

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Interconnection of Large Loads to the
Interstate Transmission System

Docket No. RM26-4-000

**COMMENTS OF THE AMERICAN PUBLIC POWER
ASSOCIATION**

The American Public Power Association (APPA) submits these comments in response to the Federal Energy Regulatory Commission's (Commission) October 27, 2025, notice inviting comment on the Secretary of Energy's proposed Advance Notice of Proposed Rulemaking (ANOPR).

Public power utilities across the nation are expanding their capacity to serve new data center loads by building grid infrastructure, creating innovative rate structures, and partnering with data center developers. APPA applauds the Commission for its extensive efforts in recent years to address issues associated with large data center loads and for its careful analysis—and respect for—the Federal Power Act's clear jurisdictional lines that reserve authority for retail transactions to state and local regulatory authorities. The ANOPR also reflects that same respect for jurisdictional boundaries, stating its intention that the Commission avoid *even arguably* impinging on state and local jurisdiction.

As the Commission considers the appropriate action to take on the ANOPR, APPA urges the Commission to consider how to implement—and modify where necessary—the ANOPR's principles in a way that achieves two goals: (1) continuing to allow relevant retail regulatory authorities to oversee the rates, terms, and conditions of retail service; and

(2) ensuring that existing customers do not bear increased cost or increased risk as a result of Commission-jurisdictional interconnection rules for large loads.

Individual APPA members and groups representing segments of the public power community—including the Transmission Access Policy Study Group and Large Public Power Council—are filing comments in this docket that suggest specific ways to implement ANOPR’s principles to achieve the twin goals of respecting jurisdictional lines and protecting existing customers. The Commission should consider those recommendations.

I. INTEREST OF APPA

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. Public power utilities are in every state except Hawaii. They collectively serve over 55 million people in 49 states and five U.S. territories, and account for 15 percent of all sales of electric energy (kilowatt-hours) to end-use consumers.

Public power utilities are load serving entities, with the primary goal of providing the communities they serve with safe, reliable electric service at the lowest reasonable cost, consistent with good environmental stewardship. This orientation aligns the interests of the utilities with the long-term interests of the residents and businesses in their communities.

II. COMMENTS

A. *Respecting Jurisdiction*

1. Any final Commission action should explicitly allow relevant retail regulatory authorities to continue regulating the rates, terms, and conditions of retail service, including allocation of costs for generation built to serve new large loads.

The Federal Power Act limits the Commission’s jurisdiction to “transmission of electric energy in interstate commerce and the sales of such energy at wholesale in interstate commerce.”¹ That jurisdiction extends “only to those matters which are not subject to regulation by the States.”² For decades, the Commission has adhered to the principle, as articulated by the U.S. Supreme Court, that “FERC jurisdiction over the sale of power has been specifically confined to the wholesale market.”³ Thus retail sales and all associated terms and conditions—including the assessment of generation costs and establishment of minimum required contractual provisions—are reserved to state commissions.⁴

Several states have exercised the authority reserved to them by the Federal Power Act to approve retail tariffs that govern the rates, terms, and conditions for serving new

¹ 16 U.S.C. § 824(a).

² *Id.*; see also 16 U.S.C. § 824(b) (limiting jurisdiction to “transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce” but not to “any other sale of electric energy.”).

³ *New York v. FERC*, 535 U.S. 1, 20 (2001).

⁴ The Federal Power Act defines “state commission” as “the regulatory body of the State or *municipality* having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or *municipality*.” 16 U.S.C. § 796(15) (emphasis added).

large loads. Many public power communities have similarly adopted such retail tariffs. Each retail tariff differs in detail about how generation costs will be allocated to the new loads, the amount of up-front payments that must be made by the new load, minimum load obligations, and the duration of the commitment to take retail service. These retail tariffs have given clarity to data center developers in many parts of the country, which facilitates regulatory certainty and a helps create positive environment for investment.

If the Commission exercises its authority to regulate the interconnection of large loads to Commission-jurisdictional transmission facilities, it must not preempt those efforts of retail regulators. In any final action on the ANOPR, the Commission should explicitly allow retail regulators to continue regulating the rates, terms, and conditions for retail service to large loads.

2. Any final Commission action should not explicitly or implicitly mandate retail wheeling.

The Federal Power Act prohibits the Commission from issuing an order requiring transmission of electric energy directly to an ultimate consumer.⁵ And it maintains “any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate customer.”⁶ Thus, while some states have authorized retail wheeling, including for new large loads, the Commission may not require it.

⁵ 16 U.S.C. § 824k(h).

⁶ *Id.*

If the Commission exercises its authority to regulate the interconnection of large loads to Commission-jurisdictional transmission facilities, it must clarify that it is not ordering any transmission provider to provide retail wheeling service.

3. The Commission should continue to disclaim authority over the transmission component of bundled retail sales.

In Order No. 888, the Commission prudently declined to exert authority over the transmission component of bundled retail sales, while reserving the issue of whether it had jurisdiction. The Supreme Court upheld the Commission's decision, noting that it "is obvious that a federal order claiming jurisdiction over *all* retail transmissions [i.e., both bundled and unbundled transmission] would have even greater implications for the States' regulation of retail sales—a state regulatory power recognized by the same statutory provision that authorizes FERC's transmission jurisdiction."⁷

There is no need to revisit that prudent decision in this proceeding. Whatever final action the Commission takes on the ANOPR, it should limit the scope of that action to exclude transmission that is bundled with a retail sale. The Commission has facilitated the expansion of wholesale markets and open access transmission in most of the country without needing to test the limits of its jurisdiction over bundled transmission; it can similarly achieve the goals of facilitating large load interconnections without making this a test case.

⁷ *New York v. FERC*, 535 U.S. at 28.

B. Protecting Existing Customers

New large loads must pay their fair share of infrastructure costs that are needed to serve them. This principle is uncontroversial. But any final action that the Commission takes on the ANOPR (and any actions the Commission takes in related dockets) must include provisions that effectuate that principle. Otherwise, existing customers will bear the risk of increased costs or reduced reliability. Wholesale transmission customers in particular could be left shouldering massive costs if new large loads do not ultimately attain or maintain the level of electricity demand that is being forecasted.⁸ The risk of stranded costs must therefore be allocated to the entities that are causing the new investment.

The ANOPR's proposal to impose standardized study deposits, readiness requirements, and withdrawal penalties appears to be consistent with the objective of fairly allocating costs. But such commitments must be well-tailored to the specific risks posed by large loads and hybrid interconnections, and they must account for regional variations and variations in interconnection configurations.

Similarly, the ANOPR's proposal to allocate all network upgrade costs to newly interconnecting large loads would insulate existing customers from costs that would not be caused but for the new interconnection. But such a principle should not disrupt the existing, long-standing cost allocation mechanisms that exist for planning the overall

⁸ Notably, wholesale transmission customers in some regions are already facing higher costs for resource adequacy based on forecasts of how new load will be added.

transmission system to meet the needs of load serving entities. And any crediting mechanism to return that money to interconnection customers should be structured in a way that holds other transmission customers harmless from stranded costs.

III. CONCLUSION

APPA appreciates the opportunity to comment on the ANOPR and urges the Commission to consider how any final action in this proceeding will respect jurisdictional boundaries and protect existing customers.

Respectfully submitted,

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