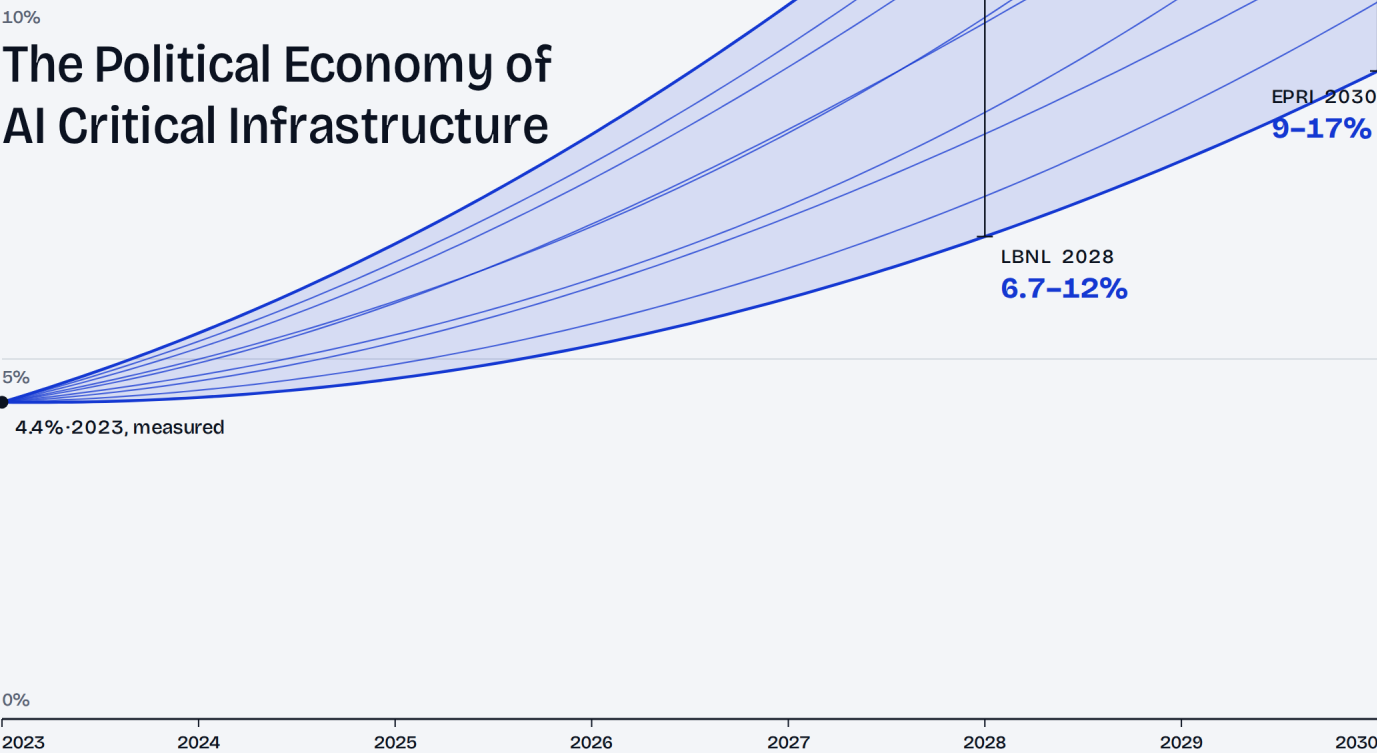


Compute, Power, and Sovereignty



Data centers' share of US electricity consumption, published forecast range, 2023–2030. 2023 value and 2028 range (6.7–12%): A. Shehabi et al, 2024 United States Data Center Energy Usage Report (Lawrence Berkeley Nat'l Lab., Dec. 2024). 2030 range (9–17%): EPRI, Powering Intelligence 2026: Updated Scenarios of U.S. Data Center Load (Feb. 2026).

Compute, Power, and Sovereignty

The Political Economy of AI Critical Infrastructure

Zola Valashiya · September 2026

About the author

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Use of AI tools

Artificial intelligence tools were used to support the research for this work: locating and retrieving primary sources, organising and verifying the evidence base, and assisting with formatting and developing the author's original draft. The ideas, analytical framework, arguments, insights and conclusions are the original work of the author, Zola Valashiya.

Executive summary

The terms on which AI compute is coupled to dedicated power are being set contract by contract, not rule by rule. Public forums set them on records whose load-bearing terms are withheld from the ratepayers, taxpayers and residents who bear them. The same terms decide whether reliability, security and cost obligations can attach to compute that federal security officials describe as strategic. The mechanism is demand risk, the chance that forecast AI load never arrives or leaves, allocated by take-or-pay, exit, collateral, walk-away and related terms.

Statute divides authority among federal energy regulators, the Electric Reliability Council of Texas (ERCOT), the Tennessee Valley Authority (TVA), and state, environmental and security instruments. The forums coordinate on jurisdiction, grid-interface reliability and a cost-causation principle. No forum holds the coupling as a unit across its terms (Texas SB 6 comes closest), and none sets common terms for security for performance, exit, disclosure or permitting. Wisconsin meets most completion tests; most load states do not.

Eight findings: price is public, security and exit are not

- 1. Energy law names the coupling but sets no security terms for it.** FERC's orders for PJM, the grid operator for 13 states and D.C., DOE's section 403 proposal, Texas SB 6 and a NERC alert each name it. None sets cyber or physical-security terms. NERC standards do not reach generation excluded under Exclusion E2 (customer-side generation serving retail load), islanded generation or compute. Section 215A's defense-critical definition excludes generation owned or operated by the designated facility's owner or operator.
- 2. Price terms share a structure; security for performance does not.** By EEI's count, 25 states have approved at least one large-load tariff. Each pairs a term, a minimum bill and an exit charge, at different levels; collateral and waiver rights differ. Wisconsin tied exemption from collateral to an A-/A3 rating and took away the utility's power to waive security; its own utility's bid to loosen that standard failed on rehearing.
- 3. Approval comes first; disclosure, where it comes, is forced by others.** Indiana approved Google's contract with key terms sealed from the public pending a subdocket, Louisiana approved Hyperion's generation but not its service agreement, and Minnesota seals fee data by statute. Administrative law judges, intervenors and courts win disclosure more often than commissions, usually after approval.
- 4. The incidence figures measure different things; none shows a cross-subsidy.** Virginia's legislative auditor projects residential costs rising \$14 to \$37 a month by 2040 (real dollars, estimated before Virginia created its large-load rate class). The PJM market monitor attributes \$29.4 billion of capacity charges to data-center load, a counterfactual price effect the report reads as a tightening brought forward.

5. **Ratepayers carry losses where no term reaches a cost or a term runs out.** Five channels sit outside project tariffs. Contracts run 12 to 15 years; an intervenor witness puts the life of Hyperion's new plants at 30 years. Intervenors say Meta can leave Hyperion after its four-year leases; Entergy says the 15-year service agreement still binds. Private finance relocates ratepayer exposure more than it removes it.
6. **The fiscal bargain turns on an unmeasured but-for share.** Virginia's combined ledger breaks even if under about a quarter of investment would have come anyway on the official formula, or between about 40 and 62 percent if the exemption's value is counted once. Either way it gains at a 10 percent share and loses at 70 percent. States cap, pause and reprice exemptions instead of repealing.
7. **The security state's gives are public; its gets are not.** Federal sites, a NEPA presumption and litigation cover are public; no public instrument secures priority, surge, reserve or lease rights. So far the forums hold: at Southaven the court has not let the United States in, pending its appeal, and at Paducah Kentucky's commission still decides.
8. **Chips bind China today; power increasingly binds US-soil deployment.** Time to power is a principal constraint on where US-controlled compute sits; the export-control window turns mainly on chip-side channels.

Nine terms for existing forums would make the settlement public

Lead actors include regional transmission organizations (RTOs) and the National Nuclear Security Administration (NNSA).

RT-1. State commissions should require a public tier of structural contract terms before approving any large-load contract of 100 MW or more, by generic order under state public-utility law. The tier lists counterparty, guaranty, term, minimum take, exit, collateral and firmness, with unit price lagged or aggregated; FERC sets the same requirement for jurisdictional agreements by rule under FPA 205(c) and 206.

RT-2. State commissions should add four increments to the common large-load floor under state public-utility law, so that terms bind successors, bar utility-only credit waivers and size exit fees and collateral to net book value, and legislatures should enact two statutory increments that protect other classes.

RT-3. FERC should keep posted large-load upgrade costs and a pro forma cost recovery agreement in its final orders in the six large-load proceedings, under FPA 206.

RT-4. RTOs should keep non-firm transmission service for large loads in their November 16, 2026 responses to FERC, under FPA 205, so that each load's firmness election sets its cost share and curtailment exposure.

RT-5. NERC should scope its planned 2027 standards request on co-located generation to cover Exclusion E2, CIP-002 categorization, low-impact controls and joint telemetry, under FPA 215, with a FERC directive under section 215(d)(5) as the fallback. The Computational Load Owner standards are already due at FERC by December 31, 2026.

RT-6. State legislatures should attach a published but-for estimate, a sunset, recapture and pre-approval filing of host agreements to every new or renewed data-center tax preference, under state tax law, in 2027 sessions.

RT-7. State legislatures should require siting boards and air agencies to decide dedicated generation on a public record, with host governments as parties, under state siting statutes and Clean Air Act section 116.

RT-8. DOE, including NNSA, should publish lease term sheets with rent and lessee-funded de-commissioning security before executing federal-site leases under 42 U.S.C. 7256 or 10 C.F.R. part 770.

RT-9. DOE, as Energy Sector Risk Management Agency, should publish criteria for federal security claims over couplings under 6 U.S.C. 665d, with the National Security Council coordinating their adoption across agencies by presidential directive.

Figure 1 sets out the nine terms by lead actor and authority, next decision window and time-to-power effect.

Federal windows close first (November 16 to December 31, 2026); durable terms need 2027 state sessions. The prediction: price and tariff terms generalize first; security-for-performance and disclosure terms move to courts.

The claims are bounded and testable

The report does not claim a retail cross-subsidy, that regulators lack the terms, or that a coupling is critical infrastructure under 42 U.S.C. 5195c(e). It does not rely on the Southaven appeal or propose a cap on US AI. It endorses no security status and does not claim pledges are empty; they fix the price principle, not security or disclosure.

Section 11.4 sets out the report's scope: a US focus with comparators abroad, and facts as of September 27, 2026.

The thesis fails if large loads in the principal states mostly take public tariffs with cost-allocation, exit and collateral terms, or if public terms prove lopsided. No one publishes that load share. The terms fail if new Texas or Irish rules delay connections as a pause would.

FIGURE 1

Nine settlement terms, and the gaps they leave

Terms RT-1 to RT-9 by type, bargain, audit question, lead actor and next decision window. Time to power: each card's effect on energization. Status as of September 27, 2026.

