SPONSOR: Rep. Burns & Rep. Heffernan & Rep. Minor-Brown & Sen. Hansen
Reps. Gorman, Phillips, Romer, Snyder-Hall, Griffith, S. Moore, Morrison, Lambert, Harris, Ortega; Sens. Sturgeon, Seigfried

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 233
AS AMENDED BY
HOUSE AMENDMENT NO. 1 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 3
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO LARGE ENERGY USE FACILITIES.

WHEREAS, the proliferation of data centers is a direct response to the escalating demand for digital services, largely driven by advancements in artificial intelligence, the digitization of various industries, and the increasing reliance on cloud-based services; and

WHEREAS, large load facilities, almost exclusively hyperscale data centers, are growing at a scale and a pace that their impact is unlike anything in the energy sector for decades; and

WHEREAS, hyperscale data centers are being developed across the country, but are growing particularly rapidly across the PJM Interconnection (PJM) grid region that includes Delaware, where their growth may have a particular impact on Delaware's grid reliability and utility customer costs; and

WHEREAS, hyperscale data centers may have the potential to be a positive economic driver, generating construction jobs and tax revenue, but are incredibly energy intensive, with large data centers using the same amount of power as a small city, or more; and

WHEREAS, the growth in hyperscale data centers was not anticipated by grid operators or utilities until only a few years ago and hyperscale data centers are also being built far faster than new power generation has historically been built, resulting in PJM's most recent capacity market auction acquiring less generation than needed to meet its reliability reserve; and

WHEREAS, both PJM and PJM's Independent Market Monitor (IMM) have concluded that data centers are the primary cause of future risks to reliability and increasing costs in the capacity market; and

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WHEREAS, the development of hyperscale data centers include reliability risks, the prospect of sharply higher energy costs including capacity costs, and the need for enormous distribution and transmission infrastructure costs; and

WHEREAS, the IMM has concluded that current and forecast data center growth has already caused costs in the capacity market alone to increase by more than $23 billion over the last two years, and that capacity auction costs would have been another $13 billion higher if not for the temporary cap on prices; and

WHEREAS, the White House Council on Energy Dominance and the Governors of all PJM states, including Governor Meyer, have signed a "Statement of Principles Regarding PJM" to address hyperscale data center growth that states that PJM should "Allocate Costs to Data Centers" because of the "size and the risks they pose to resource adequacy make today's data centers unique. For this reason, PJM should allocate the cost of any *new* capacity procured... to [utilities] with new data centers that have no self-procured new capacity or agreed to be curtailable"; and

WHEREAS, the Statement of Principles also establishes that states should "Allocate Costs to Data Centers and Protect Residential Customers" and that "[u]se all available authorities to ensure that their state public utility commissions design rate class structures to ensure that [utilities] allocate their share of the cost to procure new capacity... to new data center loads that have not otherwise procured capacity or agreed to be curtailable"; and

WHEREAS, states and utilities are implementing strategies, including infrastructure investments and diversifying energy sources, to address the rising energy needs of data centers; and

WHEREAS, the inevitable and costly upgrades to electric grid infrastructure demand timely action to ensure that the financial burden of increased energy consumption by large-load customers is not unfairly shifted onto residential and small businesses customers through rate increases; and

WHEREAS, responsible data center developers and operators are working with states to develop responsible regulatory frameworks that will enable large load facilities to operate in a way that protects ratepayers and the integrity of the electric grid; and

WHEREAS, numerous leading artificial intelligence companies have signed a "Ratepayer Protection Pledge" that, among other things, pledges that data center companies "will build, bring, or buy the new generation resources and electricity to satisfy their new energy demands, paying the full cost of those resources… [and] [w]here possible, these companies will also add more capacity that serves the broader public by increasing supply," and data center companies "will pay for all new power delivery infrastructure upgrades required to service their data centers, including adequate network upgrade costs to ensure that these expenses are not passed on to the ordinary household," and that data center companies will enter into large load tariff rate structures and "will pay these rates for the power and related infrastructure that are brought online to service their data centers, whether they use the electricity or not"; and

WHEREAS, data centers proposed in Delaware would almost double the current peak electricity demand of the entire State, straining our grid, necessitating substantial transmission infrastructure upgrades, and shifting electricity supply and demand; and

