Before the
House of Representatives of Pennsylvania
House Energy Committee Public Hearing on HB 1834
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Testimony of the
Energy Association of Pennsylvania

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Good morning, Chairman Fiedler and members of the House Energy Committee. I am Andy Tubbs, President & CEO of the Energy Association of Pennsylvania ("EAP" or "Association"), a trade association comprised of regulated electric and natural gas distribution utilities operating in Pennsylvania. EAP advocates for its members before the General Assembly and state agencies, including the Pennsylvania Public Utility Commission ("PUC"), the Department of Human Services ("DHS"), and the Department of Community & Economic Development ("DCED"), assists its members by facilitating sharing of information and best practices, and provides educational opportunities for employees of its members and others through various conferences. I'm here today on behalf of our electric distribution company ("EDC") members to testify on House Bill 1834, the Data Center Act.

Pennsylvania's EDCs appreciate the General Assembly's proactive approach to addressing the challenges and opportunities presented by the rapid growth of commercial data centers in our commonwealth. Data centers and their load represent a significant opportunity for Pennsylvania, including job growth, economic development, and bolstering national security. We share the legislature's commitment to ensuring that this growth occurs in a manner that protects existing ratepayers, maintains grid reliability, and promotes responsible infrastructure development and reasonable costs for customers.

Overall Assessment

HB 1834 represents an important first step in establishing a regulatory framework for large commercial data centers. EAP appreciates that the bill recognizes several critical principles:

- The need for financial security and contributions in aid of construction;
- The importance of load ramping schedules and adequate planning;

- Protection of existing ratepayers from shouldering costs attributable to new, large-load customers; and
- The value of curtailment provisions during emergency conditions.

These elements demonstrate a thoughtful approach to the unique challenges posed by data center development. We believe that with certain amendments, this legislation can serve as a roadmap to address concerns relating to the impact of commercial data centers on system reliability and ratepayer affordability while promoting the economic development associated with data centers.

Key Considerations and Recommended Modifications

While EAP supports the intent of HB 1834 to promote responsible and reliable data center growth, as drafted, certain provisions may unintentionally create jurisdictional, operational, and cost recovery challenges. In providing the following refinements, EAP intends to preserve the bill's objectives while aligning with established regulatory frameworks and ensuring that implementation is workable for both the PUC and the EDCs that will be responsible for carrying it out.

<u>Jurisdictional boundaries: Transmission vs. Distribution</u>

At the outset, it is important to recognize that electric transmission service, unlike electric distribution service, is governed by federal law under the Federal Power Act. Except for siting, the PUC has limited jurisdiction over transmission facilities or the recovery of costs related to those facilities. Certain provisions in HB 1834, including Section 4's prohibition on cost recovery and Section 7's requirement for PUC contract review, could inadvertently create conflicts with the Federal Energy Regulatory Commission's ("FERC") jurisdiction over transmission. Neither the PUC nor EDCs have direct access to the data needed to assess how a specific contract might affect PJM's regional grid or reliability; that information must come from PJM, which operates the transmission system. EAP recommends clarifying that the PUC's oversight under HB 1834 applies to distribution-level facilities and costs, while transmission system impacts are to be coordinated with PJM under existing federal oversight.

<u>Threshold Definition (25 MW)</u>

The bill's 25 MW threshold in Section 2 also merits careful consideration. PJM currently utilizes a 50 MW threshold in its planning processes to identify projects that have the potential to meaningfully affect the transmission grid. A lower threshold, such as 25MW, could subject smaller facilities to unnecessary regulatory requirements without delivering corresponding system benefits. EAP suggests that HB 1834 be amended to align the

threshold with PJM's 50 MW standard or, alternatively, creating a flexible, graduated framework that allows for tailored requirements based on facility size and specific system impacts. This would ensure that the legislation focuses on projects large enough to drive significant costs or reliability concerns while avoiding unnecessary regulatory burdens on smaller facilities.

Regardless, it is critical that any threshold allow for flexibility and consider the specifics of the proposed commercial data center project. We respectfully suggest that the Committee consider:

- Examining whether a 50 MW threshold would more appropriately capture facilities that create substantial infrastructure costs while avoiding unnecessary regulatory burdens on smaller facilities.
- Consulting with planning experts and PJM to understand the load levels that trigger material system upgrades.
- Creating graduated requirements based on facility size that allow for flexibility and EDC input, recognizing that a 200 MW facility presents different challenges than a 50 MW facility and that, in certain instances, a smaller sized facility might drive significant impacts.

Cost Recovery Prohibition - Section 4

Section 4's prohibition on recovering any data center-related costs from ratepayers raises significant practical and policy concerns. EAP fully agrees that existing ratepayers should not subsidize new, large-load customers.

Cost allocation in utility operations is complex. Some costs are clearly attributable to specific customers (direct interconnection facilities, customer-specific transformers), while other system investments may provide broader system benefits – the costs of which are appropriately shared across the system (substation upgrades, transmission enhancements, capacity investments). Current regulatory accounting standards and methodologies recognize this reality through sophisticated cost allocation studies.

Strictly separating all costs "that would not have been incurred but for" a data center's demand may be impossible in practice. For example, regional transmission upgrades may be triggered by multiple load additions. Distribution system investments often serve multiple purposes and customers, and the EDC's planning costs, system studies, and administrative expenses support the entire system.

As written, the bill creates risks for electric distribution utilities. Under the current legislative language, EDCs would bear:

- full counterparty credit risk with no ability to recover bad debt,
- all infrastructure investment risk with no cost recovery mechanism, and
- maintain responsibility to serve without traditional regulatory protections.