Time to power: **Faster** **Neutral to faster** **Neutral** **Slower at one step** Named gap or limit: where the terms do not reach

Term	Type	Bargain	Audit question	Lead actor and authority	Next decision window	Time to power
Cross-cutting: disclosure makes the other terms checkable (10.1)						
RT-1 Who knows: a public tier before approval	Disclosure	All three	Who knows	Commissions, by generic order; legislatures where statute seals terms (Minnesota); FERC by rule; DOE on its own CEII designations	Model bill for 2027 sessions, drafted by Dec. 2026; IURC subdocket 46276 S1 as test case	Neutral to faster
Named limit: Co-op, municipal and TVA load enter RT-1 only by board adoption or statute.						
Bargain 1: the load pays for what it causes (10.2)						
RT-2 Retail who pays: the floor plus increments	Allocation: cost and risk	Bargain 1	Who pays (retail)	Commissions (state utility law); legislatures for increments (e) and (f)	Intervenors propose increments in the 7 states with pending tariffs; no fixed date	Neutral Slower for lower-rated developers
Named limit: Co-op, municipal and TVA load enter RT-2 only by board adoption or statute.						
RT-3 Wholesale and transmission who pays	Allocation: cost	Bargain 1	Who pays (wholesale and transmission)	FERC (FPA 206); RTOs (FPA 205); commissions for flow-through	RTO responses in EL26-67 to EL26-72 due Nov. 16, 2026 (SPP Nov. 20); intervenors 30 days later	Neutral to faster
RT-4 Who controls: firm or non-firm service	Allocation: cost and curtailment risk	Bargain 1	Who controls	RTOs and FERC (EL25-49 non-firm products); states for interruptible retail tariffs	RTO responses due Nov. 16, 2026 (SPP Nov. 20)	Faster Main speed term
RT-5 Reliability and security attach to configuration	Allocation: duties	Bargains 1 and 3	Who controls (reliability and security)	NERC (FPA 215, RD26-7); FERC 215(d)(5) directive as fallback; FERC 206 for LGIA App. D	NERC Board approval Dec. 2026; filing by Dec. 31, 2026; planned 2027 standards request	Slower at one step Commissioning
Named limit: Islanded plants sit outside RT-5.						
Named gap: Who decides: no term assigns a decision forum in Bargain 1.						
Bargain 2: tax and siting inputs carry public terms (10.3)						
RT-6 Tax expenditures as priced public inputs	Allocation: cost	Bargain 2	Who pays (tax expenditures)	Legislatures and auditors	2027 sessions, first in Washington and Virginia	Neutral Location may shift among states
RT-7 Siting and environment on a public record	Allocation: duties	Bargain 2	Who decides (siting and environment)	Legislatures, with siting boards and air agencies	Texas registration bill, Jan. 2027	Slower at one step Permit step
Named gap: Who controls: no term allocates control in Bargain 2.						
Bargain 3: federal inputs and security claims need public rules (10.4)						
RT-8 Federal public inputs carry covenants	Allocation: cost and risk	Bargain 3	Who pays (federal public inputs)	DOE and NNSA (42 U.S.C. 7256; 10 C.F.R. part 770; each lease's authority not yet public); commissions or TVA Board for power service	Before each lease is executed (Savannah River, Paducah, INL, Oak Ridge); undated	Neutral One added step
RT-9 Public rule, non-public roster	Roles, no new decision rights	Bargain 3	Who decides; who controls only through the EO 14421 leg; who pays for security costs	DOE as Energy Sector Risk Management Agency (6 U.S.C. 665d); NSC by presidential directive; Congress as backstop	EO 14421 rules due Dec. 24, 2026; NDAA draft after Nov. 3 midterms	Neutral On construction
Named limit: Islanded plants sit outside RT-9's EO 14421 leg.						
Named limit: In Bargain 3, only RT-5 and RT-9's EO 14421 leg reach who controls.						

Source: Section 10 term cards RT-1 to RT-9, as of September 27, 2026.

Every audit question has at least one term a named forum can adopt under existing authority; RT-1, RT-2, RT-6 and RT-7 need a state statute for one leg, and the gaps are named.

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Public forums set the terms, but not in public

Scope and terms

In scope. US forums deciding terms for AI compute coupled to dedicated generation, 2024 to September 27, 2026: federal energy regulators, NERC, ERCOT, TVA, state commissions, legislatures, siting boards, air agencies and federal security instruments. Principal states: Wisconsin, Virginia, Indiana, Louisiana, Ohio, Texas. Comparators only: Ireland, Singapore. Export controls and allied siting: only as they bear on the pace of US-soil deployment (Sections 8.3, 8.4).

Out of scope. Control-level security implementation; retail cross-subsidy claims; grid-served load without dedicated generation, except as reliability evidence; chip supply.

Terms.

- *Coupling*: AI compute plus dedicated generation, in five forms (Section 4.3). - *Dedicated generation*: generation that serves the load in normal operation or under contracted curtailment; emergency backup alone does not count. - *Large load*: FERC's preliminary definition is 50 MW or more interconnecting above 69 kV; the report's disclosure threshold is 100 MW. - *Settlement*: a durable, generally applicable allocation of who pays, controls, decides and knows (Section 2.4). - *Demand risk*: the chance that forecast load never arrives, arrives smaller or leaves before its assets are paid off. - *Political economy*: who bears the coupling's costs and who holds control and decision rights. - *Sovereignty*: domestic control and decision rights over generation coupled to strategic compute. - *Critical infrastructure*: used only in its statutory senses (42 U.S.C. 5195c(e); Federal Power Act section 215A), which the report does not claim a coupling meets (Section 4.2).

Forecasts put data centers at 6.7 to 12 percent of US electricity by 2028 (Lawrence Berkeley National Laboratory) and 9 to 17 percent by 2030 (Electric Power Research Institute).¹

Reader's guide

- DOE: RT-5 (comments), RT-8, RT-9; Sections 4.2, 8.
- FERC: RT-1 (jurisdictional agreements), RT-3, RT-4, RT-5 (fallback directive); Sections 5, 6.3, 6.4.

¹ Arman Shehabi et al., *2024 United States Data Center Energy Usage Report*, LBNL-2001637 (Lawrence Berkeley Nat'l Lab., Dec. 2024), § 5, discussion of fig. 5.5 (scenario range of 6.7 to 12.0 percent), <https://escholarship.org/content/qt32d6m0d1/qt32d6m0d1.pdf>; EPRI, *Powering Intelligence: Updated U.S. Data Center Scenarios* (Blanford, Wilson, Bistline & Johnson), Key Insights, at 1 (Feb. 26, 2026), <https://restservice.epri.com/publicattachment/97025>.

- RTOs: RT-3, RT-4; Sections 6.3, 9.1.
- NERC: RT-5; Sections 5.1, 5.3.
- CISA: RT-9 (carries DOE's criteria and risk entry); Section 4.2.
- State commissions and NARUC: RT-1, RT-2, RT-4 (interruptible tariffs); Sections 6, 9.
- State legislatures: RT-1 (where statute seals terms), RT-2 (e) and (f), RT-6, RT-7; Section 7.
- National Security Council: RT-9 (coordinates security-claim criteria with DOE); Sections 4.2, 8.
- Congress: RT-9 backstop, RT-1 amendment to H.R. 9340; Section 8.2.

2.1 Terms that allocate demand risk are set contract by contract and withheld from those who bear them

The terms that decide who carries the risk that forecast AI load never arrives, or leaves, are written into individual contracts, not general rules. Public forums approve those contracts on records that withhold the terms allocating the risk (take-or-pay, minimum term, exit, collateral, credit, walk-away and decommissioning) from the ratepayers, taxpayers and residents who bear it. The executive summary states the findings and Section 5 the diagnosis.

2.2 Public forums withhold key terms

Regulators object that every exhibit here is public: the Edison Electric Institute (EEI), an industry group, counts 25 states with an approved large-load tariff, consumer advocates see sealed terms under protective order, and commissions are rolling confidentiality back.² The report concedes public forums; the gap lies in specific terms. Section 6.2 shows how Indiana approved a contract with key terms sealed and Louisiana certified generation for a sealed contract it did not approve.

2.3 Security is a criterion, not the frame

Security-first rivals put the decisive terms in the federal security channel; speed-first rivals (the AI Action Plan, Anthropic, the Center for Strategic and International Studies (CSIS) and Carnegie) make time to power the governing question.³ The report treats security as a forum claiming decision rights and as a test inside each bargain. It treats speed as a term (RT-4), since curtailment

² Edison Electric Institute, *Large Load Projects and Tariffs*, tariff summary (Sept. 2026): "As of September 2026, 25 states have approved at least one large load tariff, and another 7 states have pending large load tariffs." <https://www.eei.org/-/media/Project/EEI/Documents/Issues%20and%20Policy/List%20of%20Large%20Customer%20Projects%20and%20Tariffs>. For the protective-order argument: Ind. Util. Regulatory Comm'n, Order, Cause No. 46276 (Indiana Michigan Power Co. / Google), at 7 (Apr. 29, 2026) (summarizing I&M witness Loveman's rebuttal that "the OUCC, the CAC, and Commission all received fully unredacted versions of the Contract and testimony"), https://www.in.gov/iurc/files/ord_46276_042926.pdf. For the rollback of confidentiality: *id.*, Finding ¶ 9 (Confidentiality Findings), at 12-13, and Ordering ¶ 5, at 13 (designated information remains excepted from disclosure "pending the resolution of the subdocket"; Cause No. 46276 S1 (created by Order of Apr. 29, 2026; Order Initiating Subdocket Apr. 30, 2026), pending; attorney conference scheduled by docket entry of Aug. 28, 2026); Pub. Serv. Comm'n of Wis., Press Release, Docket 6680-TE-115 (Alliant Energy), at 2 (May 7, 2026) (stand-alone tariff), <https://psc.wi.gov/Documents/PressReleases/05.08.26PressRelease.PDF>.

settles neither who pays nor who knows, and reliability-first, sovereignty-first and explicit-exchange frames as instruments, since none settles who pays.⁴ Sections 8.2 and 8.5 state each position at full strength.

2.4 Five tests mark a complete settlement

A settlement is complete in a jurisdiction when:

1. the allocation rule is generic, not per contract;
2. the load-bearing terms are public;
3. an adjudicator applies the rule on a public record;
4. residual risk has a named bearer;
5. there is a review or renegotiation clause.

Wisconsin's retail tariff meets four tests, including a credit floor and a mechanism "to make future adjustments". Yet service agreements were refiled only with fewer redactions, and the Wisconsin Public Service Commission says it "has no direct regulatory oversight of the development or operations of data centers".⁵ Even Ireland dropped proposed public reporting (Section 2.7), so the test asks which terms are withheld, and from whom.

³ Security-first: Decl. of Cameron Stanley, DoW Chief Digital and AI Officer ¶ 9, *NAACP v. X.AI Corp.*, No. 3:26-cv-00074-DMB-JMV (N.D. Miss.) (executed June 15, 2026; filed July 7, 2026), ECF No. 85-1, PageID 2220 (a declaration filed in support of the United States' motion to intervene and its request that the court dismiss the suit, not a finding), <https://www.courtlistener.com/docket/73188848/85/1/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; other security-first holders are named in Section 8.5. Speed-first: The White House, *America's AI Action Plan* (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>; Anthropic, *Build AI in America* (July 21, 2025) (asking that federal lands be made available for AI infrastructure and that existing federal authorities be used, where critical for national security, to secure timely interconnection), <https://www.anthropic.com/news/build-ai-in-america>; McGeady, Majkut, Harithas & Smith, *The Electricity Supply Bottleneck on U.S. AI Dominance*, CSIS (Mar. 3, 2025), <https://www.csis.org/analysis/electricity-supply-bottleneck-us-ai-dominance>; Phillips-Robins, Tawil & Winter-Levy, *The Compute Coalition: How to Build the Future of AI in the Free World*, Carnegie Endowment for Int'l Peace (June 8, 2026) (Summary & pts. I-II), <https://carnegieendowment.org/research/2026/06/the-compute-coalition-how-to-build-the-future-of-ai-in-the-free-world>.

⁴ Frames and holders; each is answered at full strength in Section 8.5. Reliability-first: NERC, *Level 3 Essential Actions Alert: Computational Load* (May 4, 2026), pp. 1-2 ("does not create a mandatory obligation"), <https://www.nerc.com/globalassets/programs/bpsa/alerts/level-3-computational-load-alert.pdf>. Sovereignty-first: Phillips-Robins et al., *supra* note 3; Exec. Order No. 14320, § 3(b)(iii), 90 Fed. Reg. 35393 (July 28, 2025) (American AI Exports Program), https://www.federalregister.gov/documents/full_text/text/2025/07/28/2025-14218.txt. Explicit exchange: Ben Schiffman, *A Speed-for-Security Bargain for AI Data Centers*, Inst. for Progress (June 4, 2026), <https://ifp.org/speed-for-security-bargain-for-ai-data-centers/>; Arnab Datta & Tim Fist, *Compute in America: A Policy Playbook* (Special Compute Zones), Inst. for Progress (Feb. 3, 2025), <https://ifp.org/special-compute-zones/>.