WHEREAS, a 2026 study of the impacts on electricity costs in Delaware found that 2,400 MW of data center load growth in Delaware (consistent in total size to a project already being studied by Delmarva Power & Light) could increase locational marginal prices for electricity by an average of 82% above the baseline by 2029, with differing regional impacts across the State; and

WHEREAS, a separate 2026 study also found significant reliability impacts from 2,400 MW of data center load growth in Delaware; and

WHEREAS, hyperscale data center growth also poses challenges to meeting Delaware's energy and climate goals; and

WHEREAS, Delaware welcomes developers of large energy use facilities that commit to and develop their projects consistent with the "Ratepayer Protection Pledge" and the Statement of Principles, and the State and responsible developers will benefit from the regulatory certainty of a framework that enables developers to fulfill pledges that costs related to large load growth will not be shifted onto other customers.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, Chapter 1, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 102. Definitions.

As used in this title, unless the context otherwise requires:

()a. "Large energy use facility" means a facility that does any of the following:

1. Uses or is projected to use a monthly maximum demand of 75 megawatts or greater at a load factor of 85% or greater.

2. Uses a monthly maximum instantaneous demand of 100 megawatts or greater.

3. Uses or is able to use a monthly maximum demand of 30 megawatts or greater and is primarily engaged in providing a service described under code 518210 of the 2022 North American Industry Classification System.

b. Multiple facilities may be aggregated and treated as a large energy use facility for the purposes of this definition if the electric utility or the electric utility's regulatory body determines they would pose reliability risks

to the electric system because of their electricity use, proximity, and operational characteristics. Factors that may be considered include close physical proximity, common ownership or control, or ownership or control through an affiliated company, and sharing of local electrical infrastructure.

c. "Large energy use facility" does not include a facility that stores, processes, refines, or transfers crude petroleum or petroleum products in bulk quantities, including refineries, and such uses shall not count toward aggregation. This exemption does not apply to a new facility that, after [the effective date of this Act] adds uses unrelated to the storage, processing, refining, or transfer of crude petroleum, petroleum products in bulk quantities, or other energy storage materials, if the energy use of the new facility meets the thresholds in paragraph ()a. of this section.

( ) "Load ramp period" means the period of time from commencement of service until a large energy use facility's demand reaches the full contract capacity.

( ) "Contract capacity" means the amount of monthly peak load requirements that is mutually agreed to by a Commission-regulated electric utility and a large energy use facility for each month remaining in a contract term after the load ramp period has ended and for which both of the following apply:

a. The Commission-regulated electric utility agrees to provide retail electric service subject to the terms and conditions in its tariffs.

b. The large load customer agrees to purchase service at that load level for the stated term of the contract under the same terms and conditions as those stated in the contract.

Section 2. Amend Subchapter II, Chapter 1, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 203G. Approval of Electric Service Agreements for large energy use facilities.

(a) No person or entity may begin operations as a large energy use facility served by a Commission-regulated electric utility without first obtaining from the Commission the approval of an Electric Service Agreement ("ESA") and entering into a Transmission Security Agreement ("TSA") with the Commission-regulated electric utility.

(b) As a condition of receiving retail electric service by a Commission-regulated electric utility in the State, a large energy use facility must negotiate the terms of an ESA with a Commission-regulated electric utility and thereafter the Commission-regulated electric utility must submit the ESA for review and approval by the Commission. As a further condition of receiving electric service in the State, there must be a transmission rate on file with the Federal Energy Regulatory Commission that, as to transmission costs, meets the objectives of subsection (c) of this section.

Notwithstanding any other provision of this title, Commission approval is required prior to any interconnection under a large energy user tariff promulgated by a Commission-regulated electric utility under the provisions of § 317 of this title.

