

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

Interconnection of Large Loads to the ) **Docket No. RM26-4-000**  
Interstate Transmission System )

**INITIAL COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (“NARUC”), respectfully submits these comments responding to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) October 27, 2025 Notice Inviting Comments inviting comment on the Secretary of Energy’s proposed Advance Notice of Proposed Rulemaking (ANOPR)<sup>1</sup> pursuant to section 403 of the Department of Energy Organization Act.<sup>2</sup> NARUC appreciates the ANOPR disclaiming any intention to assert jurisdiction over distribution interconnections, generation facilities, and retail sales. It is imperative that FERC, in any final rulemaking, make clear that it is affirmatively not asserting jurisdiction over these facilities, or end-use sales which fall squarely within the exclusive jurisdiction of state energy regulatory authorities. Similarly, the Commission should avoid any action that would circumvent or negate state decisions governing the provision of retail service, including, but not limited to, determinations about contracting practices related to the assessment of generating costs to retail load and the permissibility of direct retail access or retail

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<sup>1</sup> “Notice Inviting Comment”, Interconnection of Large Loads, Docket No. RM26-4-000 (October 27, 2025) online at: <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=EB349A98-9823-C022-96B7-9A27AB000000>. The ADVANCED NOTICE OF PROPOSED RULEMAKING, *Ensuring the Timely and Orderly Interconnection of Large Loads* (“ANOPR”) is posted separately at: <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=4D53DC3F-903A-C7F6-AF0A-9A27C4C00000>

<sup>2</sup> 42 U.S.C. § 7173.

wheeling. This preservation of state authority is not only required by the Federal Power Act, it serves a practical imperative: preserving state commission authority to protect all end-use customers on the grid.

In response to the ANOPR, on November 12, 2025, the NARUC Board of Directors adopted a *Resolution Urging the Federal Energy Regulatory Commission to Preserve and Affirm State Retail Regulatory Jurisdiction in its Large Load Interconnection Proceeding*.<sup>3</sup> The resolution, which is attached to these comments, specifically urges the Commission to preserve the states' historic retail regulatory authority as granted by the Federal Power Act (FPA). At the same time, the resolution affirms the states' commitment to engage constructively with FERC to find legally durable mechanisms to meet our shared goal of interconnecting large retail loads in a timely and non-discriminatory manner.

### NARUC'S INTEREST

NARUC is a nonpartisan nonprofit organization founded in 1889. Its members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of energy, telecommunications, and water utilities. NARUC is recognized by Congress in several statutes<sup>4</sup> and consistently by the Courts,<sup>5</sup> as well as

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<sup>3</sup> See, *Resolution Urging the Federal Energy Regulatory Commission to Preserve and Affirm State Retail Regulatory Jurisdiction in its Large Load Interconnection Proceeding* (November 12, 2025), which is attached.

<sup>4</sup> See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); see also 47 U.S.C. §254 (1996); see also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (explaining that “[c]arriers, to get the cards, applied to . . . [NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system”).

<sup>5</sup> See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985) (noting that “[t]he District Court permitted [NARUC] to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light*

a host of federal agencies,<sup>6</sup> as the proper entity to represent the collective interests of State utility commissions.

## BACKGROUND AND DISCUSSION

In his letter, the Secretary of the Department of Energy, Secretary Chris Wright, accurately points out that large loads, including AI data centers, served by utilities, should be able to connect to the grid in a timely and orderly manner and without undue discrimination. Further, NARUC applauds the Administration's goal of revitalizing domestic manufacturing and driving American AI innovation, and NARUC seeks to work with the Administration and FERC to achieve these goals. At the same time, as acknowledged in the ANOPR, FERC has never attempted to assert jurisdiction over end-user load interconnections. The reason for this fact is that FERC asserting jurisdiction over load interconnection is outside the boundaries imposed by the FPA.

Under the FPA, the jurisdictional line between the federal and state governments over utility services is a bright one. Section 201(b)(1) of the FPA states, “[t]he provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce but...shall not apply to any other sale of electric energy. The statute clearly preserves state authority over retail sales. Further, the statute stipulates that the Commission “shall not have jurisdiction... over the facilities used for the generation of

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*Co. v. ICC*, 687 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); *compare, NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

<sup>6</sup> NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, *mimeo* at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”).

electric energy.” In addition, FPA section 212(h) prohibits FERC from directing the provision of transmission directly to end users (retail wheeling). The FPA’s encompassing reservation to states of jurisdiction over retail rates and services includes retail load interconnection.

Section 201(b) of the 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.” Additionally, states’ authority over integrated resource planning, where applicable, derives from their reserved jurisdiction under Federal Power Act section 201(b), enabling states to oversee utilities’ long-term forecasting of electricity demand and evaluation of supply- and demand-side resources to meet that demand in a cost-effective, reliable, and sustainable manner.