⁵ Pub. Serv. Comm'n of Wis., Press Release, *PSC Overhauls We Energies' Data Center Tariff*, Docket 6630-TE-113 (Apr. 24, 2026) (15-year minimum initial term; threshold lowered from 500 MW to 100 MW; additional reporting requirements; "created a mechanism for the Commission to make future adjustments if needed"; "The PSC has no direct regulatory oversight of the development or operations of data centers"), <https://content.govdelivery.com/accounts/WIPSC/bulletins/4147a70>; Wis. PSC Docket 6680-TE-115 Press Release, *supra* note 2, at 1 (ALJ directed Alliant in February 2026 "to refile its application and other related documents with fewer redactions"); Pub. Serv. Comm'n of Wis., Final Decision, Docket 6630-TE-113 (May 21, 2026), petition for judicial review filed, *Oracle Am. Cloud Servs. LLC v. Pub. Serv. Comm'n of Wis.*, No. 2026CV000256 (Wis. Cir. Ct. Ozaukee Cnty. filed June 19, 2026); Pet. for Judicial Review ¶¶ 37-38, *id.* (Final Decision raising the minimum credit rating to A- (S&P) or A3 (Moody's) and removing the utility's sole discretion to waive it), <https://wisconsinwatch.org/wp-content/uploads/2026/06/2026CV256-1.pdf>. Oracle moved to dismiss voluntarily on Aug. 17, 2026, and the court record lists the case as closed. Wisconsin Watch, *Oracle Drops Lawsuit Challenging Wisconsin Data Center Credit Rules* (Aug. 2026), <https://wisconsinwatch.org/2026/08/oracle-drops-lawsuit-challenging-wisconsin-data-center-credit-rules/>; Wis. Circuit Court Access, *Oracle Am. Cloud Servs. LLC v. Pub. Serv. Comm'n of Wis.*, No. 2026CV000256 (Ozaukee Cnty.) (status Closed), <https://wcca.wicourts.gov/>.

FIGURE 2

Price terms are closest to settled; disclosure and security are not

Five completion tests by term family in six states. As of September 27, 2026.
Outlined column: test 2, named in the caption.

Rating: **Met** **Partial** **Unmet** **Unknown**

"None": no co-location instrument in the state.

	1 Generic rule	2 Terms public	3 Public adjudication	4 Named bearer	5 Review clause	1 Generic rule	2 Terms public	3 Public adjudication	4 Named bearer	5 Review clause
WISCONSIN						VIRGINIA				
Retail tariff	Met	Partial	Met	Met	Met	Met	Met	Met	Partial	Met
Co-location	None	None	None	None	None	Partial	Partial	Met	Partial	Partial
Fiscal incentives	Met	Partial	Unmet	Partial	Unknown	Met	Partial	Unmet	Partial	Met
Generation siting	Met	Unknown	Met	Unknown	Unknown	Met	Unknown	Met	Unknown	Unknown
OHIO						INDIANA <i>Retail row: Tariff I.P. and I&M/Google contract</i>				
Retail tariff	Met	Met	Met	Partial	Partial	Met	Partial	Met	Partial	Partial
Co-location	Partial	Partial	Met	Partial	Partial	Partial	Partial	Met	Partial	Partial
Fiscal incentives	Partial	Partial	Unmet	Partial	Unknown	Partial	Partial	Unmet	Unknown	Partial
Generation siting	Met	Met	Partial	Unmet	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
TEXAS <i>Row 1 is large-load interconnection standards</i>						LOUISIANA				
Retail tariff	Met	Partial	Partial	Partial	Partial	Unmet	Unmet	Partial	Partial	Unmet
Co-location	Met	Partial	Partial	Partial	Met	None	None	None	None	None
Fiscal incentives	Met	Partial	Unmet	Unknown	Partial	Partial	Partial	Unmet	Partial	Partial
Generation siting	Unmet	Unknown	Unmet	Unknown	Unknown	Partial	Partial	Met	Partial	Unmet
SHARED FEDERAL ROW						Notes				
Large-load security <i>NERC proposed registration Same in all six states</i>	Unmet	Partial	Unmet	Unmet	Partial	<i>TX: SB 6 review is reliability-only. OH Socrates South: islanded, outside NERC.</i>				

Source: SCC PUR-2026-00056; IURC 46097, 46276; PSC WI 6630-TE-113, 6680-TE-115; PUCO 24-508-EL-ATA; LPSC U-37425; PUCT 59220; OPSB 25-0185-EL-BLN; Tex. Util. Code §§ 37.0561, 39.169 (SB 6); state codes. Forums (Section 5.2): retail tariffs, state commissions (TX: PUCT); co-location, FERC and PJM (TX: PUCT); fiscal incentives, economic development agencies and tax authorities; siting, state siting boards and commissions; large-load security, Section 5.1.

Retail tariffs meet most tests in Wisconsin, Virginia and Ohio, but terms are fully public in only three cells, fiscal terms never reach a public adjudicator, and security conditions for large loads meet no test.

2.5 The compact precedent moves into contract

Courts have tied the "regulatory compact" label to Order No. 888,⁶ which described a traditional system that "imposed an obligation to serve, and, on the other hand, permitted recovery of all prudently incurred costs".⁷ Today's terms keep causer-pays but move recovery from after-the-fact stranded-cost charges ex ante into contract, through minimum terms and credit support. Where that credit support fails (a special-purpose counterparty, a tenor shorter than the asset), Order No. 888's logic points back to regulated rates; Section 9 tests whether that holds.⁸ A rival reads the section 403 letter, the Ratepayer Protection Pledge and H.R. 9340 as a renegotiated compact.⁹ The report keeps the compact as an anchor, not the frame, because islanded and federal-site plants are not utility service.

2.6 Rival governing frames explain where terms are set, not why they stay sealed

Four rival governing frames are answered here:

- **"Who pays is settled; who knows is not."** Full incremental cost has bipartisan backing: the White House says the Pledge covers 80 percent of US power deliveries, and H.R. 9340 passed the House 417 to 3.¹⁰ But the Pledge is voluntary, and the bill sets a consider-and-determine standard with no reporting.
- **An actor-and-bargain map.** Kept as the structure of Sections 6 to 8.
- **Exit and re-entry.** The coupling is partial exit from regulated service. Susquehanna moved its Amazon supply to front-of-the-meter service in April 2026, after FERC rejected an amended

⁶ *Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667, 699-700 (D.C. Cir. 2000) (per curiam) (utilities relied on the "regulatory compact"), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002), <https://www.courtlistener.com/opinion/185161/transm-access-plcy-v-ferc/>; *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (setting just and reasonable rates "involves a balancing of the investor and the consumer interests"; *Hope* does not use the phrase "regulatory compact"), <https://www.law.cornell.edu/supremecourt/text/320/591>; *New England Coal. on Nuclear Pollution v. NRC*, 727 F.2d 1127, 1130 (D.C. Cir. 1984) (Scalia, J.) (dictum, introduced with "though we do not pass upon the point", describing "a compact whereby the utility surrenders its freedom to charge what the market will bear"), <https://www.courtlistener.com/opinion/431645/>; *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1189 (D.C. Cir. 1987) (en banc) (Starr, J., concurring) ("a compact of sorts"), <https://www.courtlistener.com/opinion/9475808/>. The label is contested, including by capture research: Robert J. Michaels, *Stranded Investment Surcharges: Inequitable and Inefficient*, Pub. Util. Fort., May 15, 1995, at 21 (calling the compact "a recent intellectual invention"), as quoted in J. Gregory Sidak & Daniel F. Spulber, *Deregulatory Takings and Breach of the Regulatory Contract*, 71 N.Y.U. L. Rev. 851, 890-91 & n.110 (1996) (Sidak and Spulber dispute the claim), <https://www.criterioneconomics.com/docs/sidak-spulber-deregulatory-takings-and-breach-of-the-regulatory-contract.pdf>; Thomas P. Lyon & Nathan Wilson, *Capture or Contract? The Early Years of Electric Utility Regulation*, 42 J. Regul. Econ. 225 (2012), <https://link.springer.com/article/10.1007/s11149-012-9200-9>.

⁷ FERC, Order No. 888, *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 61 Fed. Reg. 21,540, 21,628 (May 10, 1996) (§ IV.J.1; footnote omitted), Docket Nos. RM95-8-000, RM94-7-001, <https://www.govinfo.gov/content/pkg/FR-1996-05-10/pdf/96-10694.pdf>.

⁸ Order No. 888, 61 Fed. Reg. at 21,540 (Summary) (paired open access with recovery of "legitimate, prudent and verifiable stranded costs"); Proclamation No. 11014, *Ratepayer Protection Pledge*, 91 Fed. Reg. 11,439 (Mar. 9, 2026) (signed Mar. 4, 2026) (signatories pay "whether they use the electricity or not"), <https://www.federalregister.gov/documents/2026/03/09/2026-04645/ratepayer-protection-pledge>; Pub. Serv. Comm'n of Wis., Final Decision, Docket 6630-TE-113 (May 21, 2026), *supra* note 5.

⁹ Letter from Chris Wright, Sec'y of Energy, to FERC, directing rulemaking on large-load interconnection under DOE Organization Act § 403, ¶ 25, at 13 (Oct. 23, 2025) (loads "should be responsible for 100% of the network upgrades that they are assigned"), <https://www.energy.gov/sites/default/files/2025-10/403%20Large%20Loads%20Letter.pdf>; Ratepayer Protection Pledge, *supra* note 8; Ratepayer Protection Act, H.R. 9340, 119th Cong. (as passed by House, Sept. 16, 2026) (new PURPA § 111(d) standard for "the full, incremental cost" of upgrades with "financial assurances"), <https://www.congress.gov/bill/119th-congress/house-bill/9340/all-actions>; engrossed text at <https://www.govinfo.gov/content/pkg/BILLS-119hr9340eh/html/BILLS-119hr9340eh.htm> (the exchange: speed to power for full incremental cost, curtailability, collateral and minimum terms).

agreement.¹¹ Exit is demand risk's clearest case (Section 6), not the frame: most load still takes tariffed or contract service.

- **Decision rights migrating** up (DOJ intervention, federal-site selection under EO 14318, state siting preemption) and down (county zoning).¹² Sections 7.4 and 8.2 trace both.

2.7 Antecedents establish each element; none audits them jointly across US forums

Energy law. Harvard's Electricity Law Initiative (ELI) argued that opaquely approved special contracts may shift data-center costs to others and that "verifying this claim is all but impossible". The report takes its Bargain 1 diagnosis from ELI. Where ELI calls security benefits "either already accounted for through other policies or irrelevant to utility regulators", the report treats security instruments as forums allocating control. EEI maps tariff terms, including cost-coverage and demand-risk terms; the report adds incidence, control and disclosure.¹³

AI political economy. AI Now has argued since 2023 that compute "affects who can build AI, what kind of AI gets built, and who profits along the way". Its data-center agenda targets FERC and federal land.¹⁴ The report proposes terms with consideration, not restriction.

Bargain proposals. The Institute for Progress (IFP) proposed a speed-for-security bargain at FERC and, earlier, Special Compute Zones trading permitting, land, finance and power for security commitments.¹⁵ CSIS's flexibility compact and Carnegie also frame access as a bargain; de-

¹⁰ The White House, *President Trump's Ratepayer Protection Pledge Secures American AI Dominance, Protects Consumers* (July 23, 2026), <https://www.whitehouse.gov/releases/2026/07/president-trumps-ratepayer-protection-pledge-secures-american-ai-dominance-protects-consumers/>; *Statement of Principles Regarding PJM* (Jan. 16, 2026) (signed by the Secretary of the Interior and Secretary of Energy for the National Energy Dominance Council and the governors of all 13 PJM states) (bipartisan support), <https://www.energy.gov/documents/statement-principles-regarding-pjm>; H.R. 9340, *supra* note 9 (Roll Call No. 312, 417-3; placed on Senate calendar Sept. 23, 2026).

¹¹ *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,078 (Nov. 1, 2024) (Docket No. ER24-2172-000) (rejecting an amended interconnection service agreement that would have raised co-located load at Susquehanna from 300 MW to 480 MW), https://www.ferc.gov/sites/default/files/2024-11/20241101-3061_ER24-2172-000.pdf; Talen Energy Corp., Press Release, *Talen Energy Expands Nuclear Energy Relationship with Amazon* (June 11, 2025) (transition "after the completion of transmission reconfigurations expected in the Spring of 2026"), <https://ir.talenenergy.com/news-releases/news-release-details/talen-energy-expands-nuclear-energy-relationship-amazon>; Talen Energy Corp., Form 10-Q for the quarter ended June 30, 2026, Glossary, "AWS PPA" ("The transition to the revised AWS PPA occurred in April 2026."), accession 0001622536-26-000066, <https://www.sec.gov/Archives/edgar/data/1622536/000162253626000066/tln-20260630.htm>.

¹² Exec. Order No. 14318, *Accelerating Federal Permitting of Data Center Infrastructure*, § 9(a), 90 Fed. Reg. 35385, 35387 (July 28, 2025) (Interior and DOE, consulting Commerce "as to the Project Sponsors to which relevant authorizations shall be granted", to offer site authorizations), <https://www.federalregister.gov/documents/2025/07/28/2025-14212.txt>.