(c) It is the intent of the General Assembly that residential retail electric customers and all other industrial and commercial customers, other than large energy use facilities, should not bear the financial costs or risks associated with large energy use facilities interconnecting to the electric system serving the State and that a regulatory framework be established to ensure large energy use facilities enter into agreements to directly assign these costs. Towards that end, the Commission shall promulgate regulations to govern tariffs subject to the review and approval of the Commission that are applicable to large energy use facilities under the Commission's jurisdiction, and to set forth the minimum protective features required to be included in an ESA and that must be included in the applicable transmission rate if a large energy use facility is entitled to take retail service in the State. The Commission regulations will identify specific form language to be incorporated into all ESAs, and such language shall ensure the protections set forth in § 317 of this title. At minimum, the ESA shall govern the terms and conditions under which the Commission-regulated electric utility will provide distribution service, interconnection, cost allocation, and risk mitigation associated with serving the large energy use facility. The ESA may not require the procurement of electric supply service from the Commission-regulated electric utility and nothing in the ESA may restrict a large energy use facility from procuring electric supply service from a certified electric supplier. The ESA must include all of the following provisions:

(1) Specify the duration of the contract, which must be a minimum of 10 years commencing after load ramp and a minimum of 15 years total including the load ramp period.

(2) Specify the date or estimated date that the Commission-regulated electric utility will begin to provide electricity service.

(3) Obligate the large energy use facility to pay a minimum amount or percentage of distribution charges, which cannot be less than 90% of contract capacity, based on the large energy use facility's projected electricity usage for the electricity services the Commission-regulated electric utility is contracted to provide for the duration of the contract.

(4) For large energy use facilities that procure electricity from the Commission-regulated electric utility, obligate the large energy use facility to pay a minimum amount or percentage of supply costs, which cannot be less than 90% of contract capacity, based on the large energy use facility's projected electricity usage for the electricity services the Commission-regulated electric utility is contracted to provide for the duration of the contract. This paragraph does not apply to a large energy use facility that procures electric supply service from a certified electric supplier.

(5) Specify that, for purposes of calculating its retail service charges and for allocating among the retail customers of the utility those transmission charges paid by the utility in accordance with federal law and tariffs on file with the Federal Energy Regulatory Commission, the large energy use facility's annual capacity peak load contribution will be deemed to have been at least 90% of the contract capacity as adjusted by the applicable line loss factor and the large energy use facility's annual network peak load contribution will be deemed to have been at least 90% of the contract capacity as adjusted by the applicable line loss factor.

(6) Specify the duration of the load ramp period during which a large energy use facility must reach full forecasted load and specify interim load levels the facility must meet at designated points during this period.

(7) Outline exit procedures that will apply to large energy use facility customers in the event of contract termination. Such procedures must include at least a 5-year advance notice of termination.

(8) Set exit fees that ensure the large energy use facility makes adequate contributions to offset all unrecovered costs in the event of contract termination.

(9) Require physical and operational readiness measures that facilitate targeted curtailment, including dedicated or otherwise segregable feeders where practicable; separation of any "critical" load segments behind the meter; and telemetry and communications capability sufficient for the Commission-regulated electric utility to execute and confirm curtailment actions during emergency operations.

(10) Establish enforceable curtailment and interruptibility obligations during emergencies and other circumstances determined by the Commission, Commission-regulated electric utility, or directed by the federal regional transmission system operator.

(11) Require bonding or letters of credit backed by an investment-grade entity, or other cash-equivalent financial guarantees to ensure protection of other customers in the event of bankruptcy, liquidation, or other circumstances that would prevent the large energy use facility from meeting its obligations under the ESA.

(12) Meet any other conditions the Commission may require in the public interest, including the extent to which the large energy use facility uses local labor that is paid a prevailing wage.

(d) In determining whether to approve an ESA, the Commission shall consider all of the following:

(1) Whether the ESA is consistent with regulations promulgated by the Commission governing ESAs.

(2) Whether the ESA, in combination with the underlying tariff, ensures that all applicable costs attributable to the large energy use facility are directly assigned to the large energy use facility. In making this determination, the Commission shall consider the results of any applicable Incremental Cost Test, as provided for in § 317 of this title.

(3) Whether the ESA, in combination with the underlying tariff, provides protections necessary to ensure that other customers of the Commission-regulated electric utility are not placed at risk for paying stranded costs associated with the Commission-regulated electric utility serving the large energy use facility.

