

AN ACT

1 Providing for regulation of large load customers and public
2 utilities and for community benefits agreements between large
3 load customers and community-based organizations;
4 establishing the Data Center LIHEAP Enhancement Fund; and
5 imposing duties on the Department of Human Services and the
6 Pennsylvania Public Utility Commission.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Data Center
11 Fair Share Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Bureau of Investigation and Enforcement." The Bureau of
17 Investigation and Enforcement within the commission.

18 "Commission." The Pennsylvania Public Utility Commission.

19 "Community benefits agreement." A legally binding contract

1 negotiated and agreed to between developers and community-based
2 organizations that serves to mitigate local impacts of
3 development in which benefits are specific, measurable,
4 actionable, relevant to the community's needs, time-bound and
5 supported by the broader community.

6 "Community-based organization." A workforce development and
7 training organization, labor union, local government entity,
8 environmental advocacy organization or public or private
9 nonprofit organization or entity that is representative of the
10 host community or a significant segment of the host community
11 and works to meet community needs.

12 "Fund." The Data Center LIHEAP Enhancement Fund established
13 under section 5(a).

14 "Host community." A municipality within which a large load
15 customer's facility is located and any other municipality within
16 a 10-mile radius of the facility's borders.

17 "Large load customer." A facility, campus of facilities or
18 array of interconnected facilities in this Commonwealth that
19 meets all of the following criteria:

20 (1) Is used by a business entity or other enterprise to
21 operate, manage or maintain a computer, group of computers or
22 other organized assembly of hardware and software for the
23 primary purpose of processing, storing, retrieving or
24 transmitting data.

25 (2) Has a gross aggregate electric peak demand, not
26 reflecting any reductions attributable to co-located electric
27 generation, of 25 megawatts or greater.

28 (3) Is interconnected to a public utility at a single
29 point of interconnection or multiple interconnection points
30 within 20 miles of each other or is interconnected to

1 multiple public utilities within this Commonwealth at
2 multiple interconnection points within 20 miles of each
3 other.

4 "Low-Income Home Energy Assistance Program" or "LIHEAP." A
5 federally funded program that provides financial assistance in
6 the form of cash and crisis grants to low-income households for
7 home energy bills and is administered by the Department of Human
8 Services.

9 "Public utility." As defined in 66 Pa.C.S. § 102 (relating
10 to definitions).

11 "Ratepayer." A retail customer of a public utility that
12 purchases electric service for consumption.

13 "Renewable energy." Solar, wind energy, biomass or
14 hydroelectric power.

15 "Socially disadvantaged population." A group whose members
16 have been subjected to racial, ethnic or gender prejudice
17 because of their identity as a member of the group.

18 "Universal service and energy conservation." As defined in
19 66 Pa.C.S. §§ 2202 (relating to definitions) and 2803 (relating
20 to definitions).

21 Section 3. Duties of commission.

22 (a) Temporary regulations.--

23 (1) In order to facilitate the prompt implementation of
24 this act, the commission shall promulgate temporary
25 regulations no later than 120 days after the effective date
26 of this paragraph, inclusive of a public comment period of at
27 least 30 days.

28 (2) Temporary regulations under this subsection shall
29 expire not later than two years after publication.

30 (3) The commission may promulgate temporary regulations

1 that are not subject to:

2 (i) Section 612 of the act of April 9, 1929
3 (P.L.177, No.175), known as The Administrative Code of
4 1929.

5 (ii) Sections 201, 202, 203, 204 and 205 of the act
6 of July 31, 1968 (P.L.769, No.240), referred to as the
7 Commonwealth Documents Law.

8 (iii) Sections 204(b) and 301(10) of the act of
9 October 15, 1980 (P.L.950, No.164), known as the
10 Commonwealth Attorneys Act.

11 (iv) The act of June 25, 1982 (P.L.633, No.181),
12 known as the Regulatory Review Act.

13 (4) The commission's authority to promulgate temporary
14 regulations under this subsection shall expire two years
15 after the effective date of this paragraph. Prior to the
16 expiration of this authority, the commission shall initiate
17 the process to promulgate final regulations in accordance
18 with State law and subsection (b) so that the final
19 regulations take effect upon the expiration of the temporary
20 regulations or promulgation of the final regulations,
21 whichever occurs first.

