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REGULATORY RADAR · PRIVATE CREDIT & INFRASTRUCTURE INTELLIGENCE #005

Power becomes a permitting condition; the perimeter moves

Three jurisdictions turned data-centre power from an operating assumption into a condition of grid access

>>> Grid access, not the site permit, now gates data centres; every digital-infrastructure deal is a generation deal, and the developer owns the plant.

	Delaware (in force)	Spain (draft)	Georgia (approved)
Instrument	HB 233, HB 445, HB 310, SB 326, signed 26 August, effective immediately	Royal Decree on data-centre sustainability; consultation 27 August – 4 September; Council of Ministers date still "XXX"	PSC staff approval of Georgia Power's 3,200MW contract with OpenAI, Docket 44280, 26 August; contract redacted
Who is caught	75MW+ at 85% load factor, 100MW+ instantaneous, or 30MW+ if primarily data-processing	Centres of 1MW or more	The OpenAI Effingham County campus; 25-year agreement, power in phases 2028–2032
Power condition	100% of annual energy from generation interconnected in Delaware, PJM's DPL zone or a contiguous zone; RPS-eligible, nuclear or storage; PPAs count, open-cycle gas does not	80% of consumption from self-consumption or long-term renewable PPAs with Spanish plants commissioned within 18 months; each hour at least 80% backed by renewable power generated that hour	OpenAI pays the full cost of infrastructure to serve it and commits up to 1,000MW of flexible demand response
Penalty / protection	Bonded 15-year contract with the regulator paying the state General Fund on shortfall, termination, bankruptcy or breach; minimum payment 90% of contract capacity; no job-creation tax credits	65% surcharge on tolls for exceeding maximum grid-draw hours, rising ten points a year; 100–500% monthly surcharges for renewable shortfalls; repeated breach can cost permits	On early termination Georgia Power will not recover any shortfall from non-large-load customers; the PSC decides whether any unmitigated remainder goes to other large-load customers
Scale note	Delaware uses about 11.3m MWh a year; one proposed data centre alone would use 8.7m MWh	Spain has granted more than 12GW of grid access rights since 2021 against a 2030 estimate of 3.5–4GW of demand	Georgia Power projects about $950m a year of customer savings from 2029 across its whole large-load portfolio, its own projection

Delaware's sponsor calls it "the first state to legislatively enact a 'Bring Your Own Generation' policy"; that "first" is contested because Georgia's January 2025 rules already require full cost recovery. Spanish government sources say the decree is "not a moratorium"; industry warns projects could move to Portugal, Italy or the Netherlands. OpenAI has committed $20bn to the Georgia project; its VP of compute strategy reportedly said the full build could exceed $30bn. New Jersey signed a law on 27 August requiring biannual energy and water reports from data centres and a new utility rate class. Utrecht's grid operator has stopped new connections and is placing gas generators as an emergency measure.