(4) The need for and impact of the project proposed by the large energy use facility on the safe, adequate, and reliable operation or delivery of electric supply services. The following shall be considered positive factors, but not requirements, in evaluating an ESA, if a large energy use facility constructs or causes the construction of new generation, where such new generation: (i) is located within Delaware or within PJM's DPL transmission zone or within a transmission zone contiguous by land to the DPL transmission zone, with sufficient existing transmission infrastructure to deliver this additional electricity to Delaware; (ii) includes newly constructed generation at an existing facility, uprates, or repowering of deactivated or retired generating units as of June 12, 2026; provided that capacity that previously participated in the PJM Base Residual Auction qualifies only to the extent attributable to such uprate or repowering; (iii) matches the megawatt demand of the large energy use facility; (iv) repurposes existing transmission interconnection infrastructure, land, or other generation-related assets associated with a prior in-state facility; (v) is determined by the State Energy Office to be consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7; or (vi) is determined by the State Energy Office to be consistent with the State's renewable portfolio standards, as specified in § 354 of this title. It shall further be considered a positive factor in evaluating an ESA if a large energy use facility agrees to demand flexibility terms to assist with energy affordability, including demand flexibility during periods of dramatically increased wholesale electricity costs.

(5) The extent to which the large energy use facility will use a local labor force for construction and ongoing operation, and the extent to which the project will pay such labor force a prevailing wage.

(6) The impact of the large energy use facility on the area in which it is to be located, including the possibility that the large energy use facility provides a Community Benefits Agreement to ameliorate any negative impacts.

(7) The impact of approving the ESA on the State's economy, the impacts to the State's ratepayers, and whether the application is consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7, and whether the application is consistent with the State's renewable portfolio standards, as specified in § 354 this title.

(8) The impact of approving an ESA on the health, safety, and welfare of the general public.

(9) The demonstrated experience, operating expertise, and long-term viability of the large energy use facility or its affiliates, partners, or parent company.

(e) The Commission must act on an application to approve an ESA within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days. The application for approval of an ESA must be in writing, in such form as determined by the Commission, and contain such data, studies, documentation, or other information as the Commission shall prescribe. The application must include all of the following:

(1) The impact of the plan on transmission capacity.

(2) Upgrades, if any, to transmission or distribution infrastructure associated with the plan.

(3) The amount of electricity utilized by generation type and whether it is sourced from new or existing generation.

(4) How electricity use will be curtailed during high demand periods.

(5) The quantity and type of on-site back-up power, if any.

(6) The anticipated lifespan of the facility.

(7) Whether the business will trigger supplemental transmission projects.

(8) A study of the impact of the plan on electricity costs in Delaware.

(9) A study of the impact of the plan on grid reliability in Delaware.

(f) The Commission may revise and adjust its regulations in response to federal or PJM laws, rules, regulations, or tariffs regarding the introduction of large energy use facilities throughout the PJM region. The Commission may work to ensure that changes in capacity market operation, transmission cost allocation, or other processes at the PJM level will not, to the maximum extent possible, result in higher costs for Delaware ratepayers not included in the large energy use facility classification. Any adjustments to the tariff specified in § 317 of this title, or in the regulations governing ESAs, must aim to assure that any new obligations fall upon the class of energy users causing such obligations.

(g) A facility in operation as of [the effective date of this Act] may not be considered a large energy use facility. However, a change to an existing facility that increases the usage above the thresholds defined for a large energy use facility will trigger the provisions of this chapter requiring the approval of an ESA.

(h) An ESA may not be transferred from the applicant to another person or entity without the written approval of the Commission.

(i) Commission-regulated electric utilities shall be required to provide to the Commission annually detailed, project-specific information for each anticipated large energy use facility, including development status, evidence of financial commitment, ramp schedules, and any duplicative interconnection requests. The Commission shall submit a report listing the ESA applications received and their disposition for the prior year to the Governor, the Director and

Librarian of the Division of Legislative Services, and the Secretary of the Senate and the Chief Clerk of the House for distribution to members of the General Assembly not later than December 31st of each year.

(j) ESAs and TSAs must be interpreted and administered in a manner consistent with Chapter 10 of this title, including the State policy of retail competition and direct access. Nothing in this section, § 317 of this title, or any regulation promulgated hereunder shall be construed to do any of the following:

(1) Limit or impair the right of any retail electric customer, including a large energy use facility, to purchase electric supply service from a certified electric supplier.

