

MEMORANDUM

TO: NEPOOL Transmission Committee
FROM: NEPOOL Counsel (Eric Runge, Day Pitney LLP)
DATE: October 13, 2026
RE: Summary of FERC Order Accepting in Part and Rejecting in Part PJM Large Load Tariff Revisions, Docket No. ER26-3515 (197 FERC ¶ 61,019)

This memorandum summarizes an order the Federal Energy Regulatory Commission (“FERC” or the “Commission”) issued on October 9, 2026, on PJM Interconnection, L.L.C.’s (“PJM”) August 13, 2026 filing under section 205 of the Federal Power Act (“FPA”).¹ PJM proposed revisions to its OATT and Reliability Assurance Agreement to establish: (1) a Large Load definition; (2) a Large Load Registry; (3) a new Interim Resource Adequacy Service (“IRAS”); (4) a requirement that LSEs serving New Large Load designate new capacity at least equal to that load’s peak, failing which the load is exposed to IRAS; (5) rules for Bring Your Own New Capacity (“BYONC”) arrangements; and (6) exclusion of Eligible New Large Load from the Variable Resource Requirement (“VRR”) curve beginning with the 2029/2030 Delivery Year.² The Commission accepted only the Large Load definition and the Large Load Registry, effective October 12, 2026, and directed a compliance filing within 30 days. It rejected the rest of the proposal as an integrated package that is either outside the Commission’s jurisdiction or not shown to be just and reasonable and not unduly discriminatory.³ The Commission gave guidance for any refiling.⁴ Commissioner Rosner concurred separately.

Please contact Eric Runge (ekrunge@daypitney.com) with questions about this matter.

Executive Summary

- FERC accepts PJM’s Large Load definition (cumulative peak of 50 MW or more at a single electrical site; affiliated facilities within a one-mile radius are aggregated) and the Large Load Registry, effective October 12, 2026. The compliance filing is due in 30 days.
- FERC severs and rejects, without prejudice, the “New Large Load” definition and the entire IRAS/BYONC/VRR-exclusion package as inextricably linked.
- **Jurisdiction:** FERC finds the IRAS tariff language appears to (i) place obligations directly on Eligible New Large Loads, which are for the most part retail customers; (ii) dictate which retail customers will be curtailed; (iii) set a retail rate through the compensation mechanism; and (iv) let retail regulators set a wholesale rate. FERC notes the construct

¹PJM Interconnection, L.L.C., 197 FERC ¶ 61,019 (2026) (“Order”).

²*Id.* at P 1.

³*Id.* at PP 2, 13–15.

⁴*Id.* at PP 14, 106–111.

described in PJM’s transmittal “may be within the Commission’s jurisdiction,” but the tariff text is not.

- **Undue discrimination:** PJM did not show that retail customer characteristics (size, vintage) are material to resource adequacy. Historically, PJM has procured capacity for all NITS load comparably.
- **BYONC accreditation:** FERC rejects locking in a BYONC resource’s accredited UCAP for the term of the arrangement as unsupported. The lock-in risks creating new region-wide resource adequacy risk, and PJM’s tariff text conflicts with its own explanation.
- **Refiling guidance:** FERC flags (i) apparent conflict with NERC Reliability Standard EOP-011-4, which permits involuntary firm-load curtailment only after Emergency Energy Alert (“EEA”) 3; (ii) charging capacity costs for load for which PJM does not procure capacity; (iii) lack of deliverability conditions for BYONC; (iv) disruption of existing commercial arrangements and Behind the Meter Generation netting; and (v) a voluntary, non-firm transmission service (similar to Non-Firm Contract Demand) as an alternative avenue.
- For ISO-NE, the Order bears directly on any BYONC-type requirement and on any approach that removes large loads from the Installed Capacity Requirement. It also sets the jurisdictional guardrails for responses in the ISO-NE large-load response to the show cause order in EL26-72.

I. Background

PJM stated that, beginning with the 2027/2028 Delivery Year, it will be short of capacity to meet the PJM Region Reliability Requirement, driven particularly by data center load growth and the pace of data center interconnection.⁵ PJM described each element as severable and consented to Commission modification or severance under *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017), “where such modification is consistent with PJM’s overarching objectives.”⁶ PJM requested an October 12, 2026, effective date so that it could modify VRR planning parameters for the 2029/2030 Base Residual Auction scheduled for December 2026.⁷ Large numbers of parties intervened and protested, including states, consumer advocates, data center developers, generators, utilities, and the IMM. The Commission accepted late interventions and comments as well as answers.⁸

II. Summary of Determinations

A. Overview and Severance

The Commission found that the Large Load definition and Registry can be implemented independently of IRAS and BYONC. It found the remaining elements “not simply complementary, but instead ... inextricably linked.” In particular, the obligation on LSEs using NITS to serve New Large Load to bring new capacity or face curtailment is foundational to IRAS, BYONC, and the

⁵ *Id.* at P 3.

