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Kirkland Alert

Potential Game-Changing Rulemaking for Data Centers and Other High-Demand Loads

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The U.S. is in an "arms race" to bring data centers housing generative artificial intelligence (AI) online, and the federal government just sent a message that our federal regulators cannot be sitting on their hands. On October 23, 2025, U.S. Department of Energy (DOE) Secretary Chris Wright issued a formal directive to the Federal Energy Regulatory Commission (FERC or Commission) under Section 403 of the Department of Energy Organization Act to initiate rulemaking proceedings to produce a final rule that standardizes and "rapidly accelerate[s]" interconnection for large loads, such as AI data centers. The Advance Notice of Proposed Rulemaking (ANOPR) included in the secretary's directive proposes that FERC assert jurisdiction over the interconnection of large loads greater than 20 megawatts (MW) — an area traditionally regulated by the states — and issue a final rule by April 30, 2026. Secretary Wright's directive represents the most significant federal energy regulatory action taken to date to address the interconnection of large loads. The rulemaking proceeding is sure to garner participation from a variety of stakeholders, some of whom will likely take issue with the secretary's assertion of federal jurisdiction.

Current State of Play and Jurisdiction Over Large Load Interconnections

There is currently no standard federal regulatory framework that guides the interconnection of large loads. Traditionally, the interconnection of loads has been an area exclusively regulated by state public utility commissions. Due to variation in state level regulation and even variation among utilities within the same state, large loads seeking to interconnect and receive power from the grid face inconsistent and evolving regulatory regimes across states, utility-specific large load interconnection

processes that are often as prolonged as they are opaque, and state commission approval proceedings that require expert testimony, analysis and extended briefing in certain states. The result is a large load interconnect process that can take up to seven years to bring a new data center online. That is enough to make the local DMV appear like a beacon of efficiency. Standardization of large load interconnection procedures at a federal level could represent a significant step forward for data center developers, operators and their investors.

The ANOPR intends to alleviate any regional deviation that may be slowing large load interconnections by asserting federal jurisdiction over such connections under the Federal Power Act (FPA). Under Section 201 of the FPA, FERC has jurisdiction over the "transmission of electric energy in interstate commerce and [] the sale of electric energy at wholesale in interstate commerce." While FERC's interpretation of its jurisdiction under the FPA has expanded over time, notably to include the ability to regulate the interconnection of generating facilities larger than 20 MW delivering energy to the grid, it has never been extended to the interconnection of load receiving energy from the grid.

Secretary Wright acknowledged that FERC has historically "not exerted jurisdiction over load interconnections"; however, it is his view that "the interconnection of large loads directly to the interstate transmission system to access the transmission system and the electricity transmitted over it falls squarely within the Commission's jurisdiction." Secretary Wright also noted that it is in the public's interest for FERC to assert jurisdiction over large load interconnections and that "[t]his Administration is committed to revitalizing domestic manufacturing and driving American AI innovation, both of which will require unprecedented and extraordinary quantities of electricity and substantial investment in the Nation's interstate transmission system."

The ANOPR advances several jurisdictional bases to support this shift into the regulation of large load interconnection, including reliance on prior FERC orders including Order No. 888 (Open Access Transmission Service), Order No. 1000 (Transmission Planning and Cost Allocation), Order No. 2003 (Generator Interconnection) and Order No. 1920 (Long-Term Regional Planning). The ANOPR concludes FERC has jurisdiction over large load interconnections because:

- Large load interconnection is a critical component of open access transmission service and thus should be treated similarly to generator interconnections.
- Large load interconnection to the transmission system is a practice directly affecting wholesale electric rates, over which FERC has jurisdiction to ensure such rates are just and reasonable.

- Regulation of large load interconnection to the transmission system is a natural extension of FERC's exclusive jurisdiction over interstate transmission.
- Regulation of a large load that interconnects directly to the transmission system does not infringe on states' traditional regulatory authority over end user sales, as it is simply a regulation of interconnection procedures themselves.

The ANOPR

The ANOPR seeks to design a final rule that establishes standardized interconnection rules and study procedures for large loads, which will in turn accelerate the interconnection of high-demand load projects and enable data centers to come online more quickly. It does not shy away from thorny issues that have historically caused delay in prior proceedings, such as co-location and cost allocation. The ANOPR proposes to assign 100% of the network upgrade costs to the large load interconnection customer and it encourages co-location of what the ANOPR refers to as "hybrid facilities," or a load that shares a point of interconnection with new or existing generation facilities.

The ANOPR provides FERC with 14 guiding principles to consider and seeks comments on a variety of these principles, including:

1. Any final rule should be limited in scope to large load interconnections directly to the transmission system to avoid "affecting the States' jurisdiction over generation facilities."
2. Any final rule should be limited to new loads larger than 20 MW, and to hybrid facilities where the load exceeds 20 MW, though FERC should be open to considering alternative thresholds during the rulemaking proceedings.
3. Loads and hybrid facilities should be studied together with generation to encourage efficiencies in siting and planning and to minimize the need for unnecessary network upgrades.
4. Loads and hybrid facilities should be subject to standardized study deposits, readiness requirements and withdrawal penalties to deter speculative projects and allow for better demand forecasting.
5. Hybrid facilities should be studied based on their requested injection and withdrawal rights to incentivize co-location and efficient use of any transmission grid buildout.
6. Hybrid facilities should be required to install system protection equipment to prevent unauthorized injections or withdrawals beyond approved limits, and to consider possible penalties for violation.

7. Interconnection studies for load and hybrid facilities that agree to curtail should be expedited.
8. Load or hybrid facilities should be responsible for 100% of network upgrade costs assigned through the study process.
9. Load interconnection customers should be granted the same option-to-build for interconnection facilities as is currently granted to generator interconnection customers.
10. Generators that partially suspend output to serve a new load at the same location must go through a system support resource or reliability must run type study and fund any needed upgrades.
11. Utilities serving large loads and hybrid facilities should be responsible for transmission service based on their withdrawal rights.
12. Utilities serving large loads should procure ancillary services based on peak demand, treating co-located generation separately for compensation.
13. FERC should establish implementation and transition planning procedures for large loads currently under study and seek comment on such procedures.
14. Utilities servicing large load interconnections must comply with NERC standards.

Next Steps

FERC has initiated a "notice and comment" rulemaking per the DOE's directive and has invited interested parties to submit initial comments on the ANOPR by November 14, 2025, and reply comments by November 28, 2025. FERC is not bound by the principles outlined in the ANOPR and any proposed or final rule will likely take into consideration comments and data from interested parties. The ANOPR docket will likely receive comments from a variety of state public utility commissions, investor-owned utilities, and consumer advocacy groups. If you are interested in filing comments or receiving additional detail and analysis, please contact the attorneys listed below.

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