COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
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November 21, 2025

Via Electronic Filing

The Honorable Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Comments of the Pennsylvania Public Utility Commission; Docket No. RM26-4**

Dear Secretary Reese:

Please find for e-filing the Comments of the Pennsylvania Public Utility Commission (PA PUC) to a *Notice of Advance Notice of Proposed Rulemaking (ANOPR)* at Docket No. RM26-4.

Copies of this document have been served upon all parties designated on the Commission's official service list, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/ Elizabeth H. Barnes
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ensuring the Timely and Orderly Interconnection of Large Loads Advance Notice of Proposed Rulemaking	)))	Docket No. RM26-4

COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

On October 23, 2025, the U.S. Department of Energy (DOE) directed the Federal Energy Regulatory Commission (FERC or Commission) to develop an Advanced Notice of Proposed Rulemaking(ANOPR) related to the interconnection of large loads and directed FERC to take final action no later than April 30, 2026. Subsequently, FERC established a new docket (RM26-4) to consider DOE's proposed ANOPR and issued a *Notice Inviting Comments.* The Pennsylvania Public Utility Commission (PA PUC) thanks FERC and the DOE for their engagement in this critical issue of large load interconnection. Large load interconnection is rightly recognized as a matter of national importance. The integration of that large load must be planned in an orderly fashion, respecting physical limits that our grid faces both in the context of the facilities used for transmission and distribution as well as the area of system stability, energy prices, and resource adequacy. So too, jurisdictional lines must be respected, not just for the sake of history and precedents, but because our near century-long bright line of jurisdiction

provides major economic development benefits to our nation and individual states through predictability.

With that in mind, the PA PUC submits the following comments regarding the jurisdiction as well as likely violations of the *major questions doctrine* and *non-delegation doctrine*. Although we believe that in many respects the ANOPR goes beyond what is legally and economically justified, there remains opportunity for further discussion.

I. Background

On October 23, 2025, the Secretary of the United States Department of Energy issued a letter pursuant to section 403 of the Department of Energy Organization Act directing FERC to initiate rulemaking procedures and consider the ANOPR presenting reforms to ensure the timely and orderly interconnection of large loads, defined as greater than 20 MW, to the transmission system. The Secretary requested that FERC take final action by April 30, 2026. The ANOPR proposes, *inter alia*, that FERC assert jurisdiction over the interconnection of large loads to the grid.

The proposed ANOPR states that standardized interconnection procedures and agreements for large loads, including hybrid facilities that share a point of interconnection with new or existing generation facilities, are necessary due to the unprecedented growth of large loads seeking to interconnect to the transmission system.

II. Jurisdiction

A. Federal

Electric industry regulation is "one of the most important of the functions traditionally associated with the police power of the States." *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983). The Commission's authority includes regulation of rates and services of interstate transmission of electricity and interstate electric sales at wholesale. 16 U.S.C. § 824(b)(1). Section 201(b) of the Federal Power Act (FPA) grants the states exclusive jurisdiction "over facilities used for the generation of electric energy or over facilities used in local distribution or for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." 16 U.S.C. § 824(b).

Recommending reforms to all new loads greater than 20 MW, including for hybrid facilities and that load and hybrid facilities be studied together with generating facilities, appears to propose the expansion of Federal authority on a permanent basis through a rulemaking without the necessary statutory authority delegated to the Commission by Congress.

Pure load interconnection is squarely within the realm of local distribution reserved to the states under the Federal Power Act. The Commission has already recognized this. In Order 888, the Commission made clear that although many loads connect directly to high-voltage facilities, the 'last mile' of interconnection always includes *some* local distribution facilities, even if the facilities that constitute local distribution are not obvious. "[W]hile we believe in most cases there will be identifiable local distribution facilities subject to state jurisdiction, we also believe that even where

there are no identifiable local distribution facilities, states nevertheless have jurisdiction in all circumstances over the service of delivering energy to end users."[1]

The determination that the 'last mile' of delivering energy is a state jurisdictional facility is consistent with the Order 888 seven-factor test. The seven-factor test provides guidance for when facilities should be classified as local distribution under state jurisdiction or transmission under federal jurisdiction. Specifically, "(1) local distribution facilities are normally in close proximity to retail customers; (2) local distribution facilities are primarily radial in character; (3) power flows into local distribution systems and rarely, if ever, flows out; (4) when power enters a local distribution system, it is not reconsigned or transported on to some other market; (5) power entering a local distribution system is consumed in a comparatively restricted geographic area; (6) meters are based at the transmission/local distribution interface to measure flow into the local distribution system; and (7) local distribution systems will be of reduced voltage."[2]

