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Utilities and Data Centers Confront Congressional Scrutiny Over Rising Electricity Prices

What You Need to Know

Key takeaway #1

Rapid data center growth is increasing U.S. electricity demand, raising concerns about higher utility bills for households and small businesses.

Key takeaway #2

Energy affordability has become a legislative and oversight priority.

Key takeaway #3

Electric utilities, hyper-scalers, and data center developers face growing scrutiny.

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Rising electricity prices are becoming an increasingly potent political issue, with both utilities and data centers facing growing scrutiny from federal and state lawmakers on how to insulate ratepayers from rising costs. While headlines have been dominated by the White House and Governors of states in the PJM Interconnection proposing reforms to the PJM capacity market, and by New Jersey Governor Sherrill's goal to freeze rate hikes, the issue is also quickly becoming a focal point of congressional oversight.

In just the last few months, members of Congress have directed multiple oversight requests at federal agencies, utilities, and major technology and data center operators seeking detailed information on the cost allocation and consumer impacts of data centers, and how those agencies and utilities are protecting consumers from higher energy costs.

In December, Senators Elizabeth Warren (D-Mass.), Chris Van Hollen (D- Md.), and Richard Blumenthal (D-Conn.) opened an investigation into the financial impact of data centers, while members of the Senate Banking Committee and House Foreign Affairs Committee requested an Inspector General investigation into potential conflicts of interest involving Commerce Secretary Howard Lutnick's advocacy for data center projects, while also warning that such investments could further exacerbate rising utility costs. Underscoring the political

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salience of this issue, 17 members of Congress recently formed a new congressional caucus specifically dedicated to advocating for lower electricity rates and protecting consumers from rising energy costs.

The likelihood of continued oversight requests and even formal congressional oversight hearings continues to grow. Republicans have signaled their intent to scrutinize clean energy companies and have started to send inquiries to companies regarding business structures and intent to claim clean energy tax credits. Democrats plan to make energy affordability a key pillar of their agenda this election year and have indicated their intent to escalate their review of the energy and data center industries over the coming year.

Companies that may find themselves the targets of these investigations should act now to mitigate oversight risk, including by developing a response plan in the event of an investigation (or even less formal congressional oversight) and conducting internal preparedness exercises such as mock congressional inquiries. Efforts should be targeted on ensuring capacity exists to ensure a timely and capable response.

Given the significant legal, political, and reputational risk, utilities and data center companies should not take this emerging area of inquiry lightly, and should be prepared to engage counsel if the need arises.

Crowell & Moring will continue to monitor these developments. For further information, please contact our team.

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