

GIBSON DUNN



Energy Regulation & Litigation Update

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Secretary of Energy Directs FERC to Initiate Rulemaking to Expedite Data Center and Large Load Interconnection

The Secretary's Direction included a proposed draft Advanced Notice of Proposed Rulemaking for FERC's consideration, with a deadline for FERC to respond no later than April 30, 2026.

I. Introduction

On October 23, 2025, Secretary of Energy Chris Wright directed the Federal Energy Regulatory Commission (FERC or the Commission) to initiate rulemaking procedures to standardize the interconnection of large loads to the transmission system.^[1] Secretary Wright noted in the Direction that the ability of “large loads, including AI data centers, served by public utilities... to connect to the transmission system in a timely, orderly, and non-discriminatory manner” was an “urgent issue.”^[2] The Direction included a proposed draft Advanced Notice of Proposed Rulemaking (ANOPR) for FERC's consideration, with a deadline for FERC to respond no later than April 30, 2026.

Importantly, the Secretary's authority under Section 403 of the Department of Energy Organization Act empowers the Secretary to “propose rules, regulations, and statements of policy of general applicability” but does not require FERC to implement such “propose[d]” rules and regulations.^[3] The Commission is required under Section 403 to “consider and take final action on any [such] proposal.”^[4] Under Section 403, the Secretary's proposal is only the start of agency action and consideration, not the conclusion. However, FERC has already taken initial

action on the proposal and filed a Notice Inviting Comments on October 27, 2025.^[5] The deadline for comments on the Secretary's proposed ANOPR is November 21, and reply comments are due on or before December 5.

In addition, it is important to note that the proposal is in the form of an ANOPR. It is not a proposed rulemaking. An ANOPR is the first step in the agency rulemaking process, which, if it proceeds, is then followed by a Proposed Rulemaking, and ultimately a Final Rule. Hence the proposed ANOPR is brief and offers high-level principles and ideas for further consideration. An ANOPR is intended to solicit comments and views from interested parties on the rulemaking concepts set forth. The details of any such rulemaking, if it proceeds, would be set forth in a Proposed Rulemaking issued by the Commission. Such a Rulemaking would allow opportunity for interested parties to file comments on the proposal.

Secretary Wright's Direction first asserts that FERC has jurisdiction over interstate transmission and the interconnection of all generation and loads to the transmission system and then proposes an ANOPR under which FERC can establish rules asserting this scope of jurisdiction. In particular, the Direction argues that FERC has jurisdiction over the interconnection of large loads to interstate transmission, a departure of sorts from FERC's current practice, which has been to leave load-related issues to state regulation. The ANOPR asserts that this newly asserted jurisdiction is analogous to FERC's existing jurisdiction over generator interconnection. It argues that, like generator interconnection, load interconnection directly affects wholesale rates and is necessary for open-access transmission. Because matters directly affecting wholesale rates and open-access transmission are within FERC's jurisdiction under the Federal Power Act, the Direction argues FERC can assert jurisdiction over load interconnection.^[6]

Second, based on this newly asserted jurisdiction, the Direction provides "a series of principles" for a rule "intended to ensure efficient, timely, and non-discriminatory load interconnections."^[7] In essence, the Secretary is asking FERC to issue a rulemaking to establish a standard approach for the interconnection of large loads to the transmission system, analogous to FERC's issuance of Order No. 2003, in which FERC first established standardized procedures and a standard agreement for the interconnection of generation to the transmission system. Presumably, this standard process for load interconnection would be incorporated into the Open Access Transmission Tariffs (OATTs) of all FERC-jurisdictional transmission service providers. The Direction sets forth high-level governing "principles" for this proposed standard load interconnection process, but not the details that the Commission would require transmission service providers to incorporate into their OATTs. Those details would be developed in a Proposed Rulemaking issued by the Commission. The principles in the Secretary's proposed ANOPR—14 in total—lay a groundwork for large loads to be connected to the transmission grid, but FERC will need to fill in the details of these principles as part of the rulemaking process.

The Secretary has asked the Commission to consider the proposal and take "final action" by no later than April 30, 2026, six months from now. Such "final action" would presumably be issuance of a Final Rule by the Commission within the requested six-month timeframe.