¹³ Eliza Martin & Ari Peskoe, *Extracting Profits from the Public: How Utility Ratepayers Are Paying for Big Tech's Power*, Harvard Law Sch. Electricity Law Initiative, at 1 (verification), 11, 14 (pts. II.A-B: special contracts; federal-state gap), 31 (pt. IV, secondary benefits) (Mar. 2025), <https://eelp.law.harvard.edu/wp-content/uploads/2025/03/Harvard-ELI-Extracting-Profits-from-the-Public.pdf>; EEI, *supra* note 2.

¹⁴ Jai Vipra & Sarah Myers West, *Computational Power and AI*, AI Now Inst., Introduction (Sept. 27, 2023), <https://ainowinstitute.org/publications/compute-and-ai>; AI Now Inst., *North Star: Federal Data Center Policy Toolkit* (last modified Mar. 26, 2026) (sections "Mobilize Authority Under the Federal Energy Regulatory Commission (FERC) to Oversee Data Centers", "Restrict Data Centers on Federal Land" and "Establish Federal Oversight and Transparency Mechanisms"), <https://datacenters.ainowinstitute.org/federal/>; AI Now Inst., *AI Nationalism(s): Global Industrial Policy Approaches to AI*, Executive Summary (Amba Kak & Sarah Myers West eds., Mar. 12, 2024) (structural dependencies on private technology companies "at every layer of the AI stack, and especially compute"), <https://ainowinstitute.org/publications/ai-nationalisms-executive-summary>.

¹⁵ Schiffman, *supra* note 4; Datta & Fist, *supra* note 4 (Special Compute Zones trading permitting, land, finance and power for security commitments); see also Exec. Order No. 14141, *Advancing United States Leadership in Artificial Intelligence Infrastructure*, §§ 4(h)(iii), 4(i), 90 Fed. Reg. 5469, 5477, 5478-79 (Jan. 17, 2025) (directing DoD and DOE to "require lease or contract terms", including all costs on non-federal parties and Fed-RAMP high-impact security; the order's internal cross-references label the § 4(h) conditions as "4(g)"; no lease under the order was executed before revocation), <https://www.govinfo.gov/content/pkg/FR-2025-01-17/pdf/2025-01395.pdf>, revoked by Exec. Order No. 14318, § 4, 90 Fed. Reg. 35385, 35386 (July 28, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-07-28/pdf/2025-14212.pdf>.

velopers offered terms from federal land to "paying our own way".¹⁶ The report concedes IFP's vocabulary and multi-term idea and adds who holds residual demand risk and who can verify the allocation.

The power premise. Carnegie, CSIS and RAND have tested whether power limits compute; Carnegie finds China has "more than enough power and land to run every chip it can plausibly produce".¹⁷ The report limits its power claim to the pace of US-soil deployment.

Other antecedents. Compute-governance researchers already use power to show clusters can be detected and cut off, and Good Jobs First anticipated the Bargain 2 diagnosis. The report credits both and claims no new instrument.¹⁸

The contribution is a primary-source record of 2024 to 2026 terms and three claims. The coupling is the unit US forums are settling (Ireland and Texas SB 6 already treat it as one).¹⁹ The security-state bargain can be stated on public terms. The demand-risk mechanism is tied to disclosure.

¹⁶ Arushi Sharma Frank, *Power Access for AI: The Flexibility Compact*, CSIS Commentary (July 3, 2025) (proposing "a predictable and verifiable, telemetry-based handshake between the customer and the grid"), <https://www.csis.org/analysis/power-access-ai-flexibility-compact>; Phillips-Robins et al., *supra* note 3; Anthropic, *supra* note 3; OpenAI, *Stargate Community* (Jan. 20, 2026) ("we commit to paying our own way on energy"), <https://openai.com/index/stargate-community/>.

¹⁷ Phillips-Robins et al., *supra* note 3, pt. II; McGeady et al., *supra* note 3; Konstantin Pilz, Yusuf Mahmood & Lennart Heim, *AI's Power Requirements Under Exponential Growth*, RAND RR-A3572-1 (Jan. 28, 2025), https://rand.org/pubs/research_reports/RR-A3572-1.html.

¹⁸ Positioning antecedents and holders. Compute governance (compute-governance researchers, who treat compute as "detectable, excludable, and quantifiable"): Girish Sastry, Lennart Heim, Haydn Belfield, Markus Anderljung, Miles Brundage et al., *Computing Power and the Governance of Artificial Intelligence*, arXiv:2402.08797, abstract (Feb. 13, 2024), <https://arxiv.org/abs/2402.08797>; Lennart Heim et al., *Governing Through the Cloud: The Intermediary Role of Compute Providers in AI Regulation*, arXiv:2403.08501 (Mar. 13, 2024), <https://arxiv.org/abs/2403.08501>; Richardson et al., *How Sovereign Is Sovereign Compute? A Review of 775 Non-U.S. Data Centers*, arXiv:2508.00932 (rev. May 3, 2026), <https://arxiv.org/abs/2508.00932>. Subsidy accountability (Good Jobs First; state legislative auditors): Good Jobs First, *Even Cloudier with a Greater Loss of Spending Control*, Executive Summary (June 12, 2026) ("14 of the 37 states with sales and use tax exemptions for data centers do not publish their official revenue losses at all in a timely matter"), <https://goodjobsfirst.org/even-cloudier-with-a-greater-loss-of-spending-control-how-data-center-tax-abatements-undermine-public-budgets/>.

¹⁹ Comm'n for Regulation of Utils. (Ireland), *Large Energy Users Connection Policy: Decision Paper*, CRU/2025/236, § 3.4 (data centres of 10 MVA or more must match dispatchable onsite or proximate supply), § 3.8.3 at 84-85 (the public reporting requirement proposed in CRU202504 dropped), § 6 at 107 (bi-annual system-operator report to the CRU), § 7 at 108 (future review of the connection policy) (Dec. 12, 2025), https://cruie-live-96ca64acab2247eca8a850a7e54b-5b34f62.divio-media.com/documents/CRU2025236_Large_Energy_User_connection_policy_decision_paper.pdf; Tex. S.B. 6, 89th Leg., R.S. (2025) (enrolled), adding Tex. Util. Code § 39.169(d) (PUCT may "approve, deny, or impose reasonable conditions"), <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00006F.pdf>. Other comparators: the UK's North East AI Growth Zone discount carries "a review point in 2030" (UK Gov't, *Delivering AI Growth Zones*, CP 1440, § 3 (Nov. 2025) ("£14/MWh in the North East, with a review point in 2030"), <https://www.gov.uk/government/publications/delivering-ai-growth-zones/delivering-ai-growth-zones>); Singapore allocates capacity through competitive calls (Singapore Econ. Dev. Bd. & Infocomm Media Dev. Auth., *Four Data Centre Proposals Selected as Part of Second Data Centre Call for Application (DC-CFA2)* (Aug. 21, 2026) (200 MW), <https://www.edb.gov.sg/en/about-edb/media-releases-publications/four-data-centre-proposals-selected-as-part-of-second-data-centre.html>); the Dutch regulator reissued its grid-priority framework after the Trade and Industry Appeals Tribunal (CBB) required better justification (Autoriteit Consument & Markt, *Voorrang maatschappelijke projecten blijft mogelijk met nieuw prioriteringskader* (Dec. 12, 2025), <https://www.acm.nl/nl/publicaties/acm-voorrang-maatschappelijke-projecten-blijft-mogelijk-met-nieuw-prioriteringskader>).

FIGURE 3

Every element has an antecedent; no analysis audits them jointly

Positioning map. Seven elements of the report's audit, rated for eleven antecedents from the cited works. As of September 27, 2026. The report's own row is marked with the sections that audit each element.

Rating: **Established** **Partial** **Not addressed** **Set aside**

Set aside: raised in the cited work and excluded by argument.

	1 Coupling unit	2 Who pays	3 Who controls	4 Who decides	5 Who knows	6 Security-state forum	7 Demand-risk mechanism
ANALYSES AND PROPOSALS							
Harvard ELI Martin & Peskoe, 2025	Partial	Established	Not addressed	Established	Established	Set aside p. 31	Partial
Good Jobs First Even Cloudier, 2026	Not addressed	Partial	Not addressed	Partial	Established	Not addressed	Not addressed
EEL Large Load Projects and Tariffs	Not addressed	Partial	Not addressed	Partial	Not addressed	Not addressed	Partial
AI Now 2023 to 2026	Partial	Established	Partial	Established	Established	Partial	Partial
IFP Two proposals, 2025 and 2026	Partial	Partial	Partial	Established	Partial	Established	Partial
CSIS McGeady; Sharma Frank, 2025	Partial	Partial	Established	Not addressed	Partial	Not addressed	Partial
Carnegie The Compute Coalition, 2026	Partial	Not addressed	Not addressed	Partial	Not addressed	Partial	Not addressed
Compute governance Sastry et al.; Heim et al., 2024	Not addressed	Not addressed	Established	Partial	Established	Partial	Not addressed
INSTRUMENTS							
EO 14141 Jan. 2025; revoked July 2025	Established	Established	Partial	Partial	Partial	Established	Partial
Ireland, CRU/2025/236 Dec. 2025; non-US precedent	Established	Partial	Established	Established	Partial	Not addressed	Partial
Texas SB 6 2025 statute	Established	Established	Established	Established	Partial	Not addressed	Established
CONTRIBUTION							
This report	Audited §§ 4.1-4.3; 5.2	Audited §§ 6.4; 7.1; 9.1	Audited §§ 3.6; 4.3; 8.2	Audited §§ 5.2; 7.4; 8.2	Audited §§ 5.4; 6.2; 10.1	Audited §§ 8.1-8.5	Audited §§ 6.1; 9.2-9.4

Abbreviations: ELI, Electricity Law Initiative (Harvard Law School); EEL, Edison Electric Institute; IFP, Institute for Progress; CSIS, Center for Strategic and International Studies; EO, Executive Order; CRU, Commission for Regulation of Utilities (Ireland); SB, Senate Bill.

Sources: Martin & Peskoe, Extracting Profits from the Public (Harvard ELI, 2025); EEL, Large Load Projects and Tariffs (2026); Good Jobs First, Even Cloudier (2026); AI Now: Vipra & Myers West, Computational Power and AI (2023), Kak & Myers West (eds.), AI Nationalism(s) (2024), Guerra & Khlaaf, Fission for Algorithms (2025), and North Star toolkit (2026); IFP: Datta & Fist, Compute in America (Special Compute Zones) (2025), and Schiffman, Speed-for-Security (2026); CSIS: McGeady et al. (2025) and Sharma Frank (2025); Carnegie, The Compute Coalition (2026); Sastry et al. and Heim et al. (2024); Exec. Order 14141, 90 Fed. Reg. 5469 (2025), revoked by Exec. Order 14318; CRU/2025/236 (2025); Tex. S.B. 6 (2025, enrolled). Full citations are in the notes to Sections 2 and 4.

Antecedents establish each element somewhere, and Texas SB 6 and Ireland's CRU decision combine several in one forum, but none audits the coupling across US forums with the security-state forum and a demand-risk mechanism tied to public disclosure.

The objections that survive are about allocation

Each objection to AI data centers is tested where the harm falls: basin, airshed, grid region or parcel. Water is weak nationally but real locally. Air, noise and land are real but local. Energy and emissions is stronger than its rebuttals allow. What survives is allocative.