22 (b) Regulation requirements.--Regulations promulgated under
23 subsection (a) shall include, at a minimum, provisions relating
24 to all of the following:

25 (1) Deposits or financial security required from large
26 load customers.

27 (2) Calculations of contributions in aid of construction
28 for transmission and distribution infrastructure.

29 (3) Minimum contract terms between large load customers
30 and public utilities that require a large load customer to

1 satisfy minimum contract terms for at least 15 years if the
2 large load customer ceases operations or otherwise materially
3 changes its service requirements.

4 (4) Load ramping schedules to ensure infrastructure
5 adequacy.

6 (5) Exit or early termination fees.

7 (6) Measures to prevent circumvention of the large load
8 customer's threshold through multiple facilities,
9 interconnection points or metering points.

10 (7) Utility tracking of all costs to serve large load
11 customers and verification that revenues collected exceed
12 costs incurred.

13 (8) Curtailment of some or all of a large load
14 customer's load prior to the loads of other customer types to
15 the maximum extent practicable during emergency conditions.

16 (9) Measures to limit the amount of electricity an
17 electric generation supplier as defined in 66 Pa.C.S. § 2803
18 (relating to definitions) can provide to a large load
19 customer to no more than 25% of the energy produced in a
20 calendar year.

21 (10) An end-of-contract process providing sufficient
22 notice prior to the expiration, renewal or material
23 modification of a large load customer's service contract with
24 a public utility.

25 (11) Requirements that large load customers contribute
26 to the public utility's universal service and energy
27 conservation program, consistent with the requirements for
28 those programs in 66 Pa.C.S. §§ 2203(6), (7), (8), (9) and
29 (10) (relating to standards for restructuring of natural gas
30 utility industry) and 2804(8) and (9) (relating to standards

1 for restructuring of electric industry).

2 (12) Adoption of a rebuttable presumption for cost
3 recovery as provided under section 4(c).

4 (13) Minimum contract terms for and Bureau of
5 Investigation and Enforcement enforcement of the requirement
6 of large load customers to enter community benefits
7 agreements under section 7.

8 (14) Certification and expedited interconnection
9 standards under section 8.

10 Section 4. Recovery of costs.

11 (a) Cost recovery.--A public utility may not recover from
12 ratepayers that are not large load customers, whether through
13 base rates, riders, surcharges or any other ratemaking
14 mechanism, costs that would not have been incurred but for the
15 requirements of the large load customer.

16 (b) Cost of service study.--A public utility that serves or
17 is reasonably expected to serve large load customers shall be
18 required to submit a full cost of service study when seeking a
19 rate increase under 66 Pa.C.S. § 1308 (relating to voluntary
20 changes in rates) to support the public utility's proposed
21 allocation of shared or indirect costs that benefit multiple
22 customer classes, including large load customers.

23 (c) Rebuttable presumption.--

24 (1) There shall be a rebuttable presumption that costs
25 as described in subsection (a) are exclusively for the
26 benefit of the large load customer and that the costs shall
27 be assigned to the large load customer.

28 (2) A public utility may not assign costs to ratepayers
29 that are not large load customers based on generalized,
30 ancillary or theoretical benefits to those ratepayers absent

1 actual, quantifiable evidence demonstrating that the costs
2 incurred were necessary for a purpose other than the
3 electricity demand of the large load customer or where the
4 costs incurred produce less value to such ratepayers, on a
5 unitized basis, than the value that alternative public
6 utility investment could have produced absent the
7 requirements of the large load customer.

8 Section 5. Contributions to Low-Income Home Energy Assistance
9 Program.

10 (a) Fund.--

11 (1) The Data Center LIHEAP Enhancement Fund is
12 established as a separate fund in the State Treasury.

13 (2) The Department of Human Services, in collaboration
14 with the State Treasurer, shall administer the fund.

15 (3) The Department of Human Services shall use the money
16 from the fund to implement a supplemental program to enhance
17 the Low-Income Home Energy Assistance Program. The
18 supplemental program shall include a summer cooling
19 component.

20 (b) Sources of money.--The fund shall consist of all of the
21 following:

22 (1) Payments made under subsection (c).