II. FERC's Proposed Jurisdiction over Large Load Interconnection

Secretary Wright's Direction first argues that FERC has jurisdiction to address the interconnection of large loads to the interstate transmission system. The central point of this jurisdictional argument is based on FERC's current authority to assert jurisdiction over the interconnection of generation facilities. Most basically, the Direction argues that if FERC has jurisdiction over interconnection of generation facilities to the transmission system, then it should also have jurisdiction over interconnection of large load facilities to the transmission system.

The Direction sets forth two main jurisdictional bases for large load interconnection. The first basis for jurisdiction is that "minimum terms and conditions" for large load interconnections are necessary "to ensure non-discriminatory transmission service."^[8] Citing FERC's Order No. 2003 that deemed standard interconnection procedures for large generators "a critical component of open access transmission service," the Direction asserts the same need for standard interconnection procedures for large loads to connect to the grid.^[9]

The second basis for jurisdiction for large load interconnection is that these interconnections directly affect wholesale electricity rates. The Supreme Court has previously affirmed FERC's jurisdiction over "rules or practices" that "directly affect wholesale prices."^[10] The Federal Power Act grants FERC authority to ensure that "the sale of electric energy at wholesale in interstate commerce" takes place at "just and reasonable" rates.^[11] Because the interconnection of large loads is a practice that directly affects rates, the Secretary argues that FERC can assert jurisdiction over the interconnection of large loads to the transmission system.

The Direction also makes clear it is not intended to "impinge on States' authority over retail electricity sales," preserving state's exclusive jurisdiction over retail sales to large loads as well as the siting, expansion, and modification of generation facilities.^[12]

III. Summary of the ANOPR

Secretary Wright's Direction lays out 14 guidelines for a proposed rule in the form of fourteen "principles . . . that should inform the Commission's rulemaking procedures."^[13] The ANOPR clarifies that standardized interconnection for loads would also apply to "hybrid" facilities, which are facilities which "seek[] to share a point of interconnection with new or existing generation facilities."^[14] The 14 guidelines provided by the Secretary for the new rule are:

1. Limiting the Commission's newly asserted jurisdiction to only interconnections directly to interstate transmission facilities.
2. Applying the reforms only to new loads greater than 20MW, though the ANOPR seeks comment on this threshold.
3. Studying load and hybrid facilities together with generation facilities, which would allow for efficient siting and "minimize the need for costly network upgrades."
4. Subjecting load and hybrid facilities to "standardized study deposits, readiness requirements, and withdrawal penalties" that would provide transmission providers with

more useful information to forecast demand on their systems. The ANOPR seeks comment on how existing study deposits, readiness requirements, and withdrawal penalties can be adopted.

5. Studying hybrid facilities should be based on the net injection or withdrawal rather than their total load to “provide[] incentives for co-location with new generation facilities and ensure[] efficient buildout of the transmission system.”
6. Requiring hybrid facilities “to install system protection facilities” to prevent exceeding respective rights. The ANOPR seeks comment on operational limitations, minimum technical requirements for system protection facilities, and penalties for unauthorized injections or withdrawals.
7. Expediting interconnection for large loads that agree to be curtailable, in addition to hybrid facilities that agree to be curtailable and dispatchable. The ANOPR seeks comment on “appropriate deadlines for the expedited study process, including whether the studies can be completed in 60 days.”
8. Eighth, load and hybrid facilities “should be responsible for 100% of the network upgrades they are assigned through the interconnection studies.” The ANOPR seeks comment on whether such costs to large loads and hybrid facilities “should be offset through a crediting mechanism,” as was done in Order No. 2003, and thus rolled into the transmission rates paid by all transmission customers.
9. Ninth, if the interconnecting load customer is not the transmission owner, the customer “shall be afforded the same option to build as currently provided to” a interconnecting generator customer. This is the “option to build” process that the Commission has established for generator interconnections to the transmission system.
10. Tenth, colocation of new loads at existing generation facilities will require a system support resource (SSR) or a reliability must run (RMR) study. The study will consider load growth for three years after a generator’s proposed partial suspension to serve the collocated load, and any necessary network upgrades will be the responsibility of the generating facility. This will look at the implications of removing existing generation from the transmission system and what it means for transmission system reliability.
11. Eleventh, utilities should be responsible for transmission service to the large loads “based on their withdrawal rights.” This appears to indicate that if a large load is collocated with generation and states that it will be withdrawing nothing from the transmission system, the large load will be deemed to take no transmission service and will not be charged for transmission service. This principle, and the twelfth principle, appear to be setting the groundwork for how rates for transmission service for large loads will be determined.
12. Twelfth, utilities should be responsible for providing auxiliary services, a part of transmission service, services based on peak demand, without consideration of any collocated generation. This appears to indicate that large loads would be charged for the auxiliary service component of transmission service based on their “peak demand,” rather than their “withdrawal rights,” unlike the eleventh principle. This principle also appears to be setting the stage for how transmission service rates for large loads will be determined.
13. Thirteenth, the Direction calls for a transition plan to implement the proposed reforms and seeks comments on how to treat large loads that are already being studied for interconnection to the transmission system.
14. Fourteenth, utilities serving large loads must meet all applicable NERC reliability standards and OATT provisions. NERC is already considering the implications of the