3.1 National water: too small to carry the objection

The national objection fails on scale. Lawrence Berkeley National Laboratory (LBNL) puts direct US data-center water consumption at about 48 million gallons a day in 2023. That is about 1.1 percent of thermoelectric and under 0.1 percent of irrigation consumptive use. With LBNL's indirect water from electricity, it is still under 1 percent of the two combined.²⁰ Yet Google reports: "Our water consumption increased 34% from 2024 to 2025".²¹

Operator metrics are voluntary, self-reported and on-site only. Texas's Governor has directed the state water board to penalize reporting failures, and Minnesota seals pre-application water exchanges.²² The nation is also the wrong unit. Water is allocated by basin and delivered by utilities sized for peak days. Researchers put new water-capacity needs at 697 to 1,451 million gallons a day through 2030 if 2024 intensity persists, and site burdens at 0.2 to 134 percent of host-utility capacity.²³

²⁰ Lawrence Berkeley National Laboratory, *2024 United States Data Center Energy Usage Report* (Shehabi et al.), LBNL-2001637, § 5 at 55-57 (Dec. 20, 2024) (direct consumption 66 billion L in 2023; indirect "nearly 800 billion liters" at 4.52 L/kWh; the method does not incorporate power purchase agreements or behind-the-meter generation), https://eta-publications.lbl.gov/sites/default/files/2024-12/lbnl-2024-united-states-data-center-energy-usage-report_1.pdf; Cheryl A. Dieter et al., *Estimated Use of Water in the United States in 2015*, U.S. Geological Survey Circular 1441 (2018) (irrigation consumptive use 73.2 Bgal/d; thermoelectric consumptive use 4.31 Bgal/d), <https://pubs.usgs.gov/circ/1441/circ1441.pdf>. Direct consumption of 66 billion L is 17.4 billion gal/yr, about 48 Mgal/d, about 1.1% of thermoelectric and about 0.065% of irrigation consumptive use; direct plus indirect is about 627 Mgal/d, about 0.8% of irrigation and thermoelectric consumptive use combined (77.5 Bgal/d).

²¹ Google, *2026 Environmental Report* (June 2026), "Cooling with care: Advancing water resilience in Oregon" and endnote 78 (10.9 billion gallons consumed in 2025, covering data centers and offices; data table shows data-center consumption of 10,523 Mgal in 2025), <https://sustainability.google/files/google-2026-environmental-report.pdf>.

²² Office of the Texas Governor, "Governor Abbott Directs TWDB To Penalize Data Center Reporting Failures" (Sept. 14, 2026) (the Governor "direct[s] the Texas Water Development Board to use its enforcement authority to penalize past failures"), <https://gov.texas.gov/news/post/governor-abbott-directs-twdb-to-penalize-data-center-reporting-failures>; see also Office of the Texas Attorney General, "Attorney General Paxton Launches Landmark Investigation into Hundreds of Data Center Developments in Texas" (Sept. 24, 2026) (investigating "hundreds of data center developments to ensure that they are transparent about their water usage"), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-paxton-launches-landmark-investigation-hundreds-data-center-developments-texas>; Minn. Laws 2025, 1st Spec. Sess., ch. 12, § 3 (DNR pre-application review; exchanges are "nonpublic data"), <https://www.revisor.mn.gov/laws/2025/1/Session+Law/Chapter/12/>.

²³ Yuelin Han, Pengfei Li, Adam Wierman & Shaolei Ren, "Small Bottle, Big Pipe: Quantifying and Addressing the Impact of Data Centers on Public Water Systems," arXiv:2603.02705v2 (rev. Mar. 18, 2026), abstract ("697-1,451 million gallons per day (MGD) of new water capacity through 2030", conditional on 2024 water use intensity persisting; 227 to 604 MGD under a 10% annual intensity reduction), <https://arxiv.org/abs/2603.02705>; Basit A. Akinade, Amobichukwu C. Amanambu, Jonathan M. Frame & Shaolei Ren, "AI Data Centers and the Water Use Feedback Loop," arXiv:2606.21760v1 (June 19, 2026), abstract ("from 0.2% to 134% of host capacity") and § 6.3 (Lebanon, Ind.), <https://arxiv.org/abs/2606.21760>.

FIGURE 4

Five objections, tested at the right unit

Each objection to AI data centers in Section 3, tested at its own unit and where the harm falls: basin, airshed, grid region or parcel. Verdict: the result of that test. Allocative question: what the objection becomes, from Section 3.6.

Verdict: **Upheld** **Survives narrowed** **Rejected** **Who pays** *Surviving question*

Objection	Unit tested	Evidence from the record	Verdict	Allocative question
3.1 National water	Nation (the objection's own unit); the basin is the right unit	- Direct US data-center use about 48 Mgal/d (2023), about 1.1% of thermoelectric consumptive use (2015 USGS baseline) - Under 0.1% of irrigation consumptive use (2015 baseline) - Google: water consumption (data centers and offices) up 34%, 2024 to 2025 (self-reported, on-site only)	Rejected Too small to carry the objection	Who knows Who knows, when water data are self-reported?
3.2 Local water	Basin and host utility, peak day	- Crane nuclear restart (power supply, not a data center): up to 21 Mgal/d consumptive use (peak day) approved June 4, 2026 - Lebanon, Ind.: 134% of host-utility capacity; sites range from 0.2% to 134% - Minnesota seals pre-application water exchanges	Survives narrowed Real where peak-day capacity binds	Who pays Who knows Who pays for peak-day water? Who knows, when exchanges are sealed?
3.3 Air	Airshed (Northern Virginia; Southaven)	- Under 4% of regional NO_x routinely, but about 11% of point-source NO_x; would be 33% of regional NO_x at permitted maximums - DOE emergency orders (January and May 2026) let PJM dispatch data-center backup generation - Southaven: 27 turbines alleged to have run without an air permit; state regulators had deemed trailer-mounted, temporary turbines exempt; EPA says trailer turbines can still be stationary	Survives narrowed Real emissions, run under exemptions	Who controls Who decides Who knows Who controls backup fleets under emergency orders? Who decides between state and federal readings of one permit rule? Who knows, when local air exposure goes unmeasured?
3.4 Energy and emissions	Grid region (PJM, US) and corporate inventory	- EPRI: data centers 9% to 17% of US electricity by 2030, with gas the main new supply - PJM 2028/2029 auction: 6,831 MW short of the reliability requirement - Microsoft fiscal 2025 Scope 2: location-based 12.0 Mt CO₂e, about 4.4 times market-based 2.7 Mt CO₂e	Upheld Stronger than its rebuttals	Who pays Who knows Who pays for gas built against forecast load? Who knows, when emissions data are self-reported?
3.5 Noise and land	Parcel and county; transmission corridor	- Noise judged a problem at about 10% of operational Virginia sites - Data centers 20% to 30% of land development in Loudoun and Prince William, 2013 to 2021; Virginia requires no farmland mitigation \$3.5 billion of Virginia transmission projects proposed (December 2023), mostly for data-center demand - Ohio preempts local approval of certified generating plants of 50 MW or more	Survives narrowed Real, local and unevenly governed	Who pays Who decides Who pays for transmission land? Who decides between county and state siting?

Sources: Section 3 and its notes. LBNL (2024); USGS (2015 water use); Google 2026 Environmental Report; Microsoft 2026 Environmental Data Fact Sheet; Susquehanna River Basin Commission (91 Fed. Reg. 36038); water studies on arXiv (2026); Minnesota and Virginia (JLARC Report 598) records; Pitt et al. (Virginia Commonwealth University, 2026); DOE emergency orders (2026); Complaint, NAACP v. X.AI Corp. (N.D. Miss. 2026); Mississippi DEQ; EPA turbine rule (2026); EPRI (2026); PJM (July 2026); Ohio Rev. Code §§ 4906.01, 4906.13.

Mgal/d = million gallons a day; NO_x = nitrogen oxides; MW = megawatts; Mt CO₂e = million tonnes of carbon dioxide equivalent; PJM = PJM Interconnection, the mid-Atlantic grid operator; EPRI = Electric Power Research Institute; DOE = US Department of Energy; EPA = US Environmental Protection Agency; LBNL = Lawrence Berkeley National Laboratory; USGS = US Geological Survey; JLARC = Joint Legislative Audit and Review Commission; DEQ = Department of Environmental Quality.

National water fails at its own unit; local water, air, and noise and land survive once narrowed to the basin, the airshed, or the parcel and transmission corridor; energy and emissions is upheld; and each surviving objection becomes a question of who pays, controls, decides or knows.

Footprint researchers argue that indirect water, about 12 times direct, makes the footprint large. The arithmetic above already counts it.²⁴

3.2 Local water: real where peak-day capacity binds

The objection holds where peak-day draw presses a stressed basin or small utility.

Water-accounting analysts such as Brian Potter call indirect water an accounting artifact. Potter finds LBNL's grid-average factor counts hydro-reservoir evaporation that may occur regardless of generation; thermoelectric factors alone give about 234 million gallons a day, not 579.²⁵ The report accepts grid-average indirect water as an upper bound. For dedicated supply, what matters is the serving generator, which LBNL's method omits.²⁰ Crane, a front-of-the-meter restart that Section 4 excludes from the coupling, shows the scale. On June 4, 2026 the Susquehanna River Basin Commission approved up to 21 million gallons a day of consumptive use (peak day) for the restart.²⁶

Basin regulators say public forums already govern local water. The Commission required mitigation, certified metering and quarterly reporting, and ten Arizona providers restrict new large users.²⁶ The report agrees where a forum exists. The gap lies where none does or where data are sealed, as with Minnesota's pre-application water exchanges.

Hyperscalers say water is small and replenished. That is true in aggregate, but Google's replenishment (about 78 percent of its 2025 freshwater consumption) is a portfolio total with no basin match.²⁷ Where basins have headroom, evaporative cooling is better; dry cooling adds summer peak load.²⁴

Three further positions bear on local water.²⁸ Water advocates such as Food & Water Watch and Tucson's No Desert Data Center Coalition say the harm is understated; Lebanon, Indiana (134 percent of host-utility capacity) supports them locally, not nationally.²³ The Dalles and other host

²⁴ The 12-times ratio follows from note 20: about 579 Mgal/d indirect (627 less 48) against 48 Mgal/d direct. Chip-fabrication (scope 3) water, which Li et al. excluded for lack of data, is unquantified and belongs in the disclosure term: Pengfei Li, Jianyi Yang, Mohammad A. Islam & Shaolei Ren, "Making AI Less 'Thirsty,'" arXiv:2304.03271v5 (Mar. 26, 2025), §§ 2.2.3 (scope-3 water described) and 3.3 (embodied water excluded from the GPT-3 case study "due to the lack of public data for scope-3 water usage"), <https://arxiv.org/pdf/2304.03271>. Cooling is a trade-off: Microsoft reports that its zero-water designs cost a "nominal" energy increase, while LBNL finds that air-cooled chillers use no water but more energy. Steve Solomon (Microsoft), "Sustainable by design: Next-generation datacenters consume zero water for cooling," Microsoft Cloud Blog (Dec. 9, 2024), <https://www.microsoft.com/en-us/microsoft-cloud/blog/2024/12/09/sustainable-by-design-next-generation-datacenters-consume-zero-water-for-cooling/>; LBNL-2001637, *supra* note 20, at 45 (air-cooled chillers use no water but more energy).

²⁵ LBNL-2001637, *supra* note 20, at 56-57 (national average of 4.52 L/kWh of indirect water consumption in 2023). The hydro-evaporation critique and the thermoelectric-only estimate are Brian Potter, "I Was Wrong About Data Center Water Consumption," Construction Physics (Aug. 30, 2025) (about 234 Mgal/d on thermoelectric factors against 579 Mgal/d implied by LBNL; Potter notes the treatment of reservoir evaporation depends on local conditions), <https://www.construction-physics.com/p/i-was-wrong-about-data-center-water>.

²⁶ Susquehanna River Basin Comm'n, Actions Taken at the June 4, 2026 Meeting, 91 Fed. Reg. 36038 (June 15, 2026) (Constellation Energy Generation, LLC, Christopher M. Crane Clean Energy Center; Docket No. 20221203; consumptive use up to 21,000 mgd, peak day), <https://www.federalregister.gov/documents/2026/06/15/2026-11967/actions-taken-at-the-june-4-2026-meeting>; Susquehanna River Basin Comm'n, Constellation Energy FAQ (response to commenters) (May 13, 2026) (mitigation by Cowanesque Reservoir releases; certified meters, quarterly submission), <https://www.srbcc.gov/regulatory/public-participation/docs/constellation-energy-faq.pdf>; ASU Kyl Center for Water Policy, "How Arizona Municipal Water Providers Are Regulating Large-Volume Water Users" (Sept. 5, 2025), <https://azwaterblueprint.asu.edu/news/how-arizona-municipal-water-providers-are-regulating-large-volume-water-users>.

²⁷ Google, 2026 *Environmental Report*, *supra* note 21 (The Dalles water-risk evaluation; aquifer storage and recovery system completed 2025 and transferred with groundwater rights to the City of The Dalles; water stewardship section and endnotes 81-82: projects "replenished approximately 7.7 billion gallons of water ... roughly 78% of our 2025 freshwater consumption", reported as a portfolio total under volumetric-benefit accounting).