As for its ratemaking authority, a state commission must determine the right balance between customer classes when determining retail rates for jurisdictional entities. If FERC were to assert jurisdiction over a service to a limited class of retail customers, it would interfere with the balancing performed by state regulators in retail rate cases, a determination that is solely a state decision, and which has significant rate impacts on all classes of customers.

The FPA specifically preserves the states’ jurisdiction over retail electric services. States engaged in the regulation of electricity transactions and services long before Congress established FERC’s predecessor, the Federal Power Commission. To close the Attleboro gap, Congress carved out jurisdiction over energy transactions in interstate commerce for the federal commission, leaving the rest with the states.<sup>7</sup> Jurisdiction over large load interconnection falls squarely within

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<sup>7</sup> *Public Util. Comm’n v. Attleboro Steam & Elec. Co.*, 273 U.S. 83, 89 (1927); Compare, *New York v. Federal Energy Regulatory Comm’n*, 535 U.S. 1, 5-6 (2002)(“*New York*”)(“Prior to 1935, the States possessed broad authority to regulate public utilities, but this power was limited by our cases holding that the negative impact of the Commerce Clause prohibits state regulation that directly burdens interstate commerce.[] When

the residual intrastate oversight originally undertaken by states and continuously exercised thereafter. Section 824(a) of the FPA provides that FERC's authority "extend[s] only to those matters which are not subject to regulation by the States."<sup>8</sup> The essential nature of retail electricity makes the rates, services, and operations of public utilities "affected with a public interest" and subject to the police powers of the state.<sup>9</sup>

FERC has recognized "that the States retain significant control over local matters ..."<sup>10</sup> As the Supreme Court noted in *New York*, FERC admitted in Order 888 that its authority does not "encroach upon state authority in such traditional areas as the authority over **local service issues**, including reliability of local service; **administration of integrated resources planning** and utility buy-side and demand-side decisions, including DSM; authority over utility generation and resources portfolios; **and authority to impose non-bypassable distribution or retail stranded cost charges.**"<sup>11</sup> FERC also acknowledged in Order 888, that it did not assert jurisdiction to order retail transmission directly to an ultimate retail consumer because states retained "authority over the service of delivering electric energy to end users . . . . State regulation of most power production and virtually all distribution and consumption of electric energy is clearly distinguishable [from

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confronted with an attempt by Rhode Island to regulate the rates charged by a Rhode Island plant selling electricity to a Massachusetts company, which resold the electricity to the city of Attleboro, Massachusetts, we invalidated the regulation because it imposed a "direct burden upon interstate commerce."... [c]reating what has become known as the "*Attleboro* gap"... When it enacted the FPA in 1935,[] Congress authorized federal regulation of electricity in areas beyond the reach of state power, such as the gap identified in *Attleboro* . . . Specifically, in § 201(b) of the FPA, Congress recognized the FPC's jurisdiction as including "the transmission of electric energy in interstate commerce" and "the sale of electric energy at wholesale in interstate commerce." 16 U. S. C. § 824(b)."} {footnotes omitted}

<sup>8</sup> 16 U.S.C. § 824(a).

<sup>9</sup> See, *Munn v. Illinois*, 94 U.S. 113, 125-126 (1877).

<sup>10</sup> *New York v. FERC*, 535 U.S. at 24 (citing Order No. 888, at 31,782, n. 543).

<sup>11</sup> *Id.*,(emphasis added).

the Commission's objective of Order 888 and, therefore, Order 888 is not] inconsistent with traditional state regulatory authority in this area."<sup>12</sup> FERC, through its lack of assertion of authority, in essence has recognized that load interconnection is within the state's traditional regulatory authority that the FPA specifically reserved to the states.

Aside from the fundamental jurisdictional issue, from a policy perspective, the states are well positioned to make decisions on load interconnections necessary to support the best interests of their citizens. Retail load interconnections are an important part of these state interests. Thus, the venue for a retail end-use customer who is directly affected by the services provided by the electric supplier is a state commission. These end-use customers can seek recourse from state regulators' decisions by directly participating in state proceedings and through the process of electing or influencing the appointment of state regulators.

State public utility commissions retain jurisdiction over retail load interconnections, regardless of size, however, it is also true that the United States and its citizens will benefit from interconnecting large loads in a timely and non-discriminatory manner. Throughout this proceeding and future ones, NARUC pledges to engage with regulated entities and other stakeholders to explore consensus solutions for FERC's consideration that will help meet national goals for large load interconnection, while avoiding disputes over jurisdiction that would impede achieving our shared goals. Working together, under the concept of cooperative federalism, will lead to optimal solutions. Although the compressed timeline for comments in this initial phase of the ANOPR proceeding inhibits the states' ability to offer more specific guidance at this time, we will continue to engage in these worthwhile efforts.

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<sup>12</sup> *Id.*, 535 U.S. at 37 note 9 (Thomas, J., dissenting).