interconnection of large loads to the transmission system, including large load registration requirements.

IV. Takeaways

Secretary Wright's 14 principles leave room for FERC to fill in details as part of the rulemaking process but they make clear his intention that certain rights are afforded to large loads seeking to interconnect to the interstate transmission system. The principles repeatedly address so-called "hybrid" facilities and seek to allow collocated generation to be subtracted from the overall proposed load for purposes of interconnection. The Direction also seeks to expedite connection for large loads that agree to be curtailable, essentially "non-firm" large load interconnections, and floats a 60-day timeline as a proposal for expedited interconnection studies for such "curtailable" large load facilities.

While FERC has traditionally asserted jurisdiction over the interconnection of generation to the interstate transmission system, the ANOPR contemplates extending this Commission authority to the interconnection of large loads. Commentators have noted that utilities are likely to oppose the principles set forth in the ANOPR as proposed by the Secretary, as it would detract from their traditional authority to control when and how demand is connected to the transmission grid.^[15]

Secretary Wright's Direction is the latest development in a years-long discussion of how to power data center expansion. Following a technical conference last November,^[16] a large class of stakeholders—federal and state regulators, local utilities, and grid operators—had not yet reached alignment on how data center interconnection should move forward. Friday's Direction makes clear that FERC, spurred by the Department of Energy, may play a larger role in this process, potentially elbowing out and superseding the mix of authorities that currently control the gates to providing power to data centers.

^[1] Letter from Chris Wright, Secretary of Energy, to the Federal Energy Regulatory Commission, "Secretary of Energy's Direction that the Federal Energy Regulatory Commission Initiate Rulemaking Procedures and Proposal Regarding the Interconnection of Large Loads Pursuant to the Secretary's Authority Under Section 403 of the Department of Energy Organization Act" [hereinafter "Direction"] [<https://www.energy.gov/sites/default/files/2025-10/403%20Large%20Loads%20Letter.pdf>].

^[2] *Id.*

^[3] 42 U.S.C. § 7173(a)

^[4] 42 U.S.C. § 7173(b)

^[5] Notice Inviting Comments, Docket No. RM26-4-000 (Oct. 27, 2025). On November 7, 2025, in response to a motion requesting additional time, FERC extended the deadline to file comments by one week, changing the deadline from its original date of November 14, 2025 to the new date of November 21, 2025. See Notice Granting Extension of Time, Docket No. RM26-4-000 (Nov. 7, 2025).

[6] *Id.* at 9.

[7] *Id.* at 2.

[8] *Id.* at 9.

[9] *Id.* (quoting *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (July 24, 2003)).

[10] *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 278-79 (2016).

[11] *Id.* at 277 (citing 16 U.S.C. §§ 824(b)(1), 824d(a)).

[12] Direction, 9.

[13] *Id.* at 10.

[14] *Id.* at 9.

[15] See Diana DiGangi, *In 'unusual' move, DOE proposes rule to expand FERC's authority over large loads*. [<https://www.utilitydive.com/news/in-unusual-move-doe-proposes-rule-to-expand-fercs-authority-over-large/803717/>].

[16] See generally Gibson Dunn, "FERC Technical Conference Puts Challenges of Powering Data Centers at Center Stage." [<https://www.gibsondunn.com/ferc-technical-conference-puts-challenges-of-powering-data-centers-at-center-stage/>].

The following Gibson Dunn lawyers prepared this update: William R. Hollaway, Ph.D., Tory Lauterbach, Janine Durand, Jess Rollinson, and John Weed*.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. To learn more about these issues or for assistance with data center energy supply issues, such as preparing comments to be filed in the above-discussed proceedings, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Energy Regulation and Litigation practice group, or the following members of the firm's Energy team:

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