Aside from the final factor, last mile facilities used exclusively for delivering energy sold for end-use to customers satisfy all the factors to be classified as local distribution. Because of the extraordinary size of some data center end uses, the final factor may no longer reflect the true nature of the facilities. The Commission should be circumspect in making these jurisdictional determinations and respect its prior rulings

[1] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities,* RM95-8 (Order issued April 24, 1996) (Order 888).
[2] *Sw. Power Pool, Inc. GridLiance High Plains LLC*, 180 FERC ¶ 61,192, 62,307 (2022) (summarizing seven-factor test).

that if "no wholesale transaction is being conducted over [a facility], … there is no Commission-jurisdictional use of the facilities".[3]

The ANOPR proposes an unprecedented expansion of Federal jurisdiction and potential intrusion on the states' historic retail regulatory authority under the Federal Power Act, introducing potential confusion, unintended customer consequences, and/or legal uncertainty where none currently exists. State commissions are responsible for ensuring resource adequacy and the reliability and affordability of electric service for retail customers.

So too, FERC-mandated large load interconnections without sufficient available generation capacity could threaten reliable power service to existing retail customers, as grid operators may lack the resources needed to maintain system stability during peak demand or extreme weather events. FERC-mandated large load interconnections, including necessary transmission upgrades and other infrastructure investments, may unfairly burden retail ratepayers if not properly allocated. The proposals in the ANOPR could limit a state's ability to implement protective measures, such as large load tariffs[4] and flexibility requirements. Depending on design, they may prevent a state from incentivizing large loads to invest in local communities, including through programs such

[3] *PJM Interconnection, LLC*, 116 FERC ¶ 61,102, 61,534 (2006).

[4] Recently, the Indiana Utility Regulatory Commission adopted a Settlement *In the Matter of the Verified Petition of Indiana Michigan Power Company for Approval of Modifications to its Industrial Power Tariff – Tariff I.P. at Case No. 46097*. In the Indiana Michigan Power case, settling parties including Google, Amazon Data Services, and DCC agreed the modification to Tariff I.P. should apply to customers taking service on Indiana Michigan Power (I&M) Tariff I.P. with contract capacity greater than or equal to 70 MW at an individual plant or 150 MW on an aggregated basis. In addition, the Public Service Commission of West Virginia has recently adopted a Settlement *Appalachian Power Company and Wheeling Power Company: Application for Approval of Revisions to Schedules LCP and IP - Case No. 24-061 1 -E-T-PW*. Appalachian Power Company and Wheeling Power Company have adopted the exact same aggregation definition.

as facilitating large loads to interconnect more rapidly while bringing direct economic benefits to the community.

State regulatory authorities have the expertise and authority to balance economic development associated with large loads with the protection of retail customers. Federal overreach could undermine these efforts, disrupt orderly grid planning, and lead to further resource adequacy and affordability challenges.

The ANOPR proposes to exceed the Commission's narrow authority within its regulatory sphere of regulation under the FPA and would intrude upon state authority over distribution, generation, and intrastate transmission service.

B. Pennsylvania

The PA PUC has existing statutory authority and has promulgated regulations regarding siting and construction of new transmission facilities and the relocation of existing transmission facilities needed to accommodate large loads. 66 Pa.C.S. §§ 1101 and 1102; 52 Pa. Code Chapter 57, Subchapter G. The PA PUC offers stakeholders, including landowners subject to applications for condemnation of their lands, due process before permitting and siting high voltage transmission lines that traverse from points to points within Pennsylvania, including to the borders with adjacent states.

Pennsylvania is presently working to address large load interconnection. The PA PUC conducted an *En Banc Hearing on Interconnection and Tariffs for Large Load Customers*, PUC Docket No. M-2025-3054271, on April 24, 2025, to explore the growing impact of large load electric customers on Pennsylvania's electric grid. Overall, there was broad consensus among the witnesses and commenters regarding the

fundamental principle of cost causation and the need to protect ratepayers from unreasonable cost shifting. There was general agreement that large load customer guidance is needed in the areas of interconnection costs, interconnection studies, minimum contract terms, exit fees, and collateral, among other areas. On November 6, the PA PUC issued a Tentative Model Tariff for Customers at or over 50 MW Individually or 100 MW in the Aggregate (Large Load Customer). Comments have been requested and are being received on this Tentative Order. Thus, the PA PUC is already addressing common issues involved with the interconnection of large loads to the grid.

The PA PUC submits that states are in the best position as electric retail service regulators to determine the reasonableness of electric retail rate structures regarding the distribution of service, including service to customers with peak loads over 20 MW. In fact, such determinations are exclusively within each state's police powers.

III. Violations of the *major questions doctrine*.

Most of the recommended rules intrude into an area traditionally regulated by the states and involve significant political and economic issues regulating the nationwide interconnected transmission grid.

