LPPC
LARGE PUBLIC POWER COUNCIL

Public Power & Private Business Use:
Treasury Regulations Penalize Customer Protections

Private Business Use Explained by LPPC President Tom Falcone:

Outdated Treasury regulations force public power to choose between protecting families and serving America's growth.

LPPC member utilities represent more than one-third of expected new data center interconnections in the U.S. through 2030.

Federal policy asks data centers and other very large new customers to commit to pay the full cost of their electric service, so those costs do not fall on families and small businesses. Public power agrees with this policy and wants to ask for those commitments. However, Treasury's outdated private business use regulations prevent that.

We urge **Treasury to fix this now** by issuing long-overdue regulations or other guidance that utilities can rely on immediately. That would modernize the regulations and protect customers.

97 GW
Requested by large users at 13 LPPC utilities; added to their existing 45 GW peak, **enough to more than triple those systems**

+17% to +32%*
Increase in residential bills if a utility builds for just a quarter of large-load requests and those customers cut demand 20 to 50% **after a three-year contract ends**

67 of 73
Large-load tariffs nationwide with a stated term that run **longer than three years**

3 years
Longest commitment public power can take from a large customer without triggering **private business use under Treasury's regulations**

Sources: LPPC member survey, 2026; ERCOT 2025 Long-Term Load Forecast, p. 9; LPPC analysis; SEPA/NC Clean Energy Technology Center tariff database, June 30, 2026.
* +32%: in ERCOT, data centers placed in service 2022 to 2024 used only 49.8% of their request on average.

Federal Policy Asks for Long-Term Commitments

The **White House Ratepayer Protection Pledge** (March 4, 2026) commits AI companies to pay for the power and infrastructure they request, **whether they use it or not**. LPPC endorsed the pledge, and eleven LPPC member utilities signed it. On September 16, the House passed the **Ratepayer Protection Act**, H.R. 9340, 417 to 3. It codifies the pledge's principles as a standard state regulators and public power boards must consider. LPPC President Tom Falcone testified before the House Energy and Commerce Committee in support of the bill.

The Bipartisan American Affordability and Jobs Act (S. 5653), the Senate's permitting reform bill, goes further: it requires every electric utility, including public power, to apply these protections to data centers of 20 megawatts or more. If enacted, **complying with federal law would itself create private business use under Treasury's regulations for public power**. Treasury should act before the bill becomes law.

Treasury's Regulations Penalize Asking Large-Load Customers to Pay Their Costs

The private business use regulations for electric facilities were intended to keep tax-exempt bonds from financing what amounts to private ownership: a lease or a contract for a specific plant's output that carries that plant's costs. Under such a contract, the buyer takes title to its share of the plant's power, keeps whatever that power is worth whether it uses or sells it, and pays its share of the plant's costs whether or not the plant runs. If the power is worth more than it costs, the buyer gains; if less, it loses.

A large-load requirements contract works differently. It is standard utility service for large customers. The customer owns nothing, has no priority rights to any specific plant, can't resell power it doesn't use, pays the average cost of service for its rate class, and takes electric service on the same basis as other customers. Its minimum bill, deposit, and exit fee pay for something real: **keeping capacity available for a very large customer costs money whether the customer uses it or not**.

	Plant-share contract Private business use	**Large-load requirements contract** Standard utility service
What the customer gets	Title and priority to a share of a plant's output	Electric service, with no priority over other customers
Can it resell unused power?	Yes, and keeps the value	No
What it pays	That plant's actual costs, whether or not it runs	The average cost of service for its rate class
Who bears the plant's risk	The customer	The utility system

Updated: October 2026

Treasury's regulations treat a customer contract or tariff with minimum payments as private business use if it runs more than **three years** (Treas. Reg. § 1.141-7(f)(3)). A longer commitment is treated as if the customer owned part of the utility's system, including plants and lines built and financed before it arrived. It can cost the utility the **tax-exempt status of bonds** across its system, not just those that financed the new capacity.

The regulations do not stop public power from serving a data center from a plant financed with tax-exempt bonds. A utility may do that indefinitely, as long as each commitment runs three years or less. **They stop only the contractual commitments that protect everyone else.** Public power builds plants and lines for growth in its community, as Congress intended. The question is only whether it may ask its largest new customers to stand behind that growth, as other utilities do.

Every Option Costs the Communities Public Power Serves

Under Treasury's current regulations, public power has only **three options** when a very large customer asks for service, and each one costs the communities it serves.

