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Trends in State Regulation and Legislation Regarding Tariffs Applicable to Data Centers and Other Large Loads, Ratepayer Protections, and Data Center Moratoria and Permitting Pauses

Client Alerts

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By: Suedeen G. Kelly, Rick Stepanovic

Introduction

The surge in data center development is driving dramatic load growth, leading a number of state legislatures to adopt new laws and public utility commissions to adopt new retail rate schedules to protect existing ratepayers from bearing the costs of new utility infrastructure needed to serve new data centers. Several states have adopted legislation directing their commissions to create special rate classes for large energy users. Specialized large load retail tariffs have been adopted by or proposed to state regulators that would apply to more than 60 investor-owned utilities in more than 35 states, according to the Database of Emerging Large Load Tariffs (DELTa), as of October 2026, maintained by the Smart Electric Power Alliance and the North Carolina Clean Energy Technology Center. While utilities have long had separate retail tariffs for large industrial customers, the surge in data center demand has prompted a wave of new tariffs in the past two to three years specifically designed to address costs associated with the proliferation of large computational loads. This article summarizes emerging national and regional trends among state legislatures and regulators related to data center tariffs.[1]

National Trends

Traditional utility ratemaking generally spreads the cost of network infrastructure needed to serve existing and new load across all customer classes, broadly socializing most costs of business-as-usual generation and grid expansion, upgrades, and replacements. However, in the face of rapid load growth in a particular sector—*i.e.*, data centers—and in the context of widespread energy affordability challenges, state legislatures and utility regulators are taking measures to ensure that new large load customers bear both the costs of state-jurisdictional generation, transmission, and distribution upgrades needed to serve them and the risk of stranded assets (*e.g.*, generation capacity increases,

substation upgrades, transformers, protection/control devices) should their forecasted demand not materialize.

As large load tariffs proliferate, the following common features have emerged to protect existing utility customers:

Cost Allocation – Requiring large load customers to pay for the infrastructure needed to serve them has been a common feature of ratepayer protection legislation adopted in a number of states. Large load tariffs implementing such legislation directly assign distribution-level interconnection, upgrade, and/or study costs to the large load customer. In FERC-regulated RTO/ISO regions, transmission revenue requirements are allocated among wholesale transmission customers under FERC-approved transmission tariffs, but states retain authority over how those costs and other large load costs reach retail customers.

Minimum Demand Charges / Minimum Monthly Bills (Take-or-Pay) – Nearly all large load tariffs include a floor for what the large load customer must pay regardless of actual consumption, typically set at 75 to 90 percent of contracted capacity, with 80 percent being the most common. This functions like a take-or-pay contract, and it protects utilities and other ratepayers if a data center uses less power than forecasted.

Collateral and Credit Requirements – Many large load tariffs include credit and collateral requirements intended to ensure payment of bills, exit fees, or penalties if a data center defaults or becomes insolvent. Common forms of collateral include letters of credit, surety bonds, and cash deposits, which are often due at signing or shortly thereafter. Collateral requirements vary in amount and calculation method. Common methods include a multiple of minimum monthly bills (*e.g.*, two years of minimum monthly bills), a percentage of the total amount of minimum charges under the service agreement (*e.g.*, 50 percent of the total minimum charges for the full service agreement), or a dollar amount per MW (*e.g.*, $1.5 million per MW of contracted demand). The amount of collateral required often can be reduced if the customer provides a guarantee from a creditworthy parent, maintains a certain credit rating, or has sufficient cash on its balance sheet to meet its obligations under the service agreement. Some tariffs also include scheduled collateral reductions, as the total allocated cost of the infrastructure expansion is recovered from the large load (*e.g.*, a 1/14 reduction for each year of a 14-year term).

Long-Term Contracts – Recent large load tariffs have also included longer minimum lengths for service agreements, trending towards 10- to 20-year minimum terms. This is a significant increase from the 3-year contracts common in prior generations of large industrial tariffs, which is consistent with the current uncertainty in the data center sector about the future of individual AI providers and the industry as a whole.

Exit Fees / Early Termination Penalties – To discourage customers from leaving contracts early, overestimating capacity needs, or significantly reducing contracted load, many large load tariffs

include hefty exit fees or early termination penalties (*e.g.*, three years' minimum demand charges).