⁶ *Id.* at P 4.

⁷ *Id.*

⁸ *Id.* at PP 5–11.

VRR exclusion.⁹ Citing “significant discrepancies” between PJM’s transmittal and its tariff language, and a lack of justification, the Commission rejected the package while offering guidance for any refiling.¹⁰

B. Definition of Large Load (Accepted)

1. **50 MW threshold.** The threshold strikes a just and reasonable balance between capturing loads that require visibility for reliability and excluding smaller loads. Any cutoff inevitably excludes loads just below it.¹¹
2. **All load types.** The Commission rejected protests seeking to limit the definition to data centers or to exclude manufacturing. Protesters did not show other large loads differ in magnitude, transmission impact, or resource adequacy effect.¹²
3. **Alternatives.** Under section 205, the Commission evaluates whether the filed proposal is just and reasonable, not whether alternatives are better.¹³
4. **One-mile/single electrical site rule.** This rule is accepted to prevent avoidance through siting multiple sub-50 MW facilities close together. “Affiliate” is already a defined Tariff term, and measurement methods are implementation details appropriate for the Manuals.¹⁴
5. **New Large Load.** This definition is fundamentally part of the IRAS package, so it is severed and rejected without prejudice. PJM is encouraged to tailor any refiled definition to protect existing commercial arrangements.¹⁵
6. **Compliance.** PJM must refile within 30 days the OATT and RAA definition of Large Load only, without references to New Large Load. The proposed tariff records were rejected because they contained IRAS/BYONC language.¹⁶

C. Large Load Registry (Accepted)

1. **Purpose.** The Registry requires LSEs to provide PJM with information on the Large Loads they serve. This gives PJM the information it needs to forecast load growth, plan and manage the transmission system, and address operational impacts. It has value separate and apart from IRAS and covers all Large Loads regardless of in-service date.¹⁷
2. **Access and confidentiality.** Making Registry information available to Authorized Commissions, Transmission Owners, Electric Distributors, LSEs, the IMM, and the Commission under PJM’s existing, Commission-approved confidentiality rules is just and

⁹*Id.* at PP 13–15.

¹⁰*Id.* at P 14.

¹¹*Id.* at P 27 (citing *Southwest. Power Pool, Inc.*, 194 FERC ¶ 61,031 at PP 10, 61 (2026); *Tri-State Generation & Transmission Ass’n, Inc.*, 196 FERC ¶ 61,127 at P 76 (2026)).

¹²*Id.* at P 28.

¹³*Id.* at P 29 (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984)).

¹⁴*Id.* at P 30.

¹⁵*Id.* at P 31.

¹⁶*Id.* at PP 27 n.39, 32.

¹⁷*Id.* at P 48 & n.90.

reasonable. Only aggregate data will be posted publicly. Requests from state consumer advocates for access were rejected.¹⁸

3. **Responsibility and costs.** The LSE bears the reporting obligation, and Electric Distributors may supply information where the LSE lacks it. SMECO's cost-recovery concern was rejected because it did not explain what costs it would incur, whether those costs relate to a wholesale service, or what information it does not already possess. Industrial customers will be included in the Registry for informational purposes only.¹⁹
4. **Issues not reached; compliance.** Protests tied to IRAS (telemetry, state access for curtailment design) were not addressed given the rejection of IRAS.²⁰ PJM must refile the Registry provisions with IRAS/BYONC language removed.²¹

D. The IRAS Package

1. **Proposal.** PJM would issue IRAS Actions (NERC "Operating Instructions") directing Electric Distributors to reduce load attributable to Eligible New Large Loads not offset by BYONC or Reliability Backstop Procurement UCAP. Actions would generally come after EEA1 and before Pre-Emergency Load Management. IRAS would be suspended after three consecutive Delivery Years of meeting Reliability Requirements. Compensation would be capped at 50% of the Capacity Performance Non-Performance Charge Rate, reducible or waivable by the Eligible New Large Load in its retail rate. BYONC resources would be subject to a 10-year must-offer requirement, a \$0/MW-day price-taker requirement, and a UCAP value fixed when the resource first clears. Beginning in 2029/2030, New Large Load MW not covered by BYONC or backstop capacity would be excluded from the VRR curve regardless of whether a shortfall exists.²²
2. **Jurisdiction (PP 56–83).** PJM's position was that IRAS falls within FERC's transmission and wholesale jurisdiction: PJM would direct Electric Distributors to reduce an aggregate MW quantity rather than directing specific customers, leaving retail curtailment and cost allocation to states and RERRAs, analogous to Order No. 719 demand response.²³ Protesters argued IRAS directly regulates retail customers, uses Electric Distributors as conduits, compels states, sets a retail rate, and delegates wholesale ratemaking to states. Supporters (including Governor Shapiro, PIOs, Appalachian Voices, and the IMM) characterized IRAS as a wholesale reliability product.²⁴

