SPONSOR: Rep. Heffernan & Rep. Minor-Brown & Sen. Hansen
Reps. Gorman, K. Johnson, Morrison, Romer, Snyder-Hall, Gray, Griffith, Lambert, Ortega, Phillips; Sens. Hoffner, Wilson, Pinkney, Seigfried

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 445
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 26 AND TITLE 29 OF THE DELAWARE CODE RELATING TO LARGE ENERGY USE FACILITIES.

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

Section 1. Amend § 102, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 102. Definitions.

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

(2)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

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Released: 07/01/2026 02:25 AM

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.

Section 2. Amend § 202, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 202. Limitations on jurisdiction of Commission.

(f) Except insofar as may be necessary to implement Chapter 10 of this title regarding the establishment of retail ~~competition,~~ competition and as may be necessary to ensure large energy use facilities do not negatively affect the reliability and affordability of the electric distribution and transmission system, the Commission shall have no supervision or regulation over any electric supplier.

Section 3. Amend Chapter 80, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignate accordingly:

§ 8052. Definitions.

For the purposes of this subchapter:

(3) "Large energy use facility" means as defined under § 102 of Title 26.

§ 8066. Large energy use facilities.

(a)(1) A large energy use facility may not operate in the State unless the facility produces sufficient power or procures sufficient generation to meet 100% of the large energy use facility's annual energy needs from a facility or facilities interconnected in the State or within PJM's DPL transmission zone or within a transmission zone contiguous by land to the DPL transmission zone and with sufficient existing transmission infrastructure to deliver this additional electricity to Delaware, subject to subsection (b) of this section.

(2) Procured generation must be from a facility or facilities interconnected in the State 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, and which has not been already committed in a prior PJM capacity auction. This may include 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 shall qualify only to the extent attributable to such uprate or repowering.

(3) All power generated must meet the renewable energy portfolio standards established under §354 of Subchapter III-A, Chapter 1 of Title 26 at the established minimum cumulative percentage at the facility's anticipated

end of operation, determined at the facility's proposed date of interconnection, and produced by clean energy technology. A facility may use a combination of 1 or more of the following forms of acceptable clean energy technology to meet the percentage thresholds established therein:

a. Generation eligible for compliance with the renewable energy portfolio standards or any successor clean energy standards and interconnecting in Delaware.

b. Nuclear power.

c. Energy storage interconnecting in Delaware and used for the primary purpose of storing energy generated from resources outlined in this subsection and subsection (b) of this section.

(4) Compliance with this subsection may be achieved through any combination of procurement of renewable or clean energy resources, onsite or directly interconnected generation, power purchase agreements, or other mechanism approved by the electric utility's regulatory body.

(5) A single-cycle or open-cycle power generation facility is not an acceptable energy generation technology for purposes of this subsection.

(b) A large energy use facility that does not meet the requirement of subsection (a)(1) of this section of producing or procuring sufficient generation to fully meet the large energy use facility's demand must submit for approval by the electric utility's regulatory body a plan to increase production or procurement of generation so that the large energy use facility is producing or procuring 100% of its annual energy needs within 10 years of commencing operations. The plan must be consistent with subsections (a)(2)-(a)(5) of this section. Large energy use facilities choosing this option are curtailable for price cost impact thresholds determined by the electric utility's regulatory body and reliability events determined by PJM Interconnection or the electric distribution company and must participate in PJM demand response programs. Large energy use facilities utilizing this option that continue to operate during curtailment periods must use back-up generation systems including at least 50% power met by battery storage or clean energy technology.

(c) New energy production generation must be sought out and funded by the large energy use facility or in part by the large energy use facility.

(d) A large energy use facility may not connect to the electric distribution and transmission system until all of the following criteria are met:

(1) At least 25% of its required energy generation consistent with subsection (a) of this section is energized and interconnected.

(2) At least 25% of back-up power comes from clean energy technology and is energized and interconnected.

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(3) The large energy facility has entered a 15-year binding contract with the electric utility's regulatory body that contains, at a minimum, a guaranteed insurance bond that pays into the General Fund if the large energy use facility fails to meet its obligation to produce or procure the required amount of clean energy in the State in any year; attempts to terminate the contract; files for bankruptcy, insolvency, restructuring, or any similar undertaking; or violates any provision of this section. This is in addition to any other enforcement authority of the electric utility's regulatory body.

(e) A large energy use facility that fails to produce sufficient renewable energy in the state to support its obligations in a calendar year, or the planned amount of energy if subject to an agreement under subsection (b) of this section, must pay a penalty in an amount determined by the electric utility's regulatory body, which at a minimum must be sufficient to cover the costs of producing or procuring the energy or building or procuring the infrastructure that the facility failed to produce or procure.

(f) Any costs incurred by the electric utility's regulatory body to make determinations or manage the requirements of this section with respect to a large energy use facility may also be recovered from the large energy use facility.

(g) The regulatory body of an electric utility is authorized to promulgate regulations to fully define the requirements necessary for the implementation of this section.

Section 4. Nothing in this Act precludes an electric distribution company from imposing additional requirements on a large energy use facility.