²⁸ Further local-water positions and their holders (Section 3.2; evidence in notes 23, 27 and 29): (1) host-community and water-justice advocates (e.g., Food & Water Watch, No Desert Data Center Coalition in Tucson), with support from water-footprint researchers, holding that the report understates the harm; (2) host municipalities and economic-development officials, with hyperscalers that fund host-utility capacity (e.g., Google at The Dalles), holding that host-utility capacity is a capital-allocation problem that developer-funded deals can solve; (3) water-energy nexus analysts and grid reliability planners (e.g., the DOE Water-Energy Nexus team), holding that water is also a risk to generation, not only a burden AI imposes.

cities cite developer-funded capacity, such as the aquifer storage system Google gave the city. That settles who pays, but bilaterally and before public review.²⁷ Reliability planners, including DOE's Water-Energy Nexus team, note that heat and low flows curtail thermal plants, as at Browns Ferry in 2010.²⁹

3.3 Air: real emissions, run under exemptions

Diesel backup is not a minor source. Routine emissions are under 4 percent of Northern Virginia's nitrogen oxides (NOx). But data centers emit about 11 percent of point-source NOx, and would reach 33 percent of all regional NOx at permitted maximums. Health modelers put over 90 percent of modeled damage at grid plants; the report agrees that on-site units are the most concentrated burden, not the largest.³⁰ Virginia's environmental regulator finds that emergency generator sets "will be operated for extended periods under certain circumstances".³¹ DOE drew on that reserve by emergency order in January and May 2026, authorizing PJM to dispatch data-center backup generation.³²

Gas turbines ran under the permit system's exemptions, not outside it. In July 2025 Mississippi regulators told xAI that turbines kept on trailers and on site for under a year were "exempt from permitting requirements", provided both conditions held (Section 8.2 sets out the Southaven count).³³ Yet EPA's January 2026 turbine rule restates that trailer-mounted turbines can "still be considered stationary", while adding a 24-month temporary subcategory and a Title V exemption for non-major sources.³⁴

²⁹ U.S. Dep't of Energy, *The Water-Energy Nexus: Challenges and Opportunities* (June 2014), chs. 1-3 (2010 heat-related curtailment at Browns Ferry), <https://www.energy.gov/sites/prod/files/2014/07/f17/Water%20Energy%20Nexus%20Full%20Report%20July%202014.pdf>. On RT-7's public reporting of large withdrawals, see Section 10.3.

³⁰ Joint Legislative Audit and Review Comm'n, *Data Centers in Virginia*, Report 598 (Dec. 9, 2024), Summary at vi and ch. 5 at 59 (under 4% of regional NOx), <https://jlarc.virginia.gov/pdfs/reports/Rpt598.pdf>; Damian Pitt, Ivan Suen & Ellie Plisko, *Localized Air Pollution Impacts from Data Centers in Northern Virginia* (Va. Commonwealth Univ., 2026), § 3 & tbl. 1 (actual data-center emissions 11.3% of point-source NOx), § 4 (permitted emissions "would be 33% of total regional NOx"), https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1003&context=isee_pubs; see also VCU News, "Northern Virginia data center air pollution rivals power plant emissions" (Feb. 12, 2026), <https://news.vcu.edu/article/northern-virginia-data-center-air-pollution-rivals-power-plant-emissions>. On modeled damage: Environmental Protection Network, *The Hidden Health Costs of AI Data Centers* (Sept. 2026), Key Findings, <https://www.environmentalprotectionnetwork.org/wp-content/uploads/2026/08/Hidden-Health-Costs-of-AI-Data-Centers.pdf>; Yuelin Han et al., "Health-Informed Computing," arXiv:2412.06288v4 (rev. June 8, 2026), abstract, <https://arxiv.org/abs/2412.06288>.

31 Virginia Dep't of Env'tl. Quality, *Permit Boilerplate Procedures for Diesel Engine-Generator Sets*, GDoc DEQ 5121 v2 (Dec. 29, 2025), at 9 (quotation) and § 3.a at 8-9 (0.60 g/hp-hr for data-center engines; "This BACT limit is reflective of SCR control or equivalent"; applies to applications submitted on or after July 1, 2026; existing fleets are not retrofitted), https://townhall.virginia.gov/L/GetFile.cfm?File=C:%5CTownHall%5Cdocroot%5CGuidanceDocs%5C440%5CGDoc_DEQ_5121_v2.pdf.

32 U.S. Dep't of Energy, Order No. 202-26-06 (Jan. 26, 2026) (expired Jan. 31, 2026), extended by Order No. 202-26-06A (Jan. 29, 2026) (expired Feb. 2, 2026) (DOE order page: authorizes PJM "to direct backup generation resources at data centers and other large load customers to operate as a last resort before declaring an Energy Emergency Alert (EEA) 3 or during an EEA 3"), <https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-interconnection-pjm-order-no-202-26-06>; Order No. 202-26-23 (May 18, 2026) (effective May 18 to 20, 2026; authorizes PJM "to deploy backup generation resources at data centers and other major facilities"), listed at <https://www.energy.gov/ceser/2026-doe-202c-orders>; see also EPA, "EPA Issues Clarification to Help Power Data Centers" (May 1, 2025) (up to 50 hours a year of non-emergency operation), <https://www.epa.gov/newsreleases/epa-issues-clarification-help-power-data-centers-ensure-us-ai-capital-world>. Grid planners ask for a load-shedding counterfactual. It holds for dispatch under a 202(c) order, compliance with which "shall not be considered a violation" of environmental law, but not for routine headroom use: Federal Power Act § 202(c)(2)-(3), 16 U.S.C. § 824a(c)(2)-(3) (operation conflicting with environmental law limited to hours necessary; compliance "shall not be considered a violation" of federal, state or local environmental law), <https://www.law.cornell.edu/uscode/text/16/824a>; *Delaware Dep't of Nat. Res. & Envtl. Control v. EPA*, 785 F.3d 1 (D.C. Cir. 2015) (vacating the 100-hour emergency demand-response allowance), <https://www.courtlistener.com/opinion/2797993/delaware-department-of-natural-resources-environmental-control-v/>.

Litigators call this a governance failure. The report agrees in part: forums read one rule differently, a who-decides failure, not operator lawlessness (Section 8).³⁵ Exposure scientists call the burden unmeasured, since Memphis sampled on two days; the report adopts this as a monitoring gap.³⁶

3.4 Energy and emissions: stronger than its rebuttals

The objection is stronger than its rebuttals allow. EPRI projects data centers at 9 to 17 percent of US electricity by 2030, with gas the main source of new supply. Reliability planners say institutional forecasts are met or raised. The International Energy Agency (IEA) reports 2025 global growth "in line with IEA projections".³⁷ The report agrees. Supply is also tight: PJM's 2028/2029 auction cleared 6,831 MW short of its reliability requirement.³⁸ Announced pipelines differ: EPRI calls announced capacity a "pipeline indicator", and AEP Ohio's requests fell sharply under its tariff (Section 6.1). That gap is the demand risk this report allocates.³⁹

Google's ambition-based emissions rose 18 percent in 2025 and Microsoft's total 26.5 percent in fiscal 2025 (GHG Protocol basis). Microsoft's location-based Scope 2 was over four times market-based. The report adopts the accounting critics' and mandatory-reporting advocates' point about that gap.⁴⁰

Energy-system modelers argue that federal policy, not private bargains, drives the fossil build. EPRI ties its gas result to credits "curtailed for many technologies under the 2025 budget bill". Wind and solar lose credits if placed in service after 2027 unless construction began by July 4, 2026, and 202(c) orders keep retiring coal running.⁴¹ The report accepts that public actors set the

³³ Complaint, *NAACP v. X.AI Corp.*, No. 3:26-cv-00074 (N.D. Miss. Apr. 14, 2026), ECF No. 1 ¶ 4 (27 turbines; allegation); ECF No. 1-2, Ex. B-2 at 5 (Mississippi Dep't of Env'tl. Quality (MDEQ) letter of July 29, 2025, Determination on Portable Gas-Fired Combustion Turbines: turbines "exempt from permitting requirements pursuant to 11 Mississippi Administrative Code Part 2, Chapter 2, Rule 2.13.D," contingent on the mobile and temporary criteria remaining valid), <https://www.courtlistener.com/docket/73188848/national-association-for-the-advancement-of-colored-people-v-xai-corp/>. Operators cite EPA Region 4's review of the permanent plant's modeling; that holds for the permanent plant, not the interim units: statement of Jaricus Whitlock, Chief, MDEQ Air Division, at the MDEQ Permit Board vote on the 41-turbine Southaven PSD permit (permit voted Mar. 10, 2026; issued Mar. 11, 2026) (air-quality analysis scrutinized by MDEQ modeling staff and EPA Region 4); see Mississippi Today, "State board approves xAI permit" (Mar. 10, 2026), <https://mississippitoday.org/2026/03/10/xai-permit-approved-southaven/>.

³⁴ EPA, New Source Performance Standards Review for Stationary Combustion Turbines and Stationary Gas Turbines, Final Rule, 91 Fed. Reg. 1910 (Jan. 15, 2026), Docket EPA-HQ-OAR-2024-0419, at 1914 (trailer quotation), 1917 ("a new subcategory for stationary temporary combustion turbines"; title V exemption for turbines "that are not major sources or located at major sources"), 1926 (temporary subcategory "for turbines used at a single location for up to 24 months") and 1926 n.81 (portable turbines "continue to be subject to the NSPS, as they have been under subparts GG and KKKK", citing 40 C.F.R. § 60.4420), <https://www.govinfo.gov/content/pkg/FR-2026-01-15/pdf/2026-00677.pdf>. Permitting runs small first and big later: at Abilene (Stargate), ten turbines under a standard permit preceded a major-source application. Texas Comm'n on Env'tl. Quality, Electric Generating Unit Standard Permit technical review, Registration No. 177263, Abilene DC 1, LLC (Jan. 21, 2025) (five Titan 350 and five GE LM2500 simple-cycle turbines), https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=8600163&Rendition=Web; TCEQ, Notice of Receipt of Application and Intent to Obtain Air Permit, Permit Nos. 182126, PSDTX1688 and GHGPSDTX263, Crusoe Energy Systems LLC (application received Nov. 7, 2025; notice Nov. 19, 2025), <https://www.tceq.texas.gov/downloads/permitting/air/bilingual/pending-permit-notices/182126-nori-english.pdf>. See also Floodlight and The Texas Tribune (July 9, 2026) (small-first, big-later sequence at the Stargate site). A similar aggregation question arises at Meta's Hyperion site, where the Sierra Club contends that counting excluded emergency generators with 44 gas boilers would exceed the 100-ton minor-source limit (allegation): Sierra Club, comments to the Louisiana Dep't of Env'tl. Quality on the Laidley LLC minor source permit modification (July 30, 2026) (contesting minor-source status; LDEQ approved the modification June 6, 2026); see Louisiana Illuminator (Aug. 4, 2026), <https://lailuminator.com/2026/08/04/meta-data-center-pollution-permit-doesnt-account-for-all-its-emissions-sierra-club-says/>; Baton Rouge Business Report (Aug. 4, 2026); see also EPA, Minor New Source Review Program Air Permitting Public Participation Requirements, Proposed Rule, 91 Fed. Reg. 41591 (July 7, 2026), <https://www.federalregister.gov/documents/2026/07/07/2026-13667>.

³⁵ Litigators argue the turbines ran under a state exemption that EPA's long-standing reading contradicts; see 91 Fed. Reg. at 1914, 1926 n.81, *supra* note 34. The federal executive claims enforcement discretion, having "determined ... that no claim should be prosecuted"; EPA's own reading and the citizen-suit provision contest it. U.S. Mem. in Supp. of Mot. to Stay All Proceedings Pending Appeal, *NAACP v. X.AI Corp.*, No. 3:26-cv-00074 (N.D. Miss. Sept. 21, 2026), ECF No. 125 at 2, <https://www.courtlistener.com/docket/73188848/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; 42 U.S.C. § 7604 (citizen suits), <https://www.law.cornell.edu/uscode/text/42/7604>.

range of fuel choices. But EPRI also finds that "Energy procurement strategies drive sharply different generation buildouts", and tariffs and special contracts decide who pays for gas built against forecast load.

Standard-setters note that what counts as clean power awaits the GHG Protocol's Scope 2 revision, which has no announced final date.⁴² The report agrees: it is another privately set term.