1 Offer Contracts of Three Years or Less

If the large-load customer scales back or leaves, the families and small businesses already on the system carry the cost of capacity the large customer requested. S. 5653 would end this option. It requires data centers of 20 MW or more to keep paying their full cost of service even after they downsize or leave, which for public power creates private business use.

2 Require the Commitment Federal Policy Asks For

A binding commitment from the large-load customer for more than three years creates private business use the day it is signed, perhaps years before the customer takes service. First comes a **costly regulatory burden**: tracing decades of equipment back to the bonds that paid for it. Then the utility must **refinance part of that debt** at higher taxable rates, based on the new large-load customer's contractual share of the system peak, not on the assets it actually uses. In the example below, that adds **$1.1 billion** of extra cost that helps no current customer. In a less robust environment, that cost alone could decide whether a large-load customer comes to a public power community at all.

3 Decline to Serve

The data center, chip plant, or factory goes elsewhere, taking its jobs and tax base with it.

As the rest of the industry moves to data center commitments of 10 to 20 years, **the short three-year contracts mandated by Treasury regulations make public power the "free option" for large-load customers**. For a three-year commitment, a data center can make public power expand its system with plants and lines that are financed over decades, then walk away or, in a downturn, get out of obligations to public power communities first.

Illustrative example: A **7,000 MW system** with about **$10 billion** of tax-exempt debt serves **5,000 MW** of new large load, a quarter of the roughly 20,000 MW requested. This is conservative; some systems face requests that would double or triple their peak demand. LPPC's detailed results, *The Three-Year Trap*, work through this example and the combined results for LPPC's members.

If the utility...	Result for customers
Offers three-year contracts	In this example, if the new large-load customers use **20 percent less** than they requested when their three-year contracts end, residential bills rise about **17 percent ($23 a month)** and existing customers bear about **$5.0 billion** of added cost. If they use half of what they requested, as data centers placed in service in ERCOT from 2022 to 2024 did on average, bills rise about **32 percent ($43 a month)** and the added cost is about **$9.2 billion**. In a downturn stress test, in which large-load customers use only a **quarter** of what they requested, bills rise about **54 percent ($73 a month)** and the added cost is about **$15.9 billion**.
Requires a long-term contract	The utility in this example must refinance about **$4.1 billion** of its $10 billion of existing bonds at taxable rates, and finance part of its existing system's ongoing capital spending the same way. That adds a **$1.1 billion penalty**, about **$110 million for each 500 MW data center**, money that could otherwise go to the community, and someone must pay it: the new large-load customers, on top of their full cost of service, or existing customers, whose bills rise instead.

Across LPPC's 13 members facing the most demand, the penalty alone would run $4 billion to $6 billion. Detailed results: www.lppc.org/private-use.

The Regulations are Treasury's, and so is the Fix

No statute limits these customer contracts to three years. Treasury considered exactly this question in formulating its 1972 regulations and decided that contracts with demand charges or minimum payments are not private business use. **Congress endorsed that approach in 1986**. Treasury's current regulations, finalized in 2002, reversed it, though no new law required it and these contracts remained common.

Public power has **proposed regulatory text *(www.lppc.org/private-use)*** that would allow longer contracts with large-load customers, if those customers pay their full cost of service at arm's-length, or generally applicable rates and no facility is built for their exclusive use.

No precedent for anyone else. Treasury wrote these regulations only for publicly owned utility systems, and the change reaches only their retail electric service. It leaves every other kind of tax-exempt financing unchanged.

This Protects Families, Not Data Centers

The change does not give large customers the benefit of tax-exempt financing, consistent with Treasury's existing exceptions from private business use. It alters only who carries the risk if the customer scales back or leaves: the customer, not the families already on the system.

Treasury Should Take This Up Now

Public power utilities are meeting massive load growth today, and the Senate aims to take up S. 5653 when it returns in November. If Congress acts first, federal law would require the very protections that Treasury's regulations penalize. Every contract with a large data center would put the tax-exempt status of the utility's bonds at risk the day it is signed. Public power cannot sign those contracts and wait months for guidance. Treasury should issue regulations or other guidance that public power utilities can rely on immediately.

Public power needs to build now. Treasury should act before the Senate takes up S. 5653.

Example assumptions: LPPC analysis; single-A rates as of October 2026; present values at contract signing; $135 average monthly residential bill.