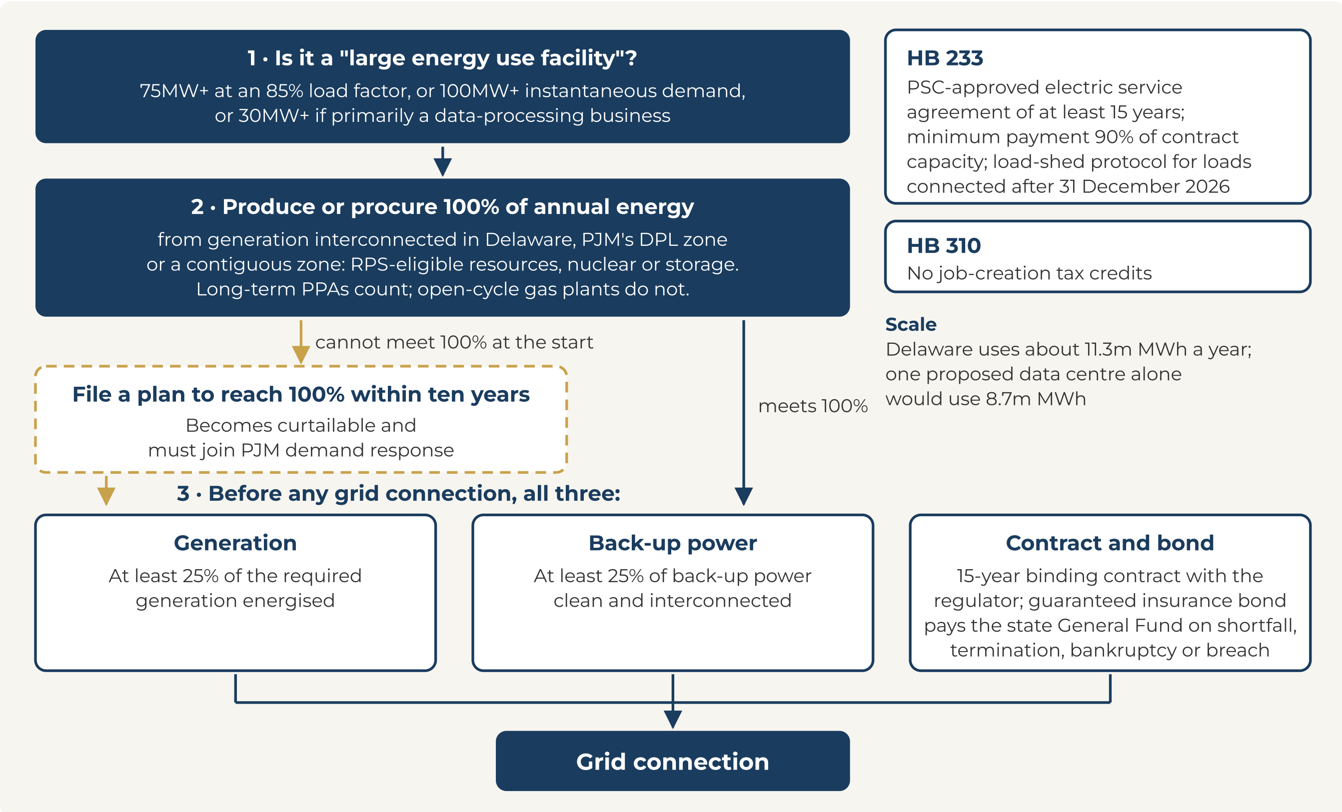

Figure 3 — Delaware HB 445: grid access is the gate, and the tenant posts a bond to the state

The financing that already carries generation. Fervo Energy's subsidiary signed a PPA with Google Energy on 26 August for a 396MW enhanced geothermal project at Cape Station, Utah, in four 99MW tranches from Q3 2028, with a 15-year term and Fervo and Alphabet parent guaranties. Google gets an option on a roughly 600MW expansion with a guaranteed date no later than June 2030. Fervo had closed $421m of non-recourse project debt for phase 1 in March, arranged by RBC with Barclays, BBVA, HSBC, MUFG and Société Générale, after $206m including $100m of project-level preferred equity from Breakthrough Energy Catalyst in 2025.

On that evidence the developer owns and finances the plant with bank debt and project equity while the hyperscaler carries only the offtake obligation and a parent guaranty; financing for the Google tranche is not yet announced.

Amazon signed four Swedish wind PPAs adding nearly 200MW, three from the Saena portfolio owned by fund manager Mirova. ONE Nuclear signed a binding LOI for site control of a 2.88GW gas plant, a 700MW/2.88GWh battery and a co-located data-centre campus in Louisiana, with no tenant, cost, offtake or financing disclosed.

Sources: note 9.

Impact Assessment: A digital-infrastructure fund raised in 2024 underwrote a shell and a lease. A fund raised now must underwrite generation capex, a 15-to-25-year contract with a regulator or utility, and in Delaware a bond that pays the state if the tenant walks. That is infrastructure risk, not real-estate risk.

Delaware is the most lender-hostile of the three, because termination or bankruptcy triggers a bonded payment to the state that competes with the project's creditors. Georgia is the most underwritable (25 years, full cost recovery, demand response, a written statement that other customers will not fund a terminated tenant's shortfall). Spain's surcharge scale is public, so the downside is quantifiable before the rule is final. Timeline: Delaware's load-shed rule applies to loads connected after 31 December 2026; Spain's decree awaits a Council of Ministers date; Georgia's power arrives 2028–2032; Cape Station's Google tranche starts Q3 2028.

For Wealth Managers: Ask any digital-infrastructure manager what share of the pipeline sits in a jurisdiction with a bring-your-own or hourly-matching rule, and whether the fund can own generation under its mandate. If not, it is a price-taker for the sector's most contested input. Watch for evergreen digital-infrastructure vehicles carrying development-stage assets at cost while the power condition is unmet, because the pre-revenue period has lengthened.

For Fund Managers: The rule set favours managers that already own both renewables and digital platforms; a pure-play data-centre credit strategy now needs a named power partner or a narrower map. Energy-transition funds holding hyperscaler PPAs (Mirova this week) hold the scarce input. The Fervo stack is the project-finance mandate infrastructure-debt funds compete with banks for. Georgia's process is the one to copy for lender purposes; Delaware's is the one to price for.

US: supervisors finalised the rule that re-opens bank risk appetite

>>> US supervisors finalised the rule that re-opens bank risk appetite; the pricing effect will show in sponsor deals first.

The OCC and FDIC issued a joint final rule on 27 August defining "unsafe or unsound practice" and setting a uniform standard for Matters Requiring Attention (MRAs, formal examiner findings a bank's board must address). A practice is unsafe or unsound only if it is contrary to prudent operation and, if continued, is *likely* to materially harm the bank's financial condition or present a material risk to the Deposit Insurance Fund. Reputation risk unrelated to financial condition is excluded. Lesser weaknesses become non-binding "supervisory observations" that need not go to the board.

