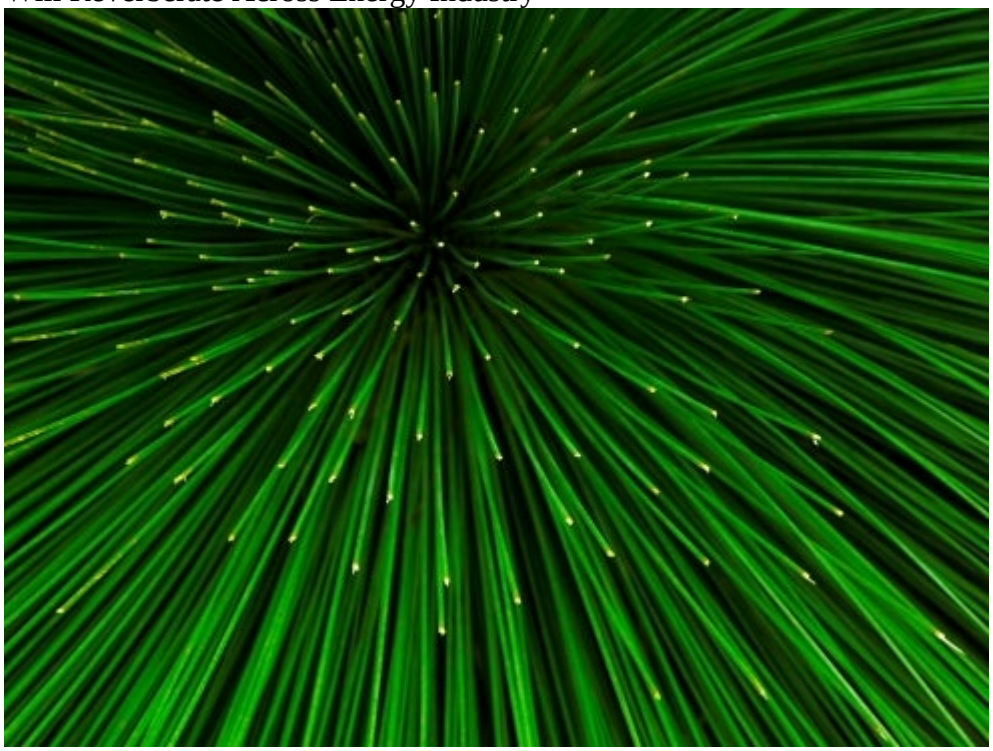
Updates
February 26, 2025
FERC Initiates Proceeding on Co-Location of Power Demand With Generating Facilities, Raising Issues That Will Reverberate Across Energy Industry



The Federal Energy Regulatory Commission (FERC) recently issued an order (Co-location Order) finding that the treatment of load that co-locates behind generating facilities' points of interconnection with the grid in the PJM region appears to be unjust, unreasonable, unduly discriminatory, or preferential; PJM's open access transmission tariff, operating agreement, and reliability assurance agreement (collectively, the Tariff) lack provisions that directly address the rates, terms, and conditions of service to participants in such co-location arrangements.[1] FERC consolidated the records of a related complaint filed by Constellation Energy and the commissioner-led technical conference held in November 2024 addressing load co-location issues. FERC also initiated a new proceeding in which it directed PJM and the transmission owners in the PJM region to show cause whether changes to the Tariff are necessary.

While the proceeding is nominally focused on PJM and its Tariff, the Co-location Order seeks briefing on a wide range of issues with general applicability. The outcome of this proceeding will have far-reaching implications for the scope of FERC's jurisdiction and set precedent for the way co-located loads are served across the country. Developers, utilities and customers contemplating co-locating loads with energy resources in any region should take note and consider participating in the briefing process.

The Co-location Order sweeps in many forms of co-located load and generation.

Co-location arrangements, which often involve large customers such as data centers and other manufacturing facilities, are "configuration[s] through which end-use customer load is physically connected to the facilities of an existing or planned generation unit on the interconnection customer's side of the point of interconnection to the [transmission operator's] transmission system."[2] The Co-location Order specifically does not limit the 206 proceeding to co-located loads of a certain size, however.[3] Moreover, co-located loads at *existing* generating facilities raise different issues from co-located loads at *planned new* generating facilities, all of which are on the

table to be addressed in this proceeding. *Id.* At P 48. Similarly, different configurations of co-located load can affect the grid differently. For example, co-located loads that are "fully isolated" and configured with protective relays that prevent the load from receiving electricity from the grid when its co-located generating resource is offline will interact with the grid differently from those that lack this configuration. *Id.* at P 73. In the underlying complaint and technical conference dockets, FERC received many, often directly contradictory comments regarding the extent of various configurations' impacts on grid reliability, transmission service, and resource adequacy, among other things. The Co-location Order seeks briefing on "whether and to what extent" different configurations of co-located load rely on or otherwise use the transmission system *Id.* at P 88, leaving it to respondents to parse the many possible structures and configurations and their potential grid impacts.

The Co-location Order raises critical questions regarding FERC's jurisdiction, including the extent of FERC's jurisdiction over interconnection of retail loads to the transmission system.