Load Flexibility – An increasing number of statutes and large load tariffs treat a data center's willingness to reduce or interrupt load as a condition of service or as grounds for relaxed financial terms. For example, state regulators have approved tariffs that require large load customers to engineer their substations and customer-side infrastructure so that non-critical load can be shed separately from critical load during a load-shedding event, and that offer a voluntary interruptible option in exchange for a lower minimum revenue guarantee.

Affordability and Low-Income Program Contributions – Some statutes and commission orders require large load customers to fund programs that reduce energy burden for residential and low-income customers, on the premise that very large loads raise regional costs in ways that direct assignment cannot fully capture. Mechanisms adopted to date include a volumetric surcharge on the largest customers (one cent per kWh for loads of 100 MW or more) dedicated to energy efficiency, home repairs, and distributed resources for energy-burdened households; a fixed annual allocation of universal service program costs to the new large load rate class; and a statutory per-MW registration fee split between a low-income bill-assistance fund and low-income efficiency programs.

Regional Trends and Recent Developments

Regional trends and variations in large load tariffs are also emerging, reflecting differences in market and regulatory structures and unique regional dynamics. The following are the most notable current regional trends, based on our analysis of the DELTa database:

PJM Interconnection States – States within the PJM RTO are currently the most active in the country, with the greatest number of approved and pending retail tariffs, the most contested commission proceedings, and the first appellate challenge to a data center tariff in the country. Most large load tariffs in PJM states lock in the data center's revenue obligation through minimum billing demand, long contract terms, and high collateral requirements. In July 2026, New Jersey enacted legislation (A796) requiring separate rate classes and tariffs for data centers located in that state, which, in addition to many of the typical features discussed above, must also include incentives for data centers to increase energy efficiency, such as through waste-heat capture technologies.

Midcontinent Independent System Operator (MISO) States – Utilities and regulators in MISO states have pursued a wide range of tariff designs, reflecting the fact that most of the MISO states have not restructured their utilities and engage in traditional state regulation of their utilities. Minimum contract terms tend to be slightly longer in the MISO states (median 15 years) than in PJM states (median 10 years). Minnesota enacted legislation (HF16) in June 2025 that requires utilities to demonstrate they can serve the additional load without weakening existing clean energy compliance commitments.

Southwest Power Pool (SPP) States – Tariffs in the states within the SPP region have converged on a relatively consistent structure, typically with 12- to 15-year terms (plus ramp periods) and 80 percent minimum demand charges.

Texas/Electric Reliability Council of Texas (ERCOT) – Because ERCOT operates largely outside FERC's jurisdiction, Texas state authorities can impose requirements that are specifically designed to address its restructured electric industry and will not face federal preemption challenges. Accordingly, in June 2025, Texas enacted one of the more operationally detailed pieces of legislation in the country (S.B. 6), with emergency curtailment procedures and state commission review of transmission cost allocation. The Public Utility Commission of Texas (PUCT) published a draft rule implementing the legislation in March 2026 (16 Tex. Admin. Code § 25.194) that would require large load customers to pay all direct interconnection costs through a contribution in aid of construction. In August 2026, Governor Abbott directed ERCOT and the PUCT to complete an audit of all data centers in ERCOT's large load interconnection process (including verification of project ownership, financing, and water/power usage disclosures), resulting in a pause of the state's first batch study process, Batch Zero. In September 2026, Governor Abbott directed the Texas Commission on Environmental Quality to halt permits sought by data centers until the audit is completed.

California/California Independent System Operator (CAISO) – The California Public Utilities Commission (CPUC) is currently considering proposed tariff provisions regarding cost allocation for transmission upgrades needed to serve customers at transmission-level voltage, which is distinct from the typical demand/load-based eligibility requirements in most tariffs. The proposed tariff has different cost allocation approaches based on the type of facility being built or upgraded. The CPUC has also instituted a rulemaking on advanced electric rate design (Rulemaking 26-04-009) where it is considering, among other things, a separate customer class for data centers and alternative generation, transmission, and distribution cost allocations and rate designs for data center customers. In September 2026, California enacted legislation (S.B. 886) to require data center customers submitting interconnection applications to disclose whether they have applied for interconnection for the same data center in other utilities' service territories or jurisdictions. This is likely designed to prevent duplicative requests from inflating load forecasts, which could result in overbuilding and stranded costs.