The Commission determined that certain aspects "appear to present an impermissible intrusion on retail rate regulation" and are not subject to section 205 authority.²⁵ Relying on FPA section 201 and *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260 (2016) ("EPSA"), the Commission reiterated that it may regulate practices directly affecting

¹⁸*Id.* at P 49.

¹⁹*Id.* at P 50.

²⁰*Id.* at P 51.

²¹*Id.* at P 48 & n.91.

²²*Id.* at PP 53–55.

²³*Id.* at PP 56–59.

²⁴*Id.* at PP 60–76.

²⁵*Id.* at P 77 (citing 16 U.S.C. §§ 824(b), 824e(a)).

wholesale rates. However, no matter how direct, or dramatic, the wholesale impact is, it may not regulate retail sales or specify terms of retail sale.²⁶ Specifically:

- (a) **Obligations on retail customers.** The tariff defines IRAS as a service “through which New Large Loads reduce load,” and states that “[a]ll Eligible New Large Loads shall be available” to provide it. While the construct described in PJM’s transmittal “may be within the Commission’s jurisdiction,” the tariff text places obligations directly on Eligible New Large Loads, and PJM’s answer failed to engage with that inconsistency. FERC noted a narrow exception for a large load taking unbundled retail transmission service under state law.²⁷
- (b) **Dictating retail curtailment.** Requiring Electric Distributors to implement IRAS “among the Eligible New Large Loads” specifies the class of retail customers to be curtailed.²⁸
- (c) **Retail rate.** The tariff directs compensation to Eligible New Large Loads, funded by charges to other retail customers. Arguments that a wholesale customer or LSE would be paid appear nowhere in the tariff, payment is not guaranteed, and the load itself may reduce or waive compensation.²⁹
- (d) **Retail regulators setting a wholesale rate.** Allowing the Electric Distributor, in consultation with the RERRA, to determine who pays and at what level is read as allowing a retail regulator to set a wholesale rate.³⁰

3. **Undue Discrimination (PP 84–95).** PJM relied on the “separate category” of large loads recognized in the large-load show cause orders and in the SPP CHILLS order.³¹ Protesters argued size and vintage are not material to capacity burdens, and that IRAS creates an inferior subclass of NITS customers paying the same rates.³²

The Commission determined that PJM did not offer sufficiently detailed evidence that treating Electric Distributors and LSEs taking NITS differently, based on their retail customers’ characteristics, is not unduly discriminatory. Historically, PJM’s capacity market has procured capacity for all NITS load regardless of retail class or vintage. “Generic references” to large-load characteristics do not overcome that construct.³³ On any refiling, PJM should either provide further justification or not expressly single out LSEs or Electric Distributors based on New Large Loads. States have “a crucial role” in designating which retail customers are curtailed.³⁴

²⁶*Id.* at PP 78–79.

²⁷*Id.* at PP 77 n.165, 81.

²⁸*Id.* at PP 80–81.

²⁹*Id.* at P 82.

³⁰*Id.* at P 83.

³¹*Id.* at PP 84–85.

³²*Id.* at PP 86–92.

³³*Id.* at P 94 (citing *Tenaska Clear Creek Wind, LLC v. FERC*, 108 F.4th 858, 868 (D.C. Cir. 2024)).

³⁴*Id.* at P 95.