NARUC respectfully requests that the FERC bring federal and state regulators together for a detailed examination of the challenges and goals. Through this process, NARUC believes that a solution can be developed to achieve the Administration's goals and avoid unintended consequences for consumers, and while still adhering to the parameters of the FPA.

## CONCLUSION

NARUC encourages FERC to work collaboratively with NARUC and the state public utility commissions to find solutions that do not infringe upon the states' historic authority over retail services, including the interconnection of end-use customers.

Respectfully submitted,

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Dated: November 21, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC: November 21, 2025

Respectfully submitted,

/s/ Kimberly W. Duffley

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***Resolution Urging the Federal Energy Regulatory Commission to Preserve and Affirm State Retail Regulatory Jurisdiction in its Large Load Interconnection Proceeding***

*Whereas* on October 23, 2025, the Secretary of Energy issued a letter pursuant to section 403 of the Department of Energy Organization Act directing the Federal Energy Regulatory Commission (FERC) to initiate rulemaking procedures and consider the proposed Advanced Notice of Proposed Rulemaking (ANOPR) presenting reforms to ensure the timely and orderly interconnection of large loads to the transmission system;

*Whereas* the states acknowledge the policy priorities expressed by the Secretary, and agree that ensuring efficient, timely, and non-discriminatory interconnection of large loads, including AI data centers, requires prompt and thoughtful consideration by regulators;

*Whereas* to ensure that any Final Rule resulting from the ANOPR process is durable, legal, and does not unintentionally lead to resource adequacy challenges or more delays to the large load interconnection process, it is particularly important that FERC give thoughtful consideration to the concerns of the States and other interested parties;

*Whereas* the ANOPR asserts FERC jurisdiction over the interconnection of large loads to the transmission system;

*Whereas* the ANOPR recognizes that section 201(b) of the Federal Power Act grants the States with 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);

*Whereas* while the ANOPR disclaims any intention to assert jurisdiction over distribution interconnections, it is imperative that FERC, in any final rulemaking, make clear that it is affirmatively not asserting jurisdiction over end-use sales, which falls squarely within the exclusive jurisdiction of state retail energy regulatory authorities;

*Whereas* state utility commissions are responsible for ensuring resource adequacy and the reliability and affordability of electric service for retail customers;

*Whereas* states’ authority over integrated resource planning, where applicable, derives from their reserved jurisdiction under Federal Power Act section 201(b), enabling states to oversee utilities’ long-term forecasting of electricity demand and evaluation of supply- and demand-side resources to meet that demand in a cost-effective, reliable, and sustainable manner;

*Whereas* the North American Electric Reliability Corporation’s (NERC) 2024 Long-Term Reliability Assessment found that demand growth is now higher than at any point in the past two decades due to demand growth from large loads, with aggregated United States winter peak load forecasted to grow by 21.5 percent to 843 gigawatts by 2034;

*Whereas* in 2023 fifteen states accounted for 80 percent of the national data center load, reflecting the diverse landscape of regional opportunities and challenges presented by large load growth across the United States;

*Whereas* any 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;

*Whereas* the costs of large load interconnections, including necessary transmission upgrades and other infrastructure investments, may unfairly burden retail ratepayers if not properly allocated;

*Whereas* under the Federal Power Act, the states retain the ability to implement protective measures, such as large load tariffs and flexibility requirements, and the ability to incentivize large loads to invest in local communities, including through programs such as facilitating large loads to interconnect more rapidly while bringing direct economic benefits to the community in the form of funding virtual power plants, non-transmission alternatives or demand-side management programs;

*Whereas* at least 20 states have approved or have pending large load tariffs or similar measures, which may include financial commitments, curtailment protocols, and minimum contract terms to allow for the rapid interconnection of large loads without compromising grid reliability or unduly burdening existing retail customers;

*Whereas* state regulatory authorities have the expertise and authority to balance economic development associated with large loads with the protection of retail customers, and seek to ensure the ANOPR proceeding does not undermine these efforts, disrupt orderly grid planning, and lead to further resource adequacy and affordability challenges;

*Whereas*, for all of the reasons stated above, the states strongly encourage FERC to carefully consider the perspectives of state regulators and other stakeholders to ensure any rulemaking proceeding does not inadvertently create additional challenges to resource adequacy, reliability, and affordability for retail customers;

*Whereas* the states look forward to working with FERC and other interested parties to develop a durable and meaningful resolution to the ANOPR proceeding; now, therefore it be

*Resolved* that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2025 Annual Meeting and Education Conference in Seattle, Washington urges the FERC to preserve and affirm states' retail regulatory authority under the Federal Power Act, ensure that large load interconnections do not compromise grid reliability or impose undue costs on retail customers, and respect state tools for promoting system flexibility and equitable cost allocation.

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*Passed by the Committee on Electricity on November 10, 2025.*

*Adopted by the NARUC Board of Directors on November 11, 2025.*

Document Content(s)

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