23 (2) Interest accrued on the money in the fund.

24 (3) Money from any other source authorized for this
25 purpose by Federal or State law.

26 (c) Annual payments.--No later than June 30 of each year,
27 each large load customer shall make a payment to the fund of
28 \$10,000 per megawatt based on its gross aggregate electric peak
29 demand, not reflecting any reductions attributable to co-located
30 electric generation.

1 (d) Continuing appropriation.--Money in the fund is
2 appropriated on a continuing basis to the Department of Human
3 Services for the purposes of this section.

4 (e) Regulations.--The Department of Human Services, in
5 collaboration with the State Treasurer, shall promulgate
6 regulations necessary to implement this section.

7 Section 6. Renewable energy requirements.

8 A public utility that enters into a contract for electric
9 service with a large load customer on or after the effective
10 date of this section shall ensure that not less than 25% of the
11 electricity supplied under the contract is generated from
12 incremental renewable energy sources that have been certified by
13 the commission, consistent with section 8, to constitute
14 incremental additions of accredited unforced capacity.

15 Section 7. Local agreements.

16 (a) Community benefits agreement party requirements.--

17 (1) A large load customer shall enter into one community
18 benefits agreement with at least three community-based
19 organizations that serve residents of the host municipalities
20 and have operated in the host communities for at least three
21 years.

22 (2) At least half of the community-based organizations'
23 signatories must have a mission to serve socially
24 disadvantaged populations. Documentation of the community-
25 based organizations' mission to serve socially disadvantaged
26 populations shall include the community-based organizations'
27 articles of incorporation or an affidavit describing
28 organizational activities, partnership activities, business
29 plans, historical documents, curricula and any other relevant
30 programming.

1 (b) Community benefits agreement contents.--A large load
2 customer shall pay an amount to be determined by the parties and
3 memorialized in the community benefits agreement under
4 subsection (a). The amount to be paid shall not be less than 10%
5 of the overall cost of the project and can be made in one-time
6 or recurring payments. Residents of the host community shall be
7 the intended beneficiaries of the community benefits agreement.
8 The specific terms of community benefits agreements may vary and
9 may include any of the following:

10 (1) Workforce development, job quality and job access
11 provisions that include:

12 (i) Terms of employment, including wages and
13 benefits, employment status, workplace health and safety,
14 scheduling and career advancement opportunities.

15 (ii) Worker recruitment, screening and hiring
16 strategies and practices, targeted hiring planning and
17 execution, investment in workforce training,
18 apprenticeships and education and worker input and
19 representation in decision making affecting employment
20 and training.

21 (2) Funding for or provision of specific environmental
22 benefits that do not primarily benefit the large load
23 customer, including monitoring and strengthening
24 environmental or public health plans and actions.

25 (3) Funding for public infrastructure projects and
26 public safety, including annual contributions to local fire
27 and first responders, to compensate for increased need of
28 specialized training and gear.

29 (4) Funding for or provision of specific community
30 improvements or amenities, including park and playground

1 equipment, urban greening, enhanced safety crossings, paving
2 roads and bike paths.

3 (5) Funding for affordable housing, home repair,
4 efficiency and weatherization programs.

5 (6) Commitments to periodically meet with community-
6 based organizations and the public to review monitoring
7 reports on electricity consumption, water consumption, water
8 discharge and air pollution.

9 (7) Financial assistance to assist municipal or citizen-
10 led air and water quality monitoring.

11 (8) Funding that supports individuals or community-based
12 organizations from the host community to intervene in public
13 utility ratepayer cases.

14 (9) Funding to a nonprofit or community-based
15 organization.

16 (10) Funding and reimbursement of costs for technical
17 assistance and support, including consulting attorneys,
18 consulting other community-based organizations, negotiation
19 trainings, facilitator services, monitoring activities and
20 any other services the community-based organization deems
21 relevant.

22 (c) Effect of agreements.--

23 (1) A community benefits agreement shall be legally
24 binding and inure to the benefit of the parties and their
25 successors and assigns.

26 (2) Nothing in this act shall prevent a municipality
27 from enacting local ordinances with additional community
28 benefits.