4. **BYONC Accreditation (PP 96–105).** The Commission determined that PJM did not justify locking in a BYONC resource’s accredited UCAP for the arrangement term. Effective load carrying capability (“ELCC”) accreditation is designed to create a single, interchangeable capacity product. A locked-in value that exceeds actual capability could create a new region-wide resource adequacy risk, given the potential magnitude of BYONC MW (PJM’s own forecast projects declining ELCC values). PJM’s assertion that ELCC risk stays with generators conflicts with its tariff text fixing accredited UCAP at the initial auction value.³⁵
5. **Other Issues — Guidance for Refiling (PP 106–111).** Because the package was rejected, FERC did not reach the remaining merits. It flagged issues any refiling “that does not infringe on retail rate regulation” must address:³⁶
 - (a) **Reliability Standards.** NERC Reliability Standard EOP-011-4 permits curtailment of firm load only after the reliability coordinator initiates an EEA3. IRAS would involuntarily curtail a portion of a Transmission Customer’s firm NITS load at EEA1, which appears to conflict with the Standard and with PJM’s tariff curtailment priorities. Voluntary demand response may be curtailed earlier.³⁷
 - (b) **Cost causation/capacity charges.** LSEs serving Eligible New Large Loads would pay the same capacity charges while PJM does not procure capacity for that load (excluded from the VRR curve). This diverges from the PJM Co-Location Order principle that customers taking non-firm service for co-located load should not pay for capacity not procured on their behalf.³⁸
 - (c) **Deliverability.** BYONC lacks locational/deliverability conditions. A New Large Load could avoid IRAS regardless of transmission constraints between the load and its BYONC resource, worsening Locational Deliverability Area (“LDA”) shortfalls. PJM may consider conditioning BYONC recognition on deliverability to the load’s LDA.³⁹
 - (d) **Existing arrangements and BTMG.** IRAS may disrupt binding agreements for loads ramping after June 1, 2027. A total-size threshold could convert a 49 MW load that adds 1 MW into a 50 MW New Large Load. The proposal does not account for existing BTMG netting (up to 50 MW).⁴⁰
 - (e) **Alternative approach.** A non-firm transmission service similar to Non-Firm Contract Demand service from the co-location proceeding might achieve some IRAS aims. That service, however, is voluntary, and IRAS is not. PJM should clearly identify the product IRAS provides, ensure the tariff consistently reflects it, and explain how it will

³⁵*Id.* at PP 103–105 & n.235 (citing *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,084 at P 105 (2021) (rejecting 13-year ELCC floor)).

³⁶*Id.* at P 106.

³⁷*Id.* at P 107.

³⁸*Id.* at P 108 (citing *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217 at PP 200–201, 214–215 (2025)).

³⁹*Id.* at P 109.

⁴⁰*Id.* at P 110 (citing *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,209 at P 207 (2026)).

transition back to traditional market structures and avoid long-term bifurcation of loads.⁴¹

E. Commissioner Rosner Concurrence

Commissioner Rosner emphasized that any refiling must justify curtailing IRAS load on a mandatory basis before load voluntarily enrolled in demand response (PJM cleared 7,017 MW of demand response in the 2028/2029 BRA). He warned that excluding IRAS load from the demand curve could produce a capacity market signaling surplus while the region involuntarily sheds thousands of MW, which is economically inefficient and an impediment to new entry. He also stated that data centers not serving critical functions should be curtailed before homes, hospitals, and schools, and called on state regulators to set retail curtailment priorities.⁴²

III. Implications for ISO-NE

A. ISO-NE's Proposed BYONC Requirement

1. **Jurisdictional framing.** The Order does not reject the BYONC concept as beyond FERC's jurisdiction. The jurisdictional defects lay in IRAS's direct obligations on retail customers, retail curtailment designation, and retail compensation. An ISO-NE BYONC requirement should therefore run to jurisdictional entities, meaning the Market Participant/LSE or Network Customer taking Regional Network Service, rather than to end-use large loads. It should avoid tariff text that obligates, curtails, or compensates an enumerated class of retail customers. FERC will read the tariff over the transmittal.⁴³
2. **Undue discrimination.** The heaviest burden is evidentiary. FERC found PJM did not show why LSEs serving new large loads should be treated differently from LSEs serving equivalent load growth, given a construct that procures capacity for all network load. ISO-NE should expect to build a detailed record showing why large-load size, vintage, speed of interconnection, or concentration is material to New England resource adequacy, or else design a requirement that does not expressly single out LSEs based on large retail load.⁴⁴
3. **Accreditation.** Any ISO-NE design that fixes or "locks in" the accreditation of self-supplied new capacity faces the Order's reasoning on BYONC accreditation. This is especially relevant as ISO-NE moves to marginal/seasonal accreditation under its Capacity Auction Reforms. Accreditation should track the same methodology applied to other resources, or ISO-NE must show the benefits outweigh the resource adequacy risk.⁴⁵
4. **Deliverability.** ISO-NE should consider conditioning recognition of self-supplied capacity on deliverability to the load's capacity zone, given New England's transmission constraints.⁴⁶

⁴¹*Id.* at P 111 (citing *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,211 at PP 86–87 (2026)).

⁴²Rosner Concurrence at PP 1–5.

