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 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

On October 27, 2025, the Federal Energy Regulatory Commission (Commission or FERC) issued a Notice Inviting Comments in this docket subsequent to a directive from the Secretary of Energy pursuant to section 403 of the Department of Energy Organization Act. The South Dakota Public Utilities Commission (SDPUC) joins in the comments of the Organization of MISO States, Inc., and respectfully submits the following comments in response to the Commission's Advanced Notice of Proposed Rulemaking (ANOPR).

The SDPUC acknowledges and appreciates both the Commission's initiative in addressing new large loads, as well as the Commission's historic and recent adherence to the jurisdictional boundaries set forth in the Federal Power Act and principles of cooperative federalism.

I. Introduction and Summary

The SDPUC is statutorily charged with the duty of regulating the service territories of electric utilities in South Dakota, as well ensuring that regulated utilities in this state provide adequate, efficient, and reasonable service at just and reasonable rates.[1] In addition, the South

[1] See South Dakota Codified Law (SDCL) chapter 49-34A.

Dakota Legislature has charged the SDPUC with ensuring the energy needs of the people of the state are met by vesting the SDPUC with siting authority over certain energy conversion and transmission facilities.[2]

The SDPUC is led by three elected commissioners and is honored to be one of the most tenured commissions in the country, with a long history of working collaboratively with customers, electric utilities, industry stakeholders, and regional transmission organizations, as well as our federal counterparts to promote reliable, affordable, and efficient electric service. We applaud the Commission's goal of pursuing efficient interconnection for large load customers. However, we want to emphasize the importance of recognizing and respecting state jurisdiction and avoiding unintended consequences. The SDPUC asks the Commission to fully consider the potential impacts to state jurisdiction, incumbent utilities, and, most importantly, all customers when determining whether the commission should expand its jurisdiction by redefining what has historically been state jurisdiction due to the need for local distribution facilities (at some point during the delivery of electricity and regardless of voltage) to serve a large load end use customer.

II. Service and Communications

All pleadings, correspondence, and communications related to this proceeding may be directed to:

Kristen N. Edwards
Commission Counsel
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
(605) 773-3201
Kristen.edwards@state.sd.us

[2] See SDCL chapter 49-41B.

III. COMMENTS

In the ANOPR, the Commission expresses its intention not to "impinge on States' authority over retail electricity sales by asserting jurisdiction over the interconnection of large loads to the transmission system."[3] Nonetheless, the unintended consequence of expanding the definition of the transmission system may do just that.

A. The need to preserve the seven-factor test.

Established by Order No. 888, the Commission has long employed the seven-factor test to determine whether a facility should be classified as transmission or distribution. This classification and the ability to rely upon it are important for jurisdictional and ratemaking purposes. The seven factors, which are applied on a case-by-case basis and upon an evaluation of the totality of the circumstances, are

> (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; it 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 geographical area. (6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system. (7) Local distribution systems will be of reduced voltage.[4]

This standard has remained in place for nearly three decades, having survived and guided

[3] ANOPR at ¶15.
[4] FERC Order No. 888, 61 Fed. Reg. at 21,620.

many court cases. In discussing this test, the United States Supreme Court noted that the Commission "has not attempted to control local distribution facilities through Order No. 888. To the contrary, [the Commission] has made clear that it does not have jurisdiction over such facilities, … and has merely set forth a seven-factor test for identifying those facilities, without purporting to regulate them."[5]

In the ANOPR, the Commission references the seven-factor test and the need to strictly adhere to it.[6] We urge the Commission to not only adhere to the test but to refrain from altering the test or making other changes that would redefine which facilities are considered transmission subject to FERC's jurisdiction. Altering this precedent would lead to loss of regulatory certainty and could result in conflicts between federal regulation and state-approved tariffs.

B. Unintended consequences of redefining transmission facilities.

Much of the balance of state and federal jurisdiction rests upon the defining of transmission and distribution systems. If the seven-factor test is not preserved, expanding which facilities classify as transmission could create a new class of customers whose rights and privileges extend beyond, and conflict with, state law.

For example, under South Dakota law, an incumbent utility may not be forced to wheel power for an end-user on its distribution system. In addition, South Dakota is not a retail choice state. Therefore, unless a customer self-generates behind the meter, the customer must purchase power from an electric utility. For loads under two megawatts, that electric utility must be the local incumbent utility. An unintended consequence of

[5] *New York v. FERC*, 535 U.S. 1, 23, 122 S.Ct. 1012, 152 L.Ed. 47 (2002).
[6] ANOPR at ¶18.

allowing large load customers to connect directly to the transmission system could be that the customer is able to generate its own power offsite and wheel the power through the transmission system to serve itself. This type of arrangement could lead to unintended consequences such as: 1) exposing existing customers to higher LMP pricing due to congestion, 2) causing the local transmission owner to build additional transmission to address reliability issues created by the large load (which costs would then be assigned to the local zone and recovered from all customers in the zone), 3) lead to resource adequacy challenges, and 4) will deprive other customers of benefits of the large load.

C. South Dakota supports the planning process developed by the Southwest Power Pool.

South Dakota is served by two regional transmission organizations (RTO), the Southwest Power Pool (SPP) and Mid-Continent Independent System Operator (MISO). SPP has worked to expedite the interconnection of large loads such as with their High Impact Large Load (HILL) proposal, recently filed with FERC.[7] The HILL process provides an excellent framework for an interconnection process that meets the rapidly increasing demand for electricity while leaving state jurisdiction intact, protecting legacy customers, and promoting regulatory certainly.

Like SPP, MISO has worked to facilitate the interconnection of large loads on its system. MISO established a mechanism, known as the Expedited Project Review process, to quickly study and approve transmission projects that are necessary to meet urgent reliability

[7] FERC Docket No. ER26-247.

requirements, many of which are associated with large load additions.

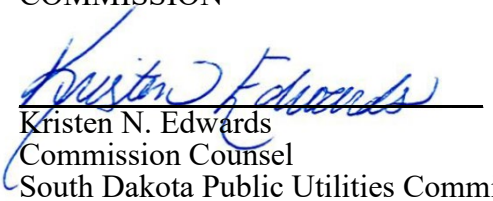
The SPP and MISO approaches to large load interconnection represent well-vetted processes which resulted from significant stakeholder input and buy-in. Both approaches help to address the challenges associated with large load customers while respecting and maintaining state and federal jurisdiction. The SDPUC supports the work the RTOs are doing and would advocate for a similar large load interconnection process, one that is limited in scope, to be adopted should FERC move forward with a rule making.

IV. CONCLUSION

The SDPUC respectfully asks the Commission to be aware of the potential impacts this action might have and to work to avoid impinging on states' rights by altering definitions or past practices and, thus, moving the jurisdictional needle. Like our federal counterparts, we strive for the development of a safe, reliable, and efficient system, while safeguarding customers from increasing costs. We advocate for a system that is orderly constructed, non-discriminatory, and that allows our vertically-integrated incumbent utilities to continue to provide retail service to customers pursuant to their state-mandated service obligations.

Dated this 13th day of November 2025.

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION



Kristen N. Edwards
Commission Counsel
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
(605) 773-3201

CERTIFICATE OF SERVICE

I, Kristen N. Edwards, hereby certify that I served a true and correct copy of the foregoing Comments of The South Dakota Public Utilities Commission, pursuant to Rule 2010, 18 C.F.R. § 385.2010, by causing the same to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Pierre, South Dakota this 13th day of November 2025.

Kristen N. Edwards
Commission Counsel
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
(605) 773-3201