(2) Require a large energy use facility to procure electric supply service from a Commission-regulated electric utility.

(3) Condition interconnection, distribution service, or transmission service upon the customer's agreement to take electric supply service from a Commission-regulated electric utility.

Section 3**.** Amend Subchapter III, Chapter 1, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows, and redesignating accordingly:

§ 317. Rates for large energy use facilities.

(a) Commission-regulated electric utilities must, within 180 days after finalization of the regulations under § 203G of this title, establish a classification of service for retail electricity consumers that are large energy use facilities. The classification of service must be separate and distinct from classifications of service for other commercial or industrial retail electricity consumers and have its own tariff schedule.

(b) All Commission-regulated electric utilities shall develop a load shed protocol to allow large energy use facilities to be curtailed in anticipation of or during emergency conditions, including the installation of any necessary equipment or technology before a customer is interconnected. This subsection applies only to a load interconnected after December 31, 2026.

(1) The load shed protocol, to the extent feasible and consistent with reliability and safety, shall do all of the following:

a. Require the pre-emergency curtailment of large energy use facilities subject to directives from PJM to the Commission-regulated electric utility in accordance with applicable PJM requirements.

b. Require the curtailment of non-critical large energy use facilities prior to the curtailment of other non-critical loads during a pre-emergency or emergency reliability event.

c. Require the curtailment of critical large energy use facilities prior to the curtailment of other critical loads during an emergency reliability event.

d. Include clear performance expectations and consequences for noncompliance.

e. Require a large energy use facility to inform potential customers that the facility is subject to curtailment under certain conditions and that, therefore, it may not be suitable for serving critical loads.

f. Exempt large energy facilities from the curtailment requirements of paragraphs (b)(1)b. through e. of this section if such large energy use facilities construct or cause the construction of new generation, where such new generation: (i) is located within Delaware or within PJM's DPL transmission zone or within a transmission zone contiguous by land to the DPL transmission zone, with sufficient existing transmission infrastructure to deliver this additional electricity to Delaware; (ii) has not previously participated in the PJM Base Residual Auction; (iii) matches the megawatt demand of the large energy use facility; and (iv) is determined by the State Energy Office to be consistent the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7, and the State's renewable portfolio standards, as specified in § 354 of Title 26.

(2) The load shed protocol must require that all large energy use facilities comply with all of the following, as a condition of interconnection:

a. Install the necessary equipment or technology to differentiate critical and non-critical loads, such as the use of dedicated or segregable feeders or allow the large energy use facility to certify that it is not hosting critical loads. Examples of critical load include essential health and public safety facilities, such as hospitals, police, military, fire facilities, 911 facilities, wastewater treatment facilities; facilities providing electric service to the bulk electric system, including off-site power to generating stations, substation light and power; critical gas infrastructure used to supply gas pipeline pumping plants, processing, and production facilities; and telecommunication facilities.

b. Maintain physical and operational readiness measures that facilitate both targeted curtailment of non-critical loads and whole facility curtailment.

c. Maintain telemetry and communications capability sufficient for the Commission-regulated electric utility to execute and confirm curtailment actions during pre-emergency or emergency operations.

(3) Prior to curtailment, the Commission-regulated electric utility shall confer with the customer to the extent feasible to shed load in a coordinated manner.

(c) For purposes of receiving distribution and transmission service, the tariff shall require each large energy use facility to enter into an Electric Service Agreement ("ESA") that is reviewed and approved by the Commission under the provisions of § 203G of this title. The tariff shall further require, as a condition of receiving retail electric service in the State, that a large energy use facility is subject to a transmission rate on file with the Federal Energy Regulatory

Commission that, as to transmission costs, meets the objectives of § 317 of this title. Commission-regulated electric utilities may not submit a tariff for approval until the Commission finalizes the regulations to establish the terms of an ESA under § 203G of this title. No large energy use facility may receive service from a Commission-regulated electric utility until such tariff schedule has been reviewed and approved by the Commission. The ESA may not restrict the procurement of electric supply service from a certified electric supplier.