Co-location of end-use loads behind generating resources raises thorny issues regarding the extent of FERC's jurisdiction. Generally, FERC has jurisdiction under the Federal Power Act (FPA) over wholesale sales of electricity in interstate commerce, transmission of electric energy in interstate commerce, and the facilities used for such sales and services. *Id.* at P 66. But the FPA reserves for the states regulation of any other sales, including retail sales of electricity to end-users, and of facilities used for the generation and distribution of electric energy. *Id.* at P 67. Thus, states determine which entities can provide electricity to retail customers in co-location arrangements, but if a co-location arrangement involves a wholesale transaction to serve the end-user (as many do), that wholesale transaction is FERC-jurisdictional. *Id.* at P 68. Likewise, FERC has exclusive jurisdiction over transmission service in interstate commerce used to serve co-location arrangements, which FERC has interpreted to include generator interconnections to the interstate transmission system. *Id.* at P 72. Historically, FERC has not sought to extend this jurisdiction to interconnection of *retail loads* except in the narrow case of unbundled retail transmission service. *Id.*

The Co-location Order invites comment on these principles underlying FERC's jurisdiction, "[i]n particular, . . . when and under what circumstances a co-located load is interconnected to the transmission system in interstate commerce." *Id.* at P 73. FERC anticipates comments on the contours of its jurisdiction under specific fact patterns—for example, whether FERC has jurisdiction if a co-located load is connected to the interstate transmission system only via the co-located generator's interconnection facilities. Importantly, FERC seeks briefing on whether it "must, should, or can exercise jurisdiction over the interconnection of co-location arrangements to the transmission system in interstate commerce as an element of transmission service, including where the purpose is to facilitate a retail sale." *Id.* FERC asks "both what general standard should apply" (*Id.*), as well as for specific illustrative examples, underscoring the far-reaching impact of a final ruling in this proceeding.

Responsibility for the costs necessary to build and operate the transmission grid reliably will be front and center.

FERC found that the Tariff did not specify how it categorizes co-location arrangements or the wholesale services and charges applicable to co-location arrangements. *Id.* at P 74. Lacking such provisions, said FERC, there is a risk that the Tariff does not require co-location arrangement participants to pay for the wholesale services they receive and, thus, that the rates for co-location arrangement participants would neither reflect the costs these participants cause nor allocate costs in a manner roughly commensurate with the benefits these participants receive. *Id.* FERC identified many other issues with the Tariff that confuse its treatment of co-location arrangements: Transmission owners are taking different approaches to accommodating co-location arrangements, raising the potential for undue discrimination or preferential treatment (*Id.* at P 75); it is unclear how co-location arrangements "benefit from or contribute to the need for certain ancillary services and black start services;" the Tariff does not specify how to allocate costs to those services to co-location arrangements (*Id.*

at P 82); and the Tariff "lacks rules necessary to provide PJM with sufficient information to perform appropriate analysis to ensure reliable system operations given the characteristics of co-location arrangements[.]" *Id.* at P 83.

FERC ordered PJM and PJM transmission owners to brief a multitude of issues, including the costs that co-location configurations impose on the transmission system; whether co-location configurations should be required to take network integration transmission service, point-to-point transmission service, or a more tailored category of transmission service; what kinds of special protection schemes or backup arrangements would be necessary to prevent a co-location arrangement from ever needing to take transmission service; the extent to which co-location arrangements benefit from ancillary services, such as black start service and the associated costs; several questions related to the appropriate interconnection studies and agreements for co-location arrangements; co-location arrangements' effect on resource adequacy, reliability, the PJM market, and appropriate mitigation measures; and the fairness of diverting the output of existing generation units that consumers originally paid for to exclusively serve co-location arrangements with one or a few large customers. *Id.* at P 88. Few, if any, transmission operator tariffs across the United States specifically address these topics, but co-location arrangements are sprouting around the country, so the precedent set in this proceeding is likely to have ripple effects in other regions as well.

FERC directed PJM and the PJM transmission owners to respond to the Co-location Order by March 24, 2025, [4] and allowed interested entities to respond within 30 days of PJM's filing, or by April 23, 2025. However, interested entities must intervene in the new 206 proceeding within 21 days of the issuance of the Co-location Order (*i.e.,* by March 13, 2025).

Endnotes

[1] *PJM Interconnection, L.L.C., et al.*, 190 FERC ¶ 61,115 at PP 1, 74 (2025).

[2] *Id.* at P 3. For a primer on co-location, increasing demand from data centers associated with advancements in artificial intelligence, and navigating the multiple competing interests in meeting data center power needs, see our article, "Plugged In & Parched: Strategic Data Center Siting in a Resource-Constrained World."

[3] *Co-location Order* at P 3 n.5.

[4] The response is required 30 days after the issuance of the Co-location Order, which falls on a Saturday. Therefore, the response is due the next business day.

Authors

Explore more in

Environment, Energy & Resources | Infrastructure Development | Energy & Natural Resources | Energy Infrastructure & Clean Technology

Related insights

Update

Corporate Transparency Act: FinCEN Reinstates Reporting Requirements With March 21 Deadline

Update

President Trump Creates “Make America Healthy Again” Commission