The rule takes effect 2 November 2026. FDIC Chair Travis Hill says "a large majority of outstanding supervisory criticisms do not meet the standard" and will be closed. Comptroller Jonathan Gould calls it codifying "the return to risk-based supervision". The Federal Reserve is not a party. Senator Warren and four colleagues asked in February for the proposal to be withdrawn, saying it would "disarm examiners".

The measured data do not yet show banks moving. The Fed's July senior loan officer survey shows C&I lending standards "basically unchanged, on net" in Q2, though banks describe them as already easier than historical midpoints. For every type of loan to non-bank financial institutions, including private equity funds, significant net shares of banks report standards at the *tighter* end of their ranges since 2011. The two-way flow is already measurable: in 2025 the syndicated market refinanced $34.1bn of direct-lender loans while direct lenders refinanced $36.9bn of syndicated loans.

Sources: note 10.

For Wealth Managers: This is a competition signal, not yet a pricing signal. If banks come back to leveraged lending, the spread premium on a direct-lending fund narrows from the competition side. Ask a US direct-lending manager what spread it is paid on new upper-middle-market deals versus twelve months ago, and how much of its 2026 pipeline was lost to a bank take-out.

For Fund Managers: This is the first structural reversal of the bank retreat that created the direct-lending opportunity. The pricing effect will show in sponsor deals first, where the syndicated market already took out $34.1bn of direct-lender paper in 2025. Banks are competing with private lenders for borrowers while staying cautious about lending to them. Nationally chartered and FDIC-supervised banks are affected directly; state member banks and holding companies sit outside because the Fed did not join.

UK: carry is income from 6 April 2026, and 2025-26 GP economics are pulled forward

>>> UK carry is now income; read a UK GP's 2025-26 carry line as a timing effect, not a performance one.

From 6 April 2026 UK carried interest is taxed as profits of a deemed trade under income tax and Class 4 NICs, with a top combined rate of up to 47%. Qualifying carry is charged on 72.5% of the amount, an effective top rate of 34.075%, up from 32% CGT in 2025-26 and 28% before that. Non-residents are taxed in proportion to UK workdays; a non-resident year with fewer than 60 UK workdays counts as non-UK, and after three such years earlier UK workdays are disregarded. The government acknowledged that the rules hit credit funds disproportionately and will introduce a bespoke provision for them.

The FT reports UK private equity carry payouts soared ahead of the change; HMRC's CGT receipts were a record £22.2bn in 2025-26, against £13.7bn the year before.

Sources: note 11.

For Wealth Managers: If a UK-based manager's 2025-26 numbers show unusually high carry realisations or GP distributions, read them as timing, not performance.

For Fund Managers: The territorial rule makes moving a deal team out of London tax-effective only over a multi-year horizon. Check whether your fund's holding-period profile qualifies under the credit-fund provision.

Switzerland: the owner register lands on 1 October regardless

>>> Switzerland's owner register lands 1 October; the question for a fund with Swiss-booked investors is what the custodian must now report.

Switzerland's federal beneficial-ownership register enters into force on 1 October 2026; on 31 August the government said it would proceed on schedule with "various measures to ensure the 'highest possible level of protection'". The register is not public; access is limited to authorities and financial intermediaries with anti-money-laundering duties. The Swiss Association of Wealth Managers asked on 24 August for a pause or stricter access, calling the register "an extremely attractive target for cybercriminals", after unknown perpetrators copied data on about 31,000 legal entities from Liechtenstein's register on the night of 29/30 July.

The FT's standfirst says the register would list ultimate owners of "more than 500,000 companies and other entities". EFG International's Giorgio Pradelli, who takes over as Swiss

Bankers Association chairman on 17 September, told the FT: "We cannot take it for granted that Switzerland will always be prominent if we do not apply the right policies". His immediate fight is the roughly $20bn of extra common equity UBS could be made to hold.

Sources: note 12.

For Wealth Managers: Clients holding private credit or infrastructure funds through a Swiss company or foundation will now have the ownership chain in a federal database. What the register requires of a Luxembourg or Cayman fund with Swiss-booked investors is not yet published; that is the first question to put to the custodian.

For Fund Managers: The Swiss channel's lobby is now led by a private bank and is arguing against added compliance cost across the board. Do not expect that to stop the register.

Carry-forward deadlines — two moved. FCA CP26/26 FRAME now closes 22 October 2026, not 22 September. CP26/28's consultation chapters and prudential discussion chapter also close 22 October, not 14 October, while its other discussion chapters still close 18 September. CP26/27 (remuneration) closes 16 September, unchanged. The PRA's 30 September grandfathering date for funded reinsurance stands, with implementation proposed for 1 July 2027 and no policy statement yet. ESMA has published nothing since its call for evidence on private credit ratings closed on 31 May.

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