(d) All ESAs submitted to the Commission for review and approval in connection with this classification of service must contain all protective provisions required under § 203G of this title.

(e) The ESAs and any tariff required by this section shall collectively:

(1) Directly assign the costs of providing to a large energy use facility the electric services identified in paragraphs (e)(1)a. through (e)(1)e. of this section that are provided under a rate subject to the jurisdiction of the Commission and ensure that no such costs are borne by any other class of customer, including:

a. Directly assign all costs related to distribution infrastructure investments required to interconnect a large energy use facility incurred by the Commission-regulated electric utility directly to the large energy use facility; any costs that cannot be directly assigned must be assigned to the class of customers for large energy use facilities and not to any other class of customers.

b. Directly assign all costs of electric capacity procurement incurred by the Commission-regulated electric utility on a total system basis as a result of electric capacity procurement requirements imposed by PJM Interconnection due to large energy use facilities; any costs that cannot be directly assigned must, to the maximum extent possible, be assigned to the class of customers for large energy use facilities and not to any other class of customers.

c. Directly assign all increased costs for transmission infrastructure resulting from any large energy use facility to the large energy use facility; any costs that cannot be directly assigned must be assigned to the class of customers for large energy use facilities and not to any other class of customers.

d. Directly assign all costs related to interconnection, impact, engineering, and related studies undertaken by the Commission-regulated electric utility to initiate, modify, or provide service to the large energy use facility; any costs that cannot be directly assigned must be assigned to the class of customers for large energy use facilities and not to any other class of customers.

e. Allocate any financial or other obligation assigned to a Delaware Commission-regulated electric utility associated with PJM's Reliability Backstop Procurement of new capacity undertaken for large energy use facilities directly to the large energy use facility that gave rise to the financial or other obligation; any costs that cannot be

directly assigned must, to the maximum extent possible, be assigned to the class of customers for large energy use facilities and not to any other class of customers.

(2) Require that each large energy use facility seeking new or modified service shall, as a condition of taking service from a Delaware Commission-regulated electric utility, provide appropriate financial security to the electric utility to ensure that the Commission-regulated electric utility's existing customers are held harmless for any of the costs in paragraphs (e)(1)a. through (e)(1)e. of this section for the entire term of the ESA. Such financial security such as bonding or letters of credit backed by an investment-grade entity, or other cash-equivalent financial guarantees, must remain in effect for the period necessary to ensure recovery of the full amount of such assigned investments.

(3) Require that the large energy use facility accept interruptible service for curtailment obligations assigned to the DPL Zone by PJM, and establish a process that ensures that large energy users are curtailed in a manner prescribed by the Commission.

(4) Establish procedures for an Incremental Cost Test ("ICT") that will measure revenues from a large load customer and compare those to the incremental costs that serving that customer imposes on the system. Incremental costs to be studied shall include increases in capacity costs, locational marginal prices, transmission and distribution system infrastructure costs, including any differential in PJM Network Integration Transmission Service rates, and any other systems costs reasonably attributable to the large energy use facility. The ICT shall be performed by an independent consultant retained by the Commission on a 3-year cycle, or at such other time as the Commission determines is necessary to evaluate material changes in the customer's load, operations, or system impacts, and the ESA will provide for adjustments to the service if the ICT reveals that the large load energy user is imposing costs upon other classes of service. Such independent consultant will perform an ICT to confirm that the revenues from a new large energy use facility are larger than the incremental costs associated with the customer. If the ICT shows that revenues are projected to be lower than incremental costs, then the Commission-regulated electric utility, in consultation with the large energy use facility, shall develop a proposal in the ESA to bring additional revenues such that incremental costs are paid for and a benefit is shown for system customers. ICT study costs incurred by the Commission-regulated electric utility, the Commission, including the independent consultant, and the Division of the Public Advocate must also be recovered through the ESA or other appropriate means. Such proposal may include, without limitation, a class- or customer-specific Consumer Protection and Infrastructure Fee designed to recover the incremental costs, infrastructure impacts, or cost shifts identified through the ICT. After recovery of costs incurred by the Commission-regulated electric utility, the Commission, and the Division of the Public Advocate, the Commission-regulated electric utility shall apply all such funds received as a direct bill credit to residential and small commercial

customers to offset the impacts of large energy use facilities that cannot otherwise be addressed through a large load tariff. All costs related to ESA and ICT review shall be born by the class of large energy use facilities and may not be allocated to any other customer class.

