Rate Regulation of Data Centers

Dane County Data Center Advisory Committee
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The Regulatory Compact

- Utilities Get: Monopoly Franchise
- Utilities Give: Obligational to Serve
- Structure: Rate Regulation (i.e. the PSC)

"a public utility shall furnish reasonably adequate service and facilities. The charge . . . for any . . . power produced, transmitted, delivered or furnished or for any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful." Wis. Stat. § 196.03. (emphasis added)

The "Just and Reasonable" standard

- The definition of just and reasonable is open to interpretation
- Utility regulators rely on evidence from stakeholders as they exercise quasijudicial powers
- The just and reasonable standard is informed by testimony submitted by regulated utilities, commission staff, consumer advocates, non-governmental organizations, coalitions of (or individual) residential, commercial, and industrial utility customers, and other intervenors.
- The regulator's decisions must be based on "substantial evidence"
- "Just and Reasonable" doesn't (necessarily) mean "Most Reasonable"

The Commission's Obligations

- To the public utility: set rates for utility service that provide the utility with an opportunity to recover:
  - Cost of providing service
    - Expenses
    - Return of capital investment costs
  - Reasonable return on investments
- To the utility customer: Just and reasonable rates
- To the "Public Interest"[1]:
  - Economic efficiency
  - Alignment of shareholder and ratepayer interests
  - Replication of competitive outcomes
  - Respect for legitimate expectations

1: https://scotthemplinglaw.com/wp-content/uploads/2021/11/The-Public-Interest-Who-Has-A-Definition.pdf

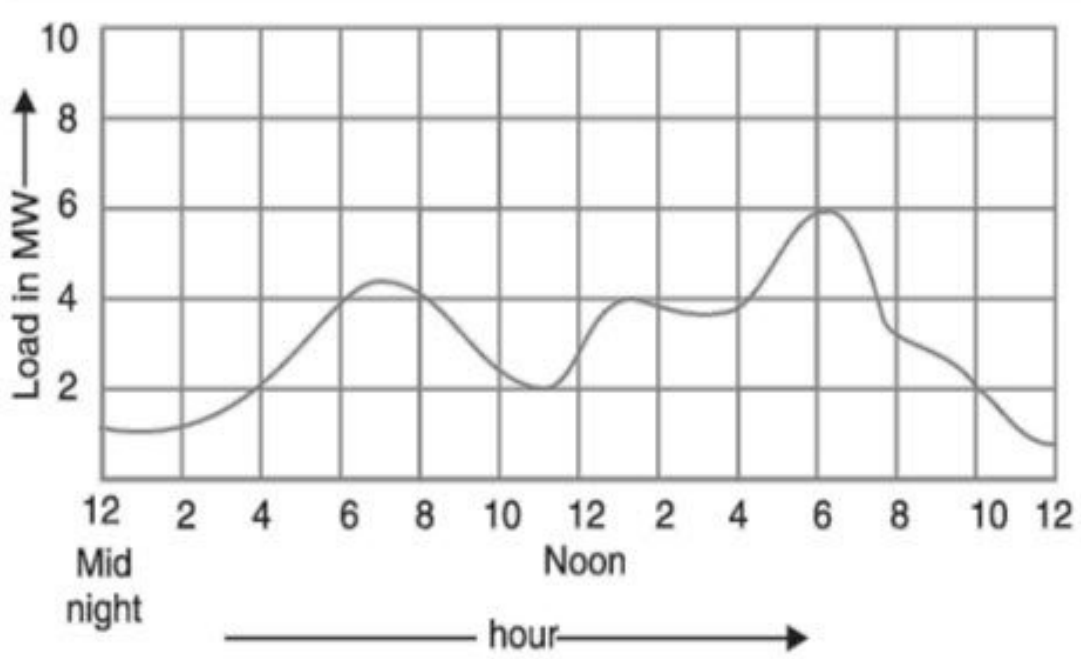
Data Centers Themselves Are Not the (Regulatory) Problem