⁴³Order at PP 77–83.

⁴⁴*Id.* at PP 94–95.

⁴⁵*Id.* at PP 103–105.

⁴⁶*Id.* at P 109.

5. **Definitions and existing arrangements.** A refiled “new” large-load definition should protect existing commercial arrangements and address incremental additions and BTMG. This aligns with the EL26-72 directive to propose implementation periods that avoid disrupting existing arrangements.⁴⁷

B. Excluding Large Loads from the ICR Resource Adequacy Assessment

1. **Parallel to the VRR exclusion.** PJM’s proposal to exclude uncovered New Large Load from the VRR curve was rejected as part of the integrated package. It drew specific concerns that ISO-NE should anticipate.⁴⁸
2. **Cost causation.** If large-load MW are excluded from the ICR (so capacity is not procured on their behalf), FERC questioned whether it is just and reasonable to charge the serving LSE capacity costs based on those MW. ISO-NE should ensure capacity cost allocation (e.g., capacity load obligation) is consistent with what is actually procured.⁴⁹
3. **Reliability Standards.** Excluding load from the ICR implies that, in a shortfall, that load is not backed by capacity and would be shed first. If the load remains firm network load, involuntary curtailment before EEA3 appears to conflict with EOP-011-4. This tension is reduced if the excluded load takes a voluntary non-firm or flexible service. That approach aligns with the flexible large-load transmission services contemplated in EL26-72.⁵⁰
4. **Market signals.** Commissioner Rosner warned that removing load from the demand curve can suppress capacity prices while load is involuntarily shed, discouraging new entry. ISO-NE should be prepared to address this concern, particularly given that ISO-NE included a separate large-load nameplate projection in its 2026 CELT forecast for the first time.⁵¹
5. **Jurisdictional line.** Exclusion from the ICR is itself a wholesale market design choice within FERC’s jurisdiction. Any accompanying curtailment or compensation tied to excluded load must avoid designating retail customers or setting retail compensation.⁵²

C. Parallel Jurisdictional, Cost-Allocation, and Reliability Issues

1. **Jurisdiction.** The Order and the EL26-72 show cause order draw the same line. FERC asserts exclusive authority over transmission service, studies, cost-shift protections, and wholesale market rules affecting large loads, while states retain retail sales, retail curtailment priority, retail cost allocation, and siting. ISO-NE and PTO responses in EL26-72 should be drafted with these guardrails in mind.
2. **Cost allocation.** The Order’s focus on aligning charges with service actually provided parallels the EL26-72 directives on cost transparency and pro forma cost recovery agreements to prevent cost shifts among transmission customers.⁵³

⁴⁷*Id.* at PP 31, 110.

⁴⁸*Id.* at PP 15, 55.

⁴⁹*Id.* at P 108.

⁵⁰*Id.* at PP 107, 111.

⁵¹Rosner Concurrence at PP 3–4.

⁵²Order at PP 81–83.

⁵³*Id.* at P 108.

3. **Reliability and operations.** Any New England curtailment construct must respect EOP-011-4 sequencing and demand response priority. New England commenters in EL26-72 also cited significant transmission constraints and a system peak of roughly 30,000 MW.⁵⁴
4. **Visibility.** The accepted PJM Registry is a template for large-load data collection that FERC views as just and reasonable independent of any curtailment construct. It complements the EL26-72 cost transparency postings and ISO-NE's large-load forecasting.⁵⁵
5. **Preferred path.** FERC signaled that voluntary, non-firm service options are a more viable route than mandatory curtailment. This is consistent with the new transmission services (interim NITS, firm and non-firm contract demand) proposed for flexible large loads in EL26-72.⁵⁶

IV. Key Takeaways

- FERC reads tariff text over transmittal narratives. Obligations, curtailment, and compensation must run to jurisdictional entities, not enumerated retail customers.
- A BYONC-type requirement is not barred, but it requires a detailed record on why large-load characteristics are material to resource adequacy (undue discrimination).
- Locked-in accreditation for self-supplied capacity is disfavored; deliverability conditions are expected.
- Excluding large loads from capacity procurement (VRR/ICR) raises cost-causation (capacity charges) and EOP-011-4 issues unless the load voluntarily takes non-firm/flexible service.
- Large Load definitions (50 MW threshold; one-mile aggregation) and registries are accepted as just and reasonable.
- Watch: PJM's 30-day compliance filing and any PJM refiling of an IRAS-like construct.

⁵⁴Order at P 107; Rosner Concurrence at PP 1–3.

⁵⁵Order at PP 48–50.

⁵⁶*Id.* at P 111.