(5) To the extent a large energy use facility procures electric supply service from a certified electric supplier, any costs allocated under this section that are associated with capacity, energy, or ancillary service obligations shall be structured in a manner compatible with the obligations of such supplier as the load-serving entity in regional wholesale markets, including PJM interconnection.

(f) In addition to an ESA, all large energy use facilities operating under the classification of service created by this section must as a condition of receiving retail electric service, have on file with the Federal Energy Regulatory Commission a TSA that constains at least the following minimum terms:

(1) Financial security sufficient to ensure that the large load energy user can provide guarantees that its annual payments for transmission service will align with the annual payment that would be allocated to the large load energy user.

(2) Require bonding or letters of credit backed by an investment-grade entity, or other cash-equivalent financial guarantees, to ensure protection of other customers in the event of bankruptcy, liquidation, or other circumstances that would prevent the large energy use facility from meeting its obligations under the TSA.

(3) A 15-year contract period for the security that commences after load ramp.

(4) A load ramp period limited to 10 years.

(5) A 5-year period of advance notice of termination.

(6) A demand floor set at 90% of contract capacity.

(g) Both ESAs and TSAs must contain provisions that allow for amendments, if required by the Commission, to adjust to changes in the financial condition of the large energy use facility or guarantor changes, or market conditions change, over the term of the contract. The Commission and the Commission-regulated electric utility have the authority to require updated information to reevaluate the customer and its collateral requirements, which may be adjusted accordingly.

(h) ESAs must contain provisions that allow for amendments, if required by the Commission, to adjust to changes based on Federal Energy Regulatory Commission Orders or PJM governing documents, tariffs, or manual changes that relate to the operation of large energy use facilities. Commission-regulated electric utilities, if directed by the Commission, must seek or support any necessary Federal Energy Regulatory Commission filing to amend the TSA to address changes in the ESA. Any such amendment is subject to Federal Energy Regulatory Commission acceptance or approval.

(i) The Commission may require large energy use facilities to participate in a registry for the purpose of tracking load forecasting, compliance with bring your own new capacity or curtailment requirements, whether administered by PJM, the Commission-regulated electric utility, or a regulatory body.

(j) The following requirements apply to all large energy use facilities and must be reflected in any applicable tariff, which values may be increased by the Commission, to be applicable to future large energy use facilities:

(1) Large energy use facilities shall contribute to the Low-Income Charge established under § 1014(b) of this title at a rate of $0.000190 per kWh.

(2) Large energy use facilities shall contribute to the Green Energy Fund established under § 1014(a) of this title at a rate of $0.000712 per kWh.

(3) Large energy use facilities are "end-use customers" for purposes of § 354 of this title and are not entitled to the exemption under § 353(b) of this title.

(4) The tariff must include a proportional allocation of the non-by-passable charge for funds distributed to a qualified fuel cell provider under § 364(b) of this title.

Section 4. Amend § 1008, Title 26 of the Delaware Code making deletions as shown by strike through and insertions as shown by underline

§ 1008. Duties of electric distribution companies.

(c) A Commission-regulated electric utility has no obligation to provide distribution service to a large energy use facility unless the facility has entered into an Electric Service Agreement approved by the Commission under § 203G of this title. Nothing in this subsection shall be construed to do either of the following:

(1) Require a large energy use facility to take electric supply service from the Commission-regulated electric utility.

(2) Limit the ability of a large energy use facility to take electric supply service from a certified electric supplier in accordance with Chapter 10 of this title.

Section 5. If any section, term or provision of this Act shall be adjudged invalid for any reason, such judgment shall not effect, impair, or invalidate any other section, term, or provision of this Act, and the remaining sections, terms, and provisions shall be and remain in full force and effect.

Section 6. This Act takes effect upon enactment. Commission-regulated electric utilities must file an application to establish the rates required under this Act within 180 days of the finalization of regulations by the Commission contemplated in Section 203G of Title 26, as contained in Section 2 of this Act.