29 (d) Community benefits agreement public meeting
30 requirement.--

1 (1) Prior to community-based organizations proffering
2 signatures, a large load customer must hold a public meeting
3 to discuss the drafted contents of the agreement with the
4 host community. The large load customer shall publish notice
5 of the public meeting in a local newspaper of general
6 circulation and on the large load customer's publicly
7 accessible Internet website at least two weeks in advance but
8 not more than one month prior to the public meeting date.

9 (2) The large load customer shall make available the
10 full content of the agreement prior to the start of the
11 public meeting by posting the agreement to the large load
12 customer's publicly accessible Internet website and printing
13 paper copies for public meeting attendees.

14 (e) Enforcement.--

15 (1) A large load customer shall file a copy of each
16 community benefits agreement with the Bureau of Investigation
17 and Enforcement. The Bureau of Investigation and Enforcement
18 shall review the community benefits agreement and certify
19 that the community benefits agreement satisfies the signatory
20 requirements.

21 (2) The Bureau of Investigation and Enforcement shall
22 maintain a public database of all executed community benefits
23 agreements in this Commonwealth.

24 Section 8. Certification and expedited interconnection for
25 large load customers bringing incremental energy
26 resources.

27 (a) Certification program.--

28 (1) The commission shall establish a program to certify
29 large load customers that have brought or plan to bring
30 incremental energy resources.

1 (2) Certification shall be based on a binding financial
2 commitment by a large load customer, including a power
3 purchase agreement, to enable an incremental energy resource
4 or resources, located within the territory of PJM
5 Interconnection, L.L.C., or its successors, equivalent on a
6 one-for-one accredited unforced capacity basis, including a
7 reasonable reserve margin, tied to the large load customer's
8 ramp and utilization schedule, through any combination of the
9 following:

10 (i) Placement in service of a new generation
11 resource or combined generation and storage resource.

12 (ii) Uprate or expansion of an existing generation
13 resource to the extent of the uprated capacity.

14 (iii) Participation in a demand response product, if
15 participation continues for the duration of the
16 certification period or until the large load customer has
17 brought additional energy capacity equivalent to the
18 capacity value of the demand response product.

19 (iv) Another incremental addition of accredited
20 unforced capacity as measured by the applicable regional
21 transmission organization or independent system operator.

22 (b) Interconnection priority.--The commission shall require
23 electric distribution companies to prioritize the
24 interconnection of large load customers certified under
25 subsection (a) and, for interconnections subject to State
26 jurisdiction, to prioritize the interconnection of paired
27 generation resources or storage resources associated with a
28 certified large load customer.

29 Section 9. Transparency, filing and enforcement.

30 (a) Filing requirement.--

1 (1) A public utility shall file with the commission a
2 copy of each contract executed with a large load customer,
3 including a copy of its community benefits agreements, upon
4 certification by the Bureau of Investigation and Enforcement
5 under section 7, on or after the effective date of this
6 paragraph.

7 (2) The public utility shall include with the filing
8 sufficient documentation to permit the commission to conduct
9 the review under paragraph (3).

10 (3) The commission shall review each contract under
11 paragraph (1) to determine all of the following:

12 (i) The impact on the grid system of PJM
13 Interconnection, L.L.C., regional transmission
14 organization or its successor.

15 (ii) The effect on the reliability of that grid
16 system.

17 (iii) The impact on ratepayers.

18 (iv) Compliance with the requirements of this act.

19 (4) A public utility shall provide a copy of a contract
20 filed under this section to the Office of Consumer Advocate,
21 the Office of Small Business Advocate and the Bureau of
22 Investigation and Enforcement.

23 (b) Void contract provisions.--Any provision of a contract,
24 agreement or similar instrument executed with a large load
25 customer on or after the effective date of this subsection shall
26 be void and unenforceable if the provision has the purpose or
27 effect of either:

28 (1) preventing the commission, the Bureau of
29 Investigation and Enforcement or a public utility from
30 carrying out their duties under this act; or

1 (2) preventing or restricting the disclosure of any
2 terms of the contract.

3 (c) Enforcement.--A violation of this act shall be subject
4 to enforcement by the commission and the Bureau of Investigation
5 and Enforcement under 66 Pa.C.S. Ch. 33 (relating to violations
6 and penalties).

7 Section 10. Effective date.

8 This act shall take effect in 60 days.