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DOE's Data Center Proposal May Spark Grid Policy Turf War

By **Keith Goldberg**

Law360 (October 29, 2025, 9:55 PM EDT) -- The Trump administration's push to convince the Federal Energy Regulatory Commission to enable the connection of data centers to the interstate transmission system may ignite a legal turf war with states over their authority to regulate retail electricity sales.

The U.S. Department of Energy recently asserted that FERC can exercise its Federal Power Act jurisdiction to develop standard grid interconnection procedures for data centers and other large power customers, just as the agency has previously done for power generation projects. However, that assertion appears to conflict with the decades-old view that the FPA grants states exclusive authority to regulate retail electricity sales.

Former FERC chairman Mark Christie, who also spent 17 years as a utility regulator in Virginia, told Law360 that FERC exerting direct authority over a retail electricity customer would represent a major power grab.

"I think this is a great intrusion on state authority," said Christie, who now directs William & Mary Law School's new Center for Energy Law & Policy.

FERC on Tuesday established a new docket to consider the DOE's proposal, which asks the agency to act by May. Initial comments are due Nov. 14 and reply comments are due Nov. 28.

There are already signs of pushback. The National Association of Regulatory Utility Commissioners, an umbrella advocacy group for state utility regulators, was petitioned Tuesday to approve at its annual meeting next month a resolution urging FERC to substantially modify the DOE's proposal.

The group's proposed resolution, sponsored by Virginia Corporation Commission member Kelsey Bagot — a former legal adviser to Christie at FERC — argues that modifications are needed to preserve states' exclusive authority over retail electricity sales and ensure other retail customers aren't saddled with unjust costs.

In a letter to FERC commissioners that accompanied last week's proposal, Energy Secretary Chris Wright acknowledged that FERC historically hasn't exercised jurisdiction over electricity load interconnection. But Wright said he believed that interconnection of large loads is "squarely within the commission's jurisdiction."

The DOE's legal justifications for its proposal, including that large-load interconnections are a "critical

component of open access transmission service," appear to lean heavily on a 2000 U.S. Supreme Court dissent by Justice Clarence Thomas in New York v. FERC, in which the court affirmed FERC's landmark Order No. 888 that established the agency's rules for allowing open access to the transmission grid.

The DOE cited Justice Thomas' contention, backed by two other justices, that the FPA gave FERC jurisdiction "over all interstate transmission, without qualification" and that the Supreme Court wrongly blessed FERC's decision not to regulate the transmission component of bundled retail electricity sales.

Even if that's the correct interpretation of the agency's authority, experts say states will emphasize that FERC has never regulated retail electricity customers as directly as the DOE's proposal asks it to do.

"Whatever the legal theory as to whether FERC actually has this much authority and can bootstrap New York v. FERC into this act, the fact is, it's never chosen to do that," Christie said. "If I was a state regulator, I would say: Why are you doing this?"

Crowell & Moring LLP energy regulatory partner and former FERC attorney Ruta Skučas said the DOE is trying to straddle the line between federal and state authority by tailoring its proposal to transmission-only interconnections, which would cover facilities with electricity demands, or loads, of at least 20 megawatts.

Skučas noted that FERC on Monday rejected a Colorado electricity cooperative's plan to manage the interconnection of large loads to its system, finding that the plan imposes specific conditions on agreements between the co-op's member utilities and large-load customers, which is "an impermissible intrusion on retail rate regulation."

"I think that is exactly what DOE is trying to do — large loads directly interconnected to the transmission system would fall under FERC's jurisdiction and the new policy that FERC develops," Skučas said. "Large loads less than 20 MW and connecting to the distribution system would be state jurisdictional. This is similar to the existing generator interconnection process."

But even if FERC can get past the threshold question of whether it has jurisdiction to regulate the interconnection of large loads, there are other ways the agency's policy development could inflame federal-state tensions, experts say.

For starters, several states and large utilities are crafting or have already crafted policies for connecting data centers and other large loads. Kent Chandler, a former chairman of the Kentucky Public Service Commission, said FERC will be required to show that the current state-by-state, utility-by-utility approach is unjust and unreasonable under the FPA.

"A lot of state commissions aren't going to be very happy to hear that DOE is now proposing to try and insert itself into something many of the states feel they're doing a very good job at," said Chandler, who is now a resident senior fellow in energy and environmental policy at the R Street Institute.

Experts say states could also argue that a federal interconnection policy for large loads undercuts their own electricity planning, contrary to the DOE's insistence that FERC's assertion of jurisdiction wouldn't intrude on state authority over siting of large-load facilities, electricity generation and assorted transmission.

"They are trying to increase the speed at which data centers can come online," said John Crossley, who leads K&L Gates LLP's energy, infrastructure and resources practice. "That is going to increase the demand curve for electricity at a time where we are already projecting to have a capacity shortage."

And while the DOE's proposal says any FERC interconnection policy should require large loads to pay for all grid upgrade costs assigned to them, there will be questions over whether the agency can craft cost allocation rules that ensure other retail customers aren't footing part of the bill.

"Putting all this with FERC ... is probably going to give people real concerns that wholesale costs are going to be determined, and then they're going to show up in retail rates in ways that state [utility] commissioners can't do anything about them," Chandler said.

FERC has been wrestling with how to update its grid policies to deal with the rapid growth of data centers and artificial intelligence. FERC commissioners in February unanimously voted to launch a review of co-locating data centers at power plants within the footprint of the nation's largest regional grid operator, PJM Interconnection, but have yet to issue an order on the matter.

At the very least, the DOE's proposal will force a nationwide conversation between FERC and state regulators over how the U.S. grid will accommodate the data center boom. And the lines between federal and state electricity jurisdiction have always evolved to reflect changed circumstances, according to Steptoe LLP energy regulatory partner Marc Spitzer.

"The reason for this proposal is the status quo is arguably not working because it's having trouble serving [electricity demand]," said Spitzer, a former FERC commissioner and Arizona utility regulator. "The relationships between the states and the federal government are not immutable."

--Editing by Kelly Duncan and Brian Baresch.
