Published on *The National Law Review* https://natlawreview.com

FERC's Rejection of Data Center Co-Location Amendments to a Pennsylvania Nuclear Power Plant's Interconnection Agreement Raises Big Questions About What's Next

Article By:

Nathan H. Carrier

Maria C. Faconti

Kimberly Frank

Matthew H. Leggett

Chimera N. Thompson

On 1 November 2024, the Federal Energy Regulatory Commission (FERC) rejected amendments to an interconnection agreement that would have increased the Susquehanna nuclear power plant's capacity dedicated to serving an on-site data center. Three commissioners participated in the decision. The order, written by Republicans Mark Christie and Lindsay See, concluded that the grid operator failed to meet the high burden of proving the necessity of the amendments. Democratic Chairman Willie Phillips dissented, arguing that the co-located load configuration presented exactly the reliability and legal issues that justified the need for the amendments. The remaining two Democratic commissioners, David Rosner and Judy Chang, did not participate in the decision.

This ruling, alongside recent FERC discussions about grid reliability and co-locating large loads, creates questions about data centers' access to adequate electricity supplies in the near term, which is crucial to the US maintaining leadership in artificial intelligence (AI). With upcoming leadership changes at FERC and in Congress, the electric regulatory landscape for co-located large loads is likely to remain uncertain.

Background and the Decision

The proposed amendments filed by PJM Interconnection, L.L.C. (PJM) on 3 June 2024, sought to increase the co-located load at the Susquehanna nuclear power plant from 300 megawatts to 480 megawatts and make further revisions related to the treatment of co-located load.[1] This was the third

set of co-located load-related changes to the interconnection agreement, but unlike prior amendments these changes were opposed. In FERC's decision, the majority rejected the proposal, finding that PJM had not demonstrated that the proposed nonconforming provisions in the amended interconnection agreement were necessary deviations from the pro forma interconnection agreement in PJM's tariff on file with FERC.[2]

In the order, the majority was not convinced by PJM's representation that the proposed amendments had been developed to address the circumstances of this particular interconnection and that approval could thus be limited to these particular circumstances, noting that "significant aspects of the proposed non-conforming provisions rely heavily on a generally applicable document, the PJM Guidance Document."[3] The majority questioned whether PJM intends to offer these terms to all similarly situated interconnection customers.

In finding that PJM had not met its burden to demonstrate the amendments were necessary, the order's limited discussion of the substantive issues does not provide much in the way of guidance. The lack of clarity further risks creating uncertainty about the co-location of large loads. It also creates new questions about what information transmission providers need to submit to FERC when proposing language that departs from a *pro forma* interconnection agreement in circumstances where co-location is involved.

Commissioner Christie's concurrence contends that co-location agreements present an array of complicated issues that could have huge ramifications for grid reliability and consumer costs. Approving the amendments would be setting a precedent to justify identical or similar co-location arrangements. In his view, the record in the docket does not show that rejection of the amendments implicates broader reliability and national security concerns, as Chairman Phillips describes in his dissent. Although Commissioner Christie appears open to considering whether a proposed co-location arrangement is reasonable, he bases his decision in this proceeding on his belief that an approval in this instance is not supported by the record.

In his dissent, Chairman Phillips argues that the co-located load configuration is the "first of its kind" and presents precisely the kind of specific reliability concerns, legal novel issues, and other unique factors to justify accepting a nonconforming interconnection agreement. For the Chairman, FERC's rejection of the amendments is a "step backward for both electric reliability and national security."[4] He believes US leadership in AI is necessary for maintaining national security, and continuing US leadership in the space will require unprecedented investment in data centers. Reliable electricity supplies are the "lifeblood" of data centers.[5]

This decision is meaningful in the context of other significant FERC actions around co-location, including the 1 November 2024 FERC Commissioner-led technical conference to discuss co-location of large-load customers with generating facilities, which provided further insight into how the commissioners view these issues. Topics discussed at the conference included whether co-location was a temporary or long-term solution to grid constraints; grid reliability and resource adequacy impacts of removing interconnected generation capacity; continuing challenges arising from the long time horizons for transmission infrastructure investment and protracted generator interconnection queue delays; new challenges in load forecasting and the need for greater visibility into grid-supplied large load plans; whether grid-supplied ancillary services provide benefits to co-located load; whether co-located load benefits in other ways from the transmission system; whether new large loads should bring their own generation to the system; and authority of federal and state regulators over co-located load arrangements.

FERC's order rejecting amendments to the Susquehanna interconnection agreement adds significant uncertainty regarding FERC's position on the co-location of large loads at the same time that FERC is grappling with regulatory and policy questions about system reliability and resource adequacy. Given the substantial recent and ongoing regulatory developments in this space, the new makeup of FERC, and the anticipated change in leadership to a Republican Chair at FERC, the emerging data center sector may be facing unprecedented regulatory risk in securing reliable electric supplies on the timeline needed for the United States to maintain leadership in AI.

One thing is certain: these issues will continue to come before FERC as the growth of data centers necessary to support the demand for AI presents pressing national security questions and industry concerns. They will likely also come before Congress where stakeholders will turn for oversight, hearing, and legislative activities to help influence and shape FERC's decisions and authorities under the Federal Power Act and other statutes. Next year's Senate activities to process nominees put forward by the incoming presidential administration at the Department of Energy, including its Office of Electricity, will inform the debate. While FERC has a full slate of commissioners today, Commissioner Christie's term expires on 30 June 2025. The nomination process to fill that seat will also be important.

Members of the firm's electric regulatory and data center practice can assist in better understanding the regulatory issues surrounding the co-location of large loads with generation facilities, as well as the specific regulatory challenges facing data centers' access to reliable electricity supplies.

Footnotes

[1] *See PJM Interconnection, L.L.C.*, Amended Interconnection Service Agreement by and among PJM, PPL Electric Utilities Corporation, and Susquehanna Nuclear, LLC, SA No. 1442; Queue No. NQ-123 (amend), Docket No. ER24-2172 (filed June 3, 2024).

[2] *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,078 (2024).

[3] *Id*. at P 87.

[4] PJM Interconnection, L.L.C., 189 FERC ¶ 61,078, at P 1 (2024) (Phillips, Chairman, dissenting).

[5] *Id*. at P 3.

National Law Review, Volume XIV, Number 316