center construction. These measures ensure that the large-scale data centers do not unnecessarily strain the respective state power supply, and expressly require large-scale data centers to comply with state energy goals, or at least require these data centers to make a compelling case as to why they could be exempt. Thus, as seen in Minnesota and Maryland, Delaware S.B. 205 is a step in the right direction to ensure that data centers meet state energy goals.

The foregoing state statutes all demonstrate how states can take action on data centers; data center development can be made to be more sustainable and made to meet state energy goals.

### **C. Changing Statutory Definitions.**

The CZA status decision on Project Washington and the subsequent administrative appeal demonstrate that the CZA does not adequately address data centers.<sup>135</sup> Applying the CZA to data centers presents two issues: (1) the CZA does not define a term crucial to large-scale data center construction (a “tank farm”), which has been, and will likely continue to be, a point of legal

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generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company.”).

<sup>133</sup> *Id.*

<sup>134</sup> S.B. 205, 2026 Gen. Assemb., Reg. Sess. (Del. 2025).

<sup>135</sup> *See* Starwood Digital Ventures Status Decision, No. CCE20260043, (Del. Dep’t of Nat. Res. and Env’t Control 2026), <https://documents.dnrec.delaware.gov/Admin/Public-Notices/CCE20260043/Status-Decision.pdf>.

controversy for data center development in Delaware; and (2) the construction and operation of large-scale data centers does not neatly fit with the statute’s definition of “heavy industry.”

In keeping with the uniqueness of the CZA, it seems that no state legislature has given statutory weight to the meaning of a “tank farm” as it pertains to data centers or even other industries. However, the municipality of Signal Hill, California codified in its municipal code the definition of a “tank farm” as simply meaning “a collection of tanks.”<sup>136</sup> This definition is consistent with the legislative intent of the CZA, DNREC’s Status Decision, as well as oral testimony given by DNREC Secretary Gregory Patterson at the Coastal Zone Industrial Control Board’s hearings on Starwood Digital Ventures’ appeal.

An additional wrinkle in the CZA is that data centers do not neatly fit with traditional definitions of “industry.” Data centers, despite not necessarily producing a tangible good, nonetheless require an amount of energy on par with activities traditionally associated with industrial uses.<sup>137</sup> This means that data centers tend to defy statutes like the CZA that define “industry” more traditionally.<sup>138</sup> While Louisiana’s legislature seemingly tends to be more data-center friendly, a recently enacted bill out of the Louisiana Senate amended the meaning of the phrase “industrial purpose” in Title 31 (municipalities and parishes) and Title 55 (trade and commerce) of Louisiana’s statutes to “include the construction and operation of data centers and commercial activities directly related thereto.”<sup>139</sup> Therefore, Louisiana’s reclassification of “industrial purpose” is a compelling precedent for Delaware legislators to follow by similarly

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<sup>136</sup> Signal Hill’s municipal definition of a “tank farm” is located in its Oil and Gas Code. *See* Signal Hill, Cal. Mun. Code ch. 16.08 440 (2025). Interestingly, this definition runs contrary to expert testimony provided by Starwood Digital Ventures during its appeal of DNREC’s Status Decision. Starwood’s expert claimed that a “tank farm” in the oil industry ostensibly requires that a tank farm be commercially viable. No such requirement of commercial viability is present in Signal Hill’s Oil and Gas Code.

<sup>137</sup> *See generally* *Energy demand from AI*, Int’l Energy Agency, <https://www.iea.org/reports/energy-and-ai/energy-demand-from-ai> (last visited Feb. 18, 2026).

<sup>138</sup> *See, e.g.*, 26 Del. C. § 353.

<sup>139</sup> S.B. 79, 2025 Sen., Reg. Sess. (La. 2025).

amending the Coastal Zone Act to explicitly classify “heavy industry” as explicitly contemplating the construction and operation of large-scale data centers.

#### **D. Non-Disclosure Agreements.**

Non-disclosure agreements (NDAs) are contracts formed between parties binding the signatory to protect confidential and/or sensitive information. The formation of NDAs is an increasingly common practice with the construction of new data centers.<sup>140</sup> For example, in Virginia, approximately twenty-five (25) of thirty-one (31) localities with an existing or proposed data center had signed NDAs.<sup>141</sup> An Oregon township, on behalf of Google, sued a local newspaper that attempted to release information about the amount of water a data center proposed by Google was projected to use.<sup>142</sup> If such information had been kept confidential about Project Washington, the DNREC Status Decision and its subsequent appeal may have been resolved differently, or at least faced different obstacles. Indeed, by restricting public access to vital operational information, NDAs and similar agreements greatly benefit the economic interest of the data center at the expense of the citizens of the state and locality in which the data center plans to operate or does in fact operate.

New Jersey<sup>143</sup>, Pennsylvania<sup>144</sup>, and Utah<sup>145</sup> have proposed legislation requiring hyperscale data centers to disclose their energy and water use. Some states have proposed legislation that goes

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<sup>140</sup> Eric Bonds and Viktor Newby, Data Centers, Non-Disclosure Agreements and Democracy, *Virginia Mercury* (April 30, 2025), <https://viriniamercury.com/2025/04/30/data-centers-non-disclosure-agreements-and-democracy/?utm>.

<sup>141</sup> *Id.*

<sup>142</sup> Seth Stern, *It's Time for Open Records Laws to Promote Transparency*, Freedom of the Press Foundation (Dec. 22, 2022), <https://freedom.press/issues/its-time-for-open-records-laws-to-promote-transparency>.

<sup>143</sup> S.B. 2274, 2026 Sen., Reg. Sess. (N.J. 2026).

<sup>144</sup> H.B. 2150, 2025 Gen. Assemb., Reg. Sess. (Penn. 2025).

<sup>145</sup> H.B. 76, 2026 Sen., Reg. Sess. (Utah. 2026).

one step further: Florida<sup>146</sup>, Georgia<sup>147</sup>, Illinois<sup>148</sup>, Michigan<sup>149</sup>, New Jersey<sup>150</sup>, and Virginia<sup>151</sup> have introduced legislation completely prohibiting data centers from entering into NDAs. Disclosure and transparency are the keystone issues here. It is imperative that corporations that may seek to construct and operate future data centers in Delaware not be allowed to hide crucial information such as projected emissions, energy usage, or water usage that have tremendous impacts on Delaware citizens and the environment.

#### IV. CONCLUSION

Project Washington serves as a defining example of the challenges facing Delaware's energy, environmental, and consumer protection framework.<sup>152</sup> More broadly, the rapid expansion of large-load data centers presents similar challenges across jurisdictions, requiring states to reassess existing regulatory structures. The combination of the Large Consumer Exception, the revised prudence standard, and the RPS exposes the structural gaps that were not designed to accommodate a large-load data center.<sup>153</sup> Due to Delaware's operation within a regional transmission system administered by PJM Interconnection, the approval of a single 1.2 gigawatt facility has implications not only for in-state ratepayers, but also for regional market dynamics and compliance with statutory energy objectives.<sup>154</sup>

Similar to Delaware, other states have been confronted with comparable large-load growth and have adopted or proposed a wide range of regulatory solutions, ranging from temporary

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<sup>146</sup> S.B. 484, 2026 Sen., Reg. Sess. (Fla. 2026).

<sup>147</sup> S.B. 436, 2025 Sen., Reg. Sess. (Ga. 2025).

<sup>148</sup> S.B. 4004, 2025 Sen., Reg. Sess. (Ill. 2025).

<sup>149</sup> H.B. 5399, 2025 H.R., Reg. Sess. (Mich. 2025).

<sup>150</sup> S.B. 2774, 2026 Gen. Assemb., Reg. Sess. (N.J. 2026).

<sup>151</sup> H.B. 496, 2026 H.R., Reg. Sess. (Va. 2026).

<sup>152</sup> See 26 Del. C. § 353(b); 26 Del. C. § 307; 26 Del. C. § 351.

<sup>153</sup> *Id.*

<sup>154</sup> PJM Interconnection, *supra* note 1.

moratoriums to requirements that data centers bear infrastructure costs and renewable energy procurement, or carbon neutrality requirements tied to tax incentives.<sup>155</sup> While Delaware’s statutory framework differs, these examples demonstrate that state-level intervention remains both legally viable and adaptable to evolving energy demands.<sup>156</sup>

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<sup>155</sup> H.B. 1012, 2025 Gen. Assemb., Reg. Sess. (Ga. 2025).

<sup>156</sup> *See* 26 Del. C. § 307; 26 Del. C. § 351; 26 Del. C. § 353(b).