3.5 Noise and land: real, local and unevenly governed

Noise is a problem at a minority of sites, about 10 percent in Virginia, and is unevenly governed. A-weighted ordinances miss low-frequency tones. Loudoun lacks "policy or regulatory language specific to tonal noise or low frequency noise", while Prince William County now enforces a steady-tonal standard.⁴³ EPA closed its noise office in 1981, when noise was judged "best handled at the State and local level"; the Noise Control Act and EPA's product and transportation noise standards remain in force, but no federal standard sets noise limits for data-center sites.⁴⁴ Virginia makes localities require an applicant's sound assessment for homes and schools within 500 feet, but sets no limit.⁴⁵

Siting counsel argue that coupled generation escapes county zoning and drives the loudest claims. Ohio preempts local approval of certified plants of 50 MW or more, and a putative class action alleges turbine noise at Southaven. The report accepts this (Section 7).⁴⁶

Land is the permanent objection. Data centers were 20 to 30 percent of land development in Loudoun and Prince William in 2013 to 2021. Statewide they equal about 1.4 percent of recent farmland loss, and Virginia requires no mitigation.⁴⁷ Two opposing positions argue that the larger cost may sit off the parcel, and the report adopts both. Transmission-siting opponents cite

³⁶ City of Memphis, "City of Memphis Releases Initial Air Quality Testing Results" (June 24, 2025) (sampling on June 13 and 16, 2025; the release describes it as a snapshot in time), <https://memphistn.gov/city-of-memphis-releases-initial-air-quality-testing-results-no-dangerous-levels-detected/>; JLARC Report 598, *supra* note 30 (local impacts harder to assess; DEQ study under way).

³⁷ EPRI (Blanford, Wilson, Bistline & Johnson), *Powering Intelligence: Updated U.S. Data Center Scenarios* (Feb. 26, 2026), Key Insights at 1, <https://restservice.epri.com/publicattachment/97025>; International Energy Agency, *Key Questions on Energy and AI* (Apr. 16, 2026), ch. 1 (global data-centre electricity demand "grew by 17% in 2025, in line with IEA projections"), <https://iea.blob.core.windows.net/assets/3179f7f8-01f6-4dd6-bffa-c9f7b73f1dc9/KeyQuestionsonEnergyandAI.pdf>. Current US baseline: 176 TWh, 4.4% of US electricity in 2023 (LBNL-2001637, *supra* note 20, Executive Summary). The IEA also expects 15 to 27 GW of onsite data-center gas by 2030, mostly in the United States. IEA, *Key Questions on Energy and AI*, *supra*, § 6, and Executive Summary (data centres about 2% of global electricity-sector emissions in 2035).

³⁸ PJM Inside Lines, "PJM Capacity Auction Procures 138,318 MW of Generation Resources" (July 14, 2026) (the auction cleared "short of PJM's reliability requirement by 6,831 MW"), <https://insidelines.pjm.com/pjm-capacity-auction-procures-138318-mw-of-generation-resources-as-work-continues-to-address-growing-electricity-demand/>. See also Dominion's plan, which raises gas to 8,510 MW from 5,934 MW as data-center contracts more than doubled to 47,045 MW, of which 16,913 MW is firm: Virginia Electric & Power Co., 2025 Update to the 2024 Integrated Resource Plan, Va. SCC Case No. PUR-2025-00184 (Oct. 15, 2025), Fig. 2.1.15 (end of July 2025 column: ESAs 9,815 MW, CLOAs 7,098 MW, firm capacity 16,913 MW, ELOAs 30,132 MW, total contracts 47,045 MW; 21,417 MW at end of July 2024) and Table 5.1.1.1, <https://www.dominionenergy.com/-/media/content/about/our-company/irp/pdfs/2025-integrated-resource-plan-update.pdf>; 2024 IRP (Oct. 15, 2024), ch. 5 (5,934 MW), https://www.dominionenergy.com/-/media/content/about/our-company/irp/pdfs/2024-irp-w_o-appendices.pdf.

³⁹ EPRI, *supra* note 37, at 2 ("pipeline indicator"); AEP Ohio, Press Release, *AEP Ohio Updates PUCO on Data Center Load: Figures Show Tariff is Working* (Feb. 13, 2026) ("13,022.7 MW asked and paid for a study"), <https://www.aepohio.com/company/news/view?releaseID=10753> (linking the PUCO filing, <https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A26B12B61453D00940>); on the earlier 30 GW figure, see Section 6 (inter-connection requests, not a load forecast). Forecast skeptics are right about pipelines, which ERCOT now screens rather than aggregates: ERCOT, Market Notice M-A090926-01, "Issuance of Batch Zero Verification Requests for Information" (Sept. 9, 2026), https://www.ercot.com/services/comm/mkt_notices/M-A090926-01.

⁴⁰ Google, *2026 Environmental Report*, *supra* note 21, at 69-70 (ambition-based emissions up 18% from 2024 to 2025); Microsoft, *2026 Environmental Data Fact Sheet* (July 2026), Table 1A (GHG Protocol total, market-based, 16,693,000 mtCO₂e in FY24 and 21,121,000 in FY25; FY25 Scope 2 location-based 12,030,556 against market-based 2,707,428) and Table 1B (management's criteria: 16,215,000 in FY24 and 20,290,000 in FY25), <https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/2026-Microsoft-Environmental-Data-Fact-Sheet-PDF.pdf>; IEA, *supra* note 37, § 5.1 (physical mix differs from the "financial" mix); LBNL-2001637, *supra* note 20 (lack of data availability significantly limits the analysis).

\$3.5 billion of Virginia transmission projects, proposed in December 2023, mostly to serve data-center demand. Fiscal-zoning scholars note that host localities draw up to 31 percent of revenue from data centers and so regulate under a conflict of interest (Sections 7 and 9).⁴⁸ Efficiency policymakers treat waste heat as a resource, as EU law does for data centers above 1 MW where feasible; the report adopts this as a comparator.⁴⁹

3.6 Four allocation questions survive

Four questions survive. Who pays for peak-day water, gas built against forecast load and transmission land? Who controls backup fleets under emergency orders? Who decides between state and federal readings of one permit rule, and between county and state siting? Who knows, when water and emissions data are self-reported, exchanges are sealed and local air exposure goes unmeasured?

⁴¹ EPRI, *supra* note 37, at 3 (quotations, including "Energy procurement strategies drive sharply different generation buildouts to meet this demand"); Pub. L. No. 119-21, §§ 70512(a), 70513(a), 139 Stat. 72 (July 4, 2025) (adding 26 U.S.C. §§ 45Y(d)(4) and 48E(e)(4): no credit for wind or solar facilities placed in service after Dec. 31, 2027, unless construction began within 12 months of enactment), <https://www.law.cornell.edu/uscode/text/26/45Y>; IRS Notice 2025-42 (beginning-of-construction rules), <https://www.irs.gov/pub/irs-drop/n-25-42.pdf>; U.S. Dep't of Energy, Order No. 202-25-3 (May 23, 2025) (J.H. Campbell plant), renewed in successive orders, most recently Order No. 202-26-39 (Aug. 14, 2026) (effective Aug. 17 to Nov. 14, 2026), <https://www.energy.gov/ceser/2026-doe-202c-orders>.

⁴² GHG Protocol, "Upcoming Scope 2 Public Consultation: Hourly Matching and Deliverability" (Oct. 14, 2025), <https://ghgprotocol.org/blog/upcoming-scope-2-public-consultation-hourly-matching-and-deliverability>; GHG Protocol, "GHG Protocol Public Consultations" (Scope 2 consultation ran Oct. 20, 2025 to Jan. 31, 2026; feedback to inform revision of the 2015 Scope 2 Guidance; no final date stated), <https://ghgprotocol.org/ghg-protocol-public-consultations>. Two further positions: litigators say AI is re-carbonizing the grid through long-lived gas assets (accepted regionally, adding who pays if the load leaves; Section 9); hyperscalers claim additionality, but while Crane adds capacity, Talen's up to 1,920 MW for Amazon is existing supply. Constellation Energy, "Constellation to Launch Crane Clean Energy Center" (Sept. 20, 2024), <https://www.constellationenergy.com/news/2024/Constellation-to-Launch-Crane-Clean-Energy-Center-Restoring-Jobs-and-Carbon-Free-Power-to-The-Grid.html>; Talen Energy Corp., press release filed as SEC exhibit (June 11, 2025), <https://www.sec.gov/Archives/edgar/data/1622536/000162253625030559/a20250611pressreleasebusin.htm>.

⁴³ JLARC Report 598, *supra* note 30, ch. 6 at 77 (at least 15 sites, 10% of operational sites), Summary at viii (low-frequency noise; ordinances target short-term sources and carry a \$500 maximum civil penalty); Loudoun County, "Data Centers: Noise & Air Quality Concerns" (amendments anticipated in spring or summer 2027), <https://www.loudoun.gov/6405/Noise-Air-Quality-Concerns>; Prince William County, Dep't of Public Works, "Steady Tonal Noise" (Chapter 14 of the County Code "as modified and effective May 1, 2026"), <https://www.pwcva.gov/departments/public-works/steady-tonal-noise>; City of Chandler, "Chandler's data center ordinance now in effect" (Chandler, Ariz., City Code § 35-2214 (added by Ordinance No. 5033, eff. Jan. 5, 2023)) (baseline study; annual noise study for five years), <https://www.chandleraz.gov/news-center/chandlers-data-center-ordinance-now-effect>.

⁴⁴ EPA, "Title IV: Noise Pollution," Clean Air Act Overview (in 1981 the Administration concluded noise issues were "best handled at the State and local level" and closed the Office of Noise Abatement and Control; EPA "retains authority" under the Noise Control Act of 1972 and the Quiet Communities Act of 1978), <https://www.epa.gov/clean-air-act-overview/title-iv-noise-pollution>; Noise Control Act of 1972, Pub. L. No. 92-574, 86 Stat. 1234, 42 U.S.C. § 4901 et seq.; 40 C.F.R. pts. 201-211, <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-G>.

⁴⁵ 2026 Va. Acts ch. 567 (H.B. 153) and ch. 568 (S.B. 94) (approved Apr. 13, 2026; effective July 1, 2026) (before approving a rezoning, special exception or special use permit for a new high energy use facility, a locality shall require the applicant to submit a site assessment of "the sound profile of the HEUF on residential units and schools located within 500 feet of the HEUF property boundary"; optional assessments of water, agricultural, park, historic and forest impacts), <https://lis.virginia.gov/bill-details/20261/HB153/text/CHAP0567> and <https://lis.virginia.gov/bill-details/20261/SB94/text/CHAP0568>. Industry says few sites draw complaints, operators fix them, and uniform standards beat local vetoes; the report accepts the point on incidence, but after-the-fact fixes are the problem, and a state tonal standard gives that predictability.

The unit being settled is compute plus dedicated generation

The unit that forums are settling is compute plus dedicated generation; most reliability evidence concerns grid-served computational load instead. A coupling pairs compute with existing plant as co-located load, with new behind-the-meter or islanded plant, or with utility plant built for one customer, and emergency backup alone does not make one: the generation must serve the load in normal operation or under contracted curtailment.

4.1 Energy law names the coupling but sets no common terms for it

DOE's October 2025 section 403 proposal to FERC addresses loads "seeking to share a point of interconnection" with generation.⁵⁰ FERC's PJM proceeding defines co-located load by physical connection on the generator's side of the point of interconnection and calls the pair a "co-location arrangement". Its June 18, 2026 show-cause order proposed a large-load definition that excludes load that is "part of a co-location arrangement".⁵¹ Texas SB 6 lets the Public Utility Commission of Texas (PUCT) "approve, deny, or impose reasonable conditions" on a "net metering arrangement" joining a registered stand-alone generator to a new large load.⁵² NERC's Level 3 alert names "computational load interconnecting with collocated generation", but its proposed registration definition reaches only sites supplied through equipment "connected to the BPS".⁵³

Fiscal instruments split shell, compute and generation (Section 7).⁵⁴ Several US forums already treat the coupling as a regulatory object, but share no common terms (Section 5).