The ANOPR's fundamental premise to create interconnection authority within the Commission for all loads on the basis of their impact on wholesale rates is impermissible under the Federal Power Act. As the Commission recently held: "retail rate regulation is impermissible "no matter how direct, or dramatic" a proposal's impact on wholesale

rates."[5] A corollary of this, consistent with prior Commission precedent,[6] is that FERC regulation of a facility used solely for the delivery of end-use sales is not permissible no matter how dramatic the effect of the interconnection on wholesale rates.

The ANOPR exacerbates the issue by targeting reforms to all new loads greater than 20 MW. Even more, the rulemaking does not address aggregate thresholds and probably captures commercial/industrial customers other than data centers. The impact of capturing all smaller non-data-center facilities above the 20 MW threshold would have a seismic impact on industrial load interconnections that have been well-functioning for decades.

The proposed rules conflict with state – approved tariffs for large industrial load that already address large load industrial tariffs with individual and aggregate megawatt load thresholds different from the 20 MW (individual) proposed in this rulemaking. Thus, the rule seeks to impose a federal standard that will have substantial political and economic impact among the 50 states and Washington D.C.

The recommendations that (1) load and hybrid facilities be studied together with generating facilities for efficient siting and be subject to standardized study deposits, readiness requirements, and withdrawal penalties; (2) hybrid facilities be studied based on the amount of injection and/or withdrawal rights requested to provide incentives for co-location with new generation facilities; (3) any hybrid interconnection install the system protection facilities necessary to prevent unauthorized injections or withdrawals

[5] *Tri-State Generation and Transmission Association, Inc.*, Docket No. ER25-3316, ¶50 (Order issued October 27, 2025).
[6] *PJM Interconnection, LLC*, 116 FERC ¶ 61,102, 61,534 (2006) (see discussion of Order 888 above).

that exceed the respective rights; (4) financial penalties for load facilities and hybrid facilities; (5) expedited consideration of interconnection studies of large loads and hybrid facilities that agree to be curtailable and dispatchable; and (6) that load and hybrid facilities should be responsible for 100% of the network upgrades that are assigned through the interconnection studies all have widespread economic and political ramifications. When an agency, like FERC, issues a rule of significance, the *major questions doctrine* requires clear congressional authorization. There is no clear congressional authorization for the action being taken by the Commission, if taken to the broadest extent of the ANOPR.[7] The rules proposed in the ANOPR would encroach on the traditional state prerogatives of transmission, distribution, and generation siting, as well as retail electric service, that Congress left to the states in the FPA. The erosion of state authority is inconsistent with the FPA's principle of cooperative federalism and would invite FERC to impose unjust, unreasonable, and unduly discriminatory rates on customers among the states. That erosion would also undermine the predictability on which our grid has long-relied.

The seismic impact and substantial deviation from historical treatment runs headlong into the prohibitions of the *major questions doctrine*. In *West Virginia v. EPA*, 597 U.S. 697 (2022), the Supreme Court clearly held that based on the history and

[7] *West Virginia v. EPA*, 597 U.S. 697 (2022). (Congress did not grant the Environmental Protection Agency in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the generation shifting approach the Agency took in the Clean Power Plan. Under the *major questions doctrine* there are extraordinary cases in which the history and breadth of the authority the agency has asserted and economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority. The EPA could not point to clear congressional authorization for the authority it claimed).

breadth of the authority the agency has asserted and economic and political significance of that assertion, courts are required to search for a clear Congressional authorization before granting agencies that extraordinary authority. Under *Loper Bright*, agencies are not granted deference in the assertion of that Congressional authorization. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). There is no clear Congressional authorization to expand FERC jurisdiction to pure load interconnection of any size.

However, if limited to hybrid interconnections of load and generation at the same point-of-interconnection, there may be greater room for discussion. As recognized in Order 888, facilities may be Commission jurisdictional if power flows in both directions over the facility. The Commission controls generator interconnection at the transmission level under Order 2003 and Order 2023. Further guidance on paired interconnection studies could be welcome, subject to a more detailed proposed rule and opportunity for comment, if that guidance minimized the need for transmission buildout and interconnection study timelines due to the nature of that paired interconnection. For example, The Brattle Group has suggested that paired interconnections could shorten study timelines through modified assumptions and operational solutions.[8]

VI. Conclusion

The PA PUC welcomes further discussion of interconnection reforms from the Commission, subject to the comments herein regarding jurisdiction.

[8] Slide 5, 17, Eolian/Brattle BIGPAL, PJM CIFP on Large Load Additions, available at https://www.pjm.com/-/media/DotCom/committees-groups/cifp-lla/2025/20251014/20251014-item-03b---eolian-brattle-proposed-options.pdf (last accessed November 19, 2025).

Respectfully submitted,

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Dated: November 21, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing document upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

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Dated: November 21, 2025