This fundamentally conflicts with the regulatory compact as well as a utility's obligation to serve, raises financial prudency concerns, and shifts risk to other utility ratepayers, creating unintended consequences.

EAP recommends clarifying that customer-specific costs should be directly assigned to data centers while shared system costs should be allocated with established cost-of-service principles. The legislation should also explicitly recognize the need to recover legitimate planning, study, and administrative costs incurred by utilities when responding to large-load interconnect requests. These refinements would uphold the bill's intent to protect exiting customers while maintain operational feasibility for EDCs.

Many of the above items will likely be addressed in the PUC's forthcoming large load tariff / interconnection rules docket and may not necessarily require further clarification via legislation.[1]

Tracking and Verification Requirements - Section 3(b)(7)

Section 3(b)(7) requires utilities to track all costs and "verify that revenues collected exceed costs incurred." While EAP supports transparency, this language departs from traditional ratemaking practice, which determines cost recovery and revenue sufficiency through base rate proceedings using established cost allocation methodologies. Requiring utilities to "prove" profitability for a specific-customer class outside of normal rate cases could introduce uncertainty and conflict with long-standing regulatory principles. Further, it is unclear what regulatory consequences would follow if costs temporarily exceeded revenues (which could occur during initial infrastructure buildout).

EAP recommends clarifying that cost tracking and verification should occur within regular PUC base rate proceedings, ensuring appropriate oversight without creating new administrative burdens or regulatory inconsistencies.

[1] For example, EDCs must have a formal load shedding plan approved by the PUC to be used during system emergencies. The regulations, found in Title 52, Chapter 57, establish the conditions that constitute an emergency, require specific notification procedures, and mandate the order of priority for service interruptions. Additional legislative action may not be necessary and may be duplicative or create conflict with established practices and requirements.

Renewable Energy Requirements - Section 6

Section 6 requires that utilities ensure 25 percent of electricity supplied to data centers comes from renewable sources. This provision faces significant implementation challenges under Pennsylvania's deregulated market structure. EDCs do not control the generation supply provided to customers.[2] Most large commercial customers, including data centers, purchase electricity from competitive markets, not from EDCs. Requiring EDCs to ensure that 25 percent of electricity supplied to data centers come from renewable sources effectively imposes an obligation they cannot fulfill. Furthermore, the proposed definition of "renewable energy" does not align with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act, creating legal and administrative conflicts.

If the goal is to ensure renewable energy use by data centers, consider making this a direct obligation of the data center (like the LIHEAP contributions in Section 5)[3] rather than an EDC obligation.

Contract Filing and Review - Section 7

Section 7(a) requires utilities to file data center contracts with the PUC for review of grid impacts, reliability effects, ratepayer impacts, and compliance with the Act. While EAP supports transparency, the PUC may not have the authority or information necessary to evaluate regional transmission system impacts. The legislation does not address how much time the PUC would have to complete such reviews, what standards would apply, or how confidential commercial information would be protected. Finally, the "impact on ratepayers" review (Section 7(a)(3)(iii)) appears inconsistent with Section 4's prohibition on cost recovery—if no costs can be recovered from ratepayers, the impact should theoretically be zero.

The Committee should consider clarifying the PUC's authority and the consequences if a contract fails to meet the review standards. EAP believes amendments to HB 1834 could require PJM to assess transmission system impacts and provide the PUC with any necessary authority to make the request and to obtain the information in a timely fashion so as not to delay development of commercial data centers.

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[2] The Pennsylvania Electricity Generation Customer Choice and Competition Act was passed in 1996, restructuring the state's wholesale and retail electricity markets. This act, inter alia, separated electricity generation from distribution and allowed consumers to choose their electric supplier.

[3] Even with this suggestion, EAP has concerns that the LIHEAP requirement, while well intentioned, could be discriminatory. This would appear to create an obligation on one subset of customers and not similarly situated customers, i.e., any other customer who is not classified as a "data center" but has load over a certain threshold would not have to contribute to LIHEAP directly. Such additional obligation could deter location of data centers in Pennsylvania, negatively affecting economic development.

Supporting Regulatory Development

We appreciate that the bill provides for both temporary and permanent PUC rulemaking. The 90-day timeline for temporary regulations is aggressive given the complexity of the issues, but we are committed to working constructively with the Commission to develop workable regulations. We recommend that the final regulations include:

- Clear definitions and thresholds;
- Transparent cost allocation methodologies;
- Coordination with PJM processes; and
- Adequate implementation timelines for utilities.

Conclusion

Taken together, these modifications would help HB 1834 achieve its dual goals: encouraging data center development in Pennsylvania while maintaining reliability, affordability, and consistency within existing regulatory authority. The Energy Association of Pennsylvania and its member utilities remain committed to working collaboratively with the Committee, the PUC, PJM, and other stakeholders to refine the legislation so that it promotes economic growth while safeguarding the reliability and fairness that Pennsylvania customers depend upon.

Finally, while HB 1834 provides an important framework for managing the impacts of large data center load at the distribution level, it is equally important to recognize the broader resource adequacy challenges we face. The rapid addition of substantial new load from data centers and other emerging industries must be accompanied by commensurate investment in new generation resources. Without sufficient new supply, the entire PJM region faces increased risk of capacity shortfalls, higher capacity prices, and reduced reliability for all customers. EAP believes that a balanced approach, which combines PJM-level market reforms with carefully designed state mechanisms where necessary, will best support the continued reliability and affordability of Pennsylvania's electric system as new, energy-intensive industries locate and expand here.

Thank you for your consideration of these comments. I am happy to answer any questions.