⁴⁶ Ohio Rev. Code § 4906.01(B)(1)(a) (major utility facility includes electric generating plant of 50 MW or more), <https://codes.ohio.gov/ohio-revised-code/section-4906.01>, and § 4906.13(B), <https://codes.ohio.gov/ohio-revised-code/section-4906.13>; *Haley v. X.AI Corp.*, No. 3:26-cv-00148 (N.D. Miss. filed June 8, 2026) (putative class action; motion to dismiss fully briefed, ECF Nos. 52-53, 69, 71; reply Sept. 21, 2026; no ruling as of Sept. 27, 2026); Defs. X.AI Corp. and MZX Tech LLC Mem. in Supp. of Mot. to Dismiss for Failure to State a Claim, ECF No. 53 (July 27, 2026), <https://www.courtlistener.com/docket/73458129/53/haley-v-xai-corp/>. Residents show that compliance is not relief: a pending complaint says Microsoft told Wisconsin neighbors it met the ordinance. Complaint, *Ostergaard v. Microsoft Corp.*, No. 2:26-cv-01169 (E.D. Wis. filed July 1, 2026), ECF No. 1 ¶ 50 (quoting Microsoft; allegation), <https://www.courtlistener.com/docket/73566375/1/ostergaard-v-microsoft-corporation/>, superseded by Am. Compl., ECF No. 20 (Aug. 31, 2026).

⁴⁷ JLARC Report 598, *supra* note 30, ch. 5 at 66-67 (20 to 30% of land development; about 1.4% of farmland loss; no required mitigation); American Farm Bureau Federation, "Balancing Data Center Growth with American Agriculture," Market Intel (Apr. 23, 2026) (conversion "generally permanent"), <https://www.fb.org/intel/markets/balancing-data-center-growth-with-american-agriculture>.

⁴⁸ JLARC Report 598, *supra* note 30, ch. 3 at 33 (new transmission in densely populated regions; \$3.5 billion in Virginia transmission projects proposed in December 2023, mostly to serve data-center demand) and Summary at ii (data-center revenue from under 1% to 31% of local revenue in five mature localities).

⁴⁹ Directive (EU) 2023/1791 on energy efficiency (recast), art. 26(6), 2023 O.J. (L 231) 1 (addressed to member states; data centres above 1 MW total rated energy input to use waste heat unless not technically or economically feasible), <https://eur-lex.europa.eu/eli/dir/2023/1791/oj/eng>. Ireland is a further comparator (Section 2): data centers used 22 percent of metered electricity in 2024, and its connection policy sets settlement terms. Central Statistics Office (Ireland), *Data Centres Metered Electricity Consumption 2024* (June 10, 2025), <https://www.cso.ie/en/releasesandpublications/ep/p-dcmecc/datacentresmeteredelectricityconsumption2024/>; Comm'n for Regulation of Utils. (Ireland), *Large Energy Users Connection Policy: Decision Paper*, CRU/2025/236, §§ 3.4, 3.8.3 (Dec. 12, 2025), https://cruie-live-96ca64acab2247eca8a850a7e54b-5b34f62.divio-media.com/documents/CRU2025236_Large_Energy_User_connection_policy_decision_paper.pdf.

⁵⁰ U.S. Dep't of Energy, Advance Notice of Proposed Rulemaking on interconnection of large loads, transmitted by Letter from Chris Wright, Sec'y of Energy, to FERC under DOE Organization Act § 403, 42 U.S.C. § 7173, ¶ 12, at 9-10 (Oct. 23, 2025), Docket No. RM26-4-000, <https://www.energy.gov/sites/default/files/2025-10/403%20Large%20Loads%20Letter.pdf>. FERC describes the instrument as an ANOPR that "directed the Commission to consider taking additional actions". 195 FERC ¶ 61,211, P 1 & n.5 (see note 51). Under section 403, DOE proposes and FERC decides.

Rival view: energy law already governs the coupling. At full strength, the coupling's hazards are reliability and cost-causation problems that FPA sections 201 and 215 and state retail law already govern. Commissioner Chang wrote: "Co-Located Loads electrically connected to the grid (through a co-located generator) benefit from the system and should cover their costs."⁵⁵ A critical-infrastructure overlay would pull the coupling out of public dockets. *Reply*: accepted; the report routes its terms through the energy forums (Section 10, RT-4 and RT-5). But recognition is partial. The coupling-specific instruments (the June 18 PJM order, the DOE proposal and SB 6) set no cyber or physical-security terms. Graded coverage of registered generators under NERC's Critical Infrastructure Protection (CIP) standards misses all compute and any generation under Exclusion E2, under which customer-side generation serving retail load can fall outside the Bulk Electric System (Section 5).⁵⁶ Islanded generation sits outside FERC and NERC. SB 6 review excludes those who bear the cost: only the PUCT, ERCOT, the interconnecting utility and the parties take part. An arrangement the PUCT does not act on in time is deemed approved.⁵² The gaps are security, disclosure and islanding, not recognition.

4.2 Criticality turns on a defense-mission test, not national consequence

The report does not claim that a coupling is critical infrastructure under 42 U.S.C. 5195c(e); a single coupling probably fails its national "debilitating impact" test.⁵⁷ The statute that ties a facility's criticality to its power supply is FPA section 215A. DOE designates facilities "critical to the defense of the United States" and "vulnerable to a disruption of the supply of electric energy provided to such facility by an external provider".⁵⁸ Their owners or operators "shall bear the full incremental costs" of emergency measures, and critical electric infrastructure information (information on bulk-power assets that FERC or DOE designates) is exempt from FOIA and state

⁵¹ *PJM Interconnection, L.L.C.*, Order Instituting Proceeding Under Section 206 of the Federal Power Act, 195 FERC ¶ 61,211, P 1 nn.2-3 (June 18, 2026) (Docket No. EL26-67-000) (quoting *Co-Located Load Configurations in PJM*, 193 FERC ¶ 61,217, at PP 3, 164 (Dec. 18, 2025) (Docket No. EL25-49-000)) (the large-load definition is preliminary: "it appears that it would be reasonable to define"), <https://www.ferc.gov/sites/default/files/2026-06/EL26-67-000.pdf>; *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,115, at P 3 n.4 (Feb. 20, 2025) (Docket No. EL25-49-000) (original co-located load definition); see also *PJM Interconnection, L.L.C.*, Order on Rehearing, 195 FERC ¶ 61,209, at PP 7-9 (June 18, 2026) (modifying the discussion and setting aside the December order in part; the P 164 definition is quoted without change in the same-day show-cause order, 195 FERC ¶ 61,211, P 14 & n.51; rehearing deemed denied by operation of law Aug. 20, 2026 (accession 20260820-3008)). The six parallel show-cause orders are Docket Nos. EL26-67 to EL26-72. FERC, *Fact Sheet: FERC Directs Nation's Largest Grid Operator to Create New Rules* (Dec. 18, 2025), <https://www.ferc.gov/news-events/news/fact-sheet-ferc-directs-nations-largest-grid-operator-create-new-rules-embrace>.

⁵² Tex. S.B. 6, 89th Leg., R.S. (2025) (enrolled), adding Tex. Util. Code § 39.169(a), (d), (e), (g), at 6-8, <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00006F.pdf>. Section 39.169(g) limits the parties to "the commission, the independent organization certified under Section 39.151 for the ERCOT power region, the interconnecting electric cooperative, transmission and distribution utility, or municipally owned utility, and a party in the net metering arrangement"; § 39.169(e) deems an arrangement approved if the PUCT does not act within the statutory period; § 39.169(f) requires review of conditions every five years. Section 39.169(b) exempts generators registered with co-located load at energization and generators majority-owned by the customer's parent as of January 1, 2025.

⁵³ NERC, *Level 3 Essential Actions Alert: Computational Load*, at 1-2 (May 4, 2026) (not a Reliability Standard; no mandatory obligation), <https://www.nerc.com/globalassets/programs/bpsa/alerts/level-3-computational-load-alert.pdf>; NERC, Proposed Rules of Procedure App. 2, "Computational Load Site" (posted Aug. 19, 2026) (revises NERC's April 2026 proposed criteria: 20 MW or more at a single BPS interconnection of 60 kV or more, hosting 1 MW or more of Computational Load; posted Apr. 2, 2026) (proposed; comment period closed Sept. 18, 2026; subject to NERC Board and FERC approval; filing due Dec. 31, 2026 under FERC's order in Docket No. RD26-7-000 (July 16, 2026)), <https://www.nerc.com/who-we-are/rules-of-procedure/proposed-changes-to-rules-of-procedure>.

⁵⁴ Northwest La. Fin. Auth., *Economic Development Financing Term Sheet*, Laidley, LLC (Richland Parish), Exhibit A, PILOT chart and job-shortfall provisions (2024) (term sheet submitted for NWLFA and Richland Parish approval; unsigned proposed term sheet; immovable property 40% falling to 20%; movable property 0% at every investment level, rising on a jobs shortfall, for example to 12%, or to 100% if the shortfall exceeds 50%), <https://www.powermag.com/wp-content/uploads/2024/11/term-sheet-project-sucra-submitted-for-approval.pdf>; Tex. H.B. 5, 88th Leg., R.S. (2023), adding Tex. Gov't Code § 403.602(8)(B), <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB00005F.htm>. Virginia's data-center consumption tax separately reaches operators using "self-supplied electricity generation", 2026 Va. Acts, Spec. Sess. I, ch. 1 (H.B. 30, approved June 29, 2026), Item 3-5.24(A)(2), <https://budget.lis.virginia.gov/get/budget/5311/HB30> (a revenue instrument, not a security designation).

⁵⁵ FERC, Commissioner Chang, Concurrence, *Co-Located Load Configurations in PJM*, Docket No. EL25-49-000 et al. (Dec. 18, 2025), <https://www.ferc.gov/news-events/news/e-1-commissioner-changs-concurrence-pjm-co-location>.

disclosure law. But defense critical electric infrastructure excludes infrastructure "owned or operated by the owner or operator of such facility". A third-party plant could qualify. An owner-operated behind-the-meter plant cannot, and a self-supplied campus may fail the external-provider requirement. Grid-connected generation can still be critical electric infrastructure as a bulk-power-system asset, but that test ignores the facility it serves.

EO 14299 directs DOE to "initiate the process for designating" DOE-sited AI data centers as critical defense facilities "where appropriate", with the electrical infrastructure, including generation, treated as defense critical electric infrastructure as law allows.⁵⁹ No designation had been made public as of September 27, 2026. No executive order can bring owner-operated generation inside a statutory exclusion.

The report adopts section 215A as the test for any claim that a coupling is security-critical, and as a ceiling, not a source of standing obligations (Section 10, RT-9). Its tools are emergency orders and information protection. Its secrecy rule covers only information FERC or DOE designates, and a CEII label alone does not establish that a commercial term is protected, so RT-1 can still require rates, minimum take, exit fees and collateral in public.

The strongest security claim comes from a litigant: at Southaven the United States filed a Department of War declaration calling inference capacity "a long-term strategic tool" (Section 8.2).⁶⁰ Kentucky still decides Paducah's power agreement (Section 8.1).⁶¹

Rival view: criticality belongs to functions and entities, not configurations. At full strength, US practice works through National Critical Functions and NSM-22's Systemically Important Entities, prioritized by the potential for disruption "to cause nationally significant and cascading negative impacts", not by commercial configuration.⁶² Reply: agreed that no new sector is warranted

⁵⁶ 195 FERC ¶ 61,211, *supra* note 51; NERC Reliability Standard CIP-002, Attachment 1, criterion 2.1; CIP-013-2, R1, <https://www.nerc.com/pa/Stand/Reliability%20Standards/CIP-013-2.pdf>; CIP-003-9 (low-impact controls); NERC Glossary of Terms, "Bulk Electric System", Exclusion E2. Section 5 sets out the graded coverage in full (note 98).

⁵⁷ 42 U.S.C. § 5195c(e), <https://www.law.cornell.edu/uscode/text/42/5195c>. The largest recent IT cascade, the July 2024 CrowdStrike outage, came from a faulty software update, not from compute paired with power. U.S. Gov't Accountability Off., GAO-24-107733, *Cyber Resiliency: CrowdStrike Outage Highlights Challenges* (Sept. 23, 2024) (describing the outage, caused by a CrowdStrike software update, as potentially one of the largest IT outages in history), <https://www.gao.gov/products/gao-24-107733>.

⁵⁸ 16 U.S.C. § 824o-1(a)(2)-(4), (b)(6)(B), (c), (d)(1), <https://www.law.cornell.edu/uscode/text/16/824o-1>; 18 C.F.R. § 388.113(c) (critical electric infrastructure information is information related to critical electric infrastructure that FERC or DOE designates under FPA 215A(d); critical energy infrastructure information is specific engineering, vulnerability or detailed design information), <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-X/part-388/section-388.113>.

⁵⁹ Exec. Order No. 