Whereas, while NASUCA recognizes that the exact definition, size, and scale of a "large load" or "hyperscale load" will vary from state to state according to each state's interests, NASUCA is concerned about the incremental impact on non-hyperscale load customers from new load that is distinguished from historically served loads by their massive scale, high sustained load factor, and often high-density geographic clustering, need for significant dedicated generation, transmission, or distribution investments, uncertain development timelines or ultimate demand, phased development, request for service on timelines that outpace traditional utility planning, and the potential to materially affect rates, reliability, and resource adequacy

Source: NASUCA Resolution Supporting Protections for Non-Hyperscale Load Customers From Actual and Projected Hyperscale Load Growth (nasuca.org)

Drilling Down on Large Loads

- "Distinguished from historically served loads"
- Massive scale
  - We Energies: 2 projects ->Double utility peak demand
  - Scale relative to the rest of the utility's customer base
- High sustained load factor
  - $Load\ Factor = \frac{Average\ Load}{Maximum\ Load}$
- High-density geographic clustering



Sources of Risk

- Need for significant dedicated generation transmission, or distribution investments
  - See: Obligation to serve
- Uncertain development timelines or ultimate demand and phased development
- Request for service on timelines that outpace traditional utility planning
- Potential to materially affect rates, reliability, and resource adequacy

Risk Impacts

- Increase in overall cost of service
  - Average incremental cost higher than system average cost
    - Need to meet demand
    - Resource adequacy/Reliability
- Cost-shifts
  - To other customers or to utility shareholders/municipality
  - Under recovery through rates
    - Poor design
    - Lower demand than planned for
  - Stranded assets
    - Customer terminates service
    - Lower demand than planned for

Ratemaking Benefits
Balancing Risk and Reward

- Claimed Benefit: Potential to reduce costs to other customers by spreading fixed costs out over a greater quantity of sales
  - Cover all incremental ("but-for") costs
  - Contribute to other fixed costs
- Possible solutions exist on a spectrum

PSC Cases: Lessons Learned

- Two Cases: 6630-TE-113, 6680-TE-115
- Cost Shift Mitigation
  - Minimum Billing Amounts (e.g. demand)
    - E.g. Transmission demand
  - "Take-or-Pay"
    - E.g. We Energies Bespoke Resources Subscriptions
  - Incremental Cost Test
    - E.g. Alliant Energy Individual Customer Rate contract for Meta (Beaver Dam)
  - Focus on Energy Contributions
    - Exclude from Large Energy Customer cap on contributions (Wis. Stat. § 196.374(5)(b))

PSC Cases: Lessons Learned (Cont.)

- Financial Risk
  - Risk of slow/non-payment of bills
  - Risk of customer insolvency/bankruptcy
  - Protect other customers and utility shareholders/municipality
- Termination Charges
- Financial Security
  - Form
    - Cash, collateral, or letter of credit
    - Parent guarantee
    - Adequate credit rating
  - Amount
    - Amount equal to payment obligations for service for a specified amount of time (e.g. 24 or 26 months)
    - Amount equal to specific costs (E.g. We Energies Bespoke Resources)
- "Open for Business" vs. Customer Protections

Outstanding Issues

- Cost Allocation
  - Retail
  - Transmission (FERC jurisdiction)
- Resource Planning
  - Wisconsin has no integrated resource planning requirements (IRP)
  - Dispatchable Fossil Generation vs Renewables and Storage
  - Unclear what influence large load customer “wants” have on incremental resource planning
- Financial Security
  - Oracle lawsuit
  - Pending and expected large load tariff filings (Xcel, MGE, Alliant)

Limitations of Utility Regulation

- Limits to Commission Authority
  - Enforce existing laws and administrative code
  - Balance interests of customers against utility/shareholders
  - "Public Interest" generally narrowly defined
  - "Just and Reasonable" standard
- Other considerations may need to be addressed separately
  - Community Benefits Agreements
  - Zoning
  - Other Conditions
- Local concerns should be addressed before a proposal before a proposal comes before the PSC
  - PSC likely not the right vehicle for addressing issues not directly related to utility rate regulation

PSC Dockets

- We Energies: 6630-TE-113
- Alliant Energy (ICR): 6680-TE-115
- Xcel Energy: 4220-TE-119
- Madison Gas and Electric: 3270-TE-124
- Alliant Energy (tariff): Expected by end of August 2026