States in New York Independent System Operator (NYISO) and ISO New England (ISO-NE) – There has been less large load tariff activity in New York and the New England states (located in NYISO and ISO-NE, respectively). However, in February 2026, the New York State Public Service Commission initiated a proceeding (Case No. 26-E-0045) to review interconnection processes, cost-allocation mechanisms, and tariff structures relating to the integration of large loads with the state's transmission and distribution systems and will hold a technical conference by the end of 2026. In July 2026, New York Governor Hochul issued a one-year permitting moratorium for new

data centers (with a demand of 50 MW or more) in order to build a regulatory framework that protects ratepayers, the environment, and the grid (in part through Case No. 26-E-0045).

Western Non-RTO/ISO States – State legislatures and commissions in non-RTO/ISO regions have the latitude to require direct cost assignment for transmission upgrades to network transmission service given the inapplicability of RTO/ISO cost allocation rules (although federal regional transmission planning/cost allocation requirements still apply to non-networked, unbundled transmission service). In the Western states, this has resulted in more explicit direct-assignment frameworks. For example, the Oregon POWER Act (H.B. 3546), enacted in June 2025, requires that large load tariffs either (a) directly assign the costs of serving a large load facility to the specific customer, or (b) allocate the costs of serving such facilities to the entire class of large load customers.

Southeastern Non-RTO/ISO States – Large load tariffs in the Southeast have typically been utility-initiated, rather than the product of legislative or state regulatory mandates. In April 2026, Alabama enacted the first statute in this region mandating specific large load reform (S.B. 270). It directs the Alabama Public Service Commission to determine whether the terms of service agreements with large load data centers provide for the recovery of incremental costs of service to data centers. Florida followed soon thereafter, enacting legislation to implement large load customer tariff and service requirements in May 2026 (S.B. 484). Large load tariffs in the Southeast states also have a broad range of minimum contract lengths, from 1 year to 20 years.

Moratoria and Permitting Pauses

Alongside tariff reform, governors have begun using environmental permitting, state land, and taxing authority to slow data center development while ratepayer protection frameworks are built. To date these actions have come from the executive branch; legislative moratoria have largely failed. New York, discussed above, is the only state with a statewide moratorium in force that is labeled as such. Texas, also discussed above, reached a similar result by pausing its study and permitting processes. Oregon's Governor Kotek, by contrast, has acknowledged that the state lacks authority to halt private development and has instead paused all state agency action on easements, leases, land use permits, and sales of state-owned property for data center projects through July 1, 2027, while calling on the 2027 legislature to enact a statewide moratorium.

Legislative moratoria have fared worse. Maine's legislature passed a statewide moratorium on data centers of 20 MW or more, but Governor Mills vetoed it in April 2026 and the veto was sustained; moratorium bills in Georgia, Maryland, Minnesota, Oklahoma, South Dakota, and Vermont died in their 2026 sessions. Local moratoria, by contrast, have proliferated into the hundreds. The pattern suggests that moratoria are functioning less as permanent bans than as leverage: New York and Texas have each conditioned the resumption of permitting on data centers demonstrating that they will bear the costs of serving them, which is the same objective the tariffs discussed above pursue through rate design.

Conclusion

The state regulatory landscape for data centers has changed rapidly in the past two years and will continue to evolve as utilities, regulators, and state legislatures respond to the dramatic growth in data center demand. The large load tariffs that have been adopted or proposed to date reflect an emerging set of common mechanisms to protect existing utility customers from the imposition of costs associated with serving new data center load, with significant regional variation reflecting local conditions and considerations. Key battleground issues include cost-assignment methodologies, curtailment protocols, and the resolution of federal-state jurisdictional questions.

Jenner & Block regularly advises clients on data center issues, rate design, and utility regulatory proceedings in jurisdictions across the country. For more information, see Data Centers | Jenner & Block LLP.

Footnotes

[1] The trends discussed in this article are drawn principally from DELTa, which reflects information as of October 2026. Legislation and regulation concerning data center load are developing rapidly, and the status of the legislation, orders, and tariffs discussed here may have changed since publication.

Related Lawyers



Suedeen G. Kelly
Partner
skelly@jenner.com
+1 202 639 6055



Rick Stepanovic
Associate
rstepanovic@jenner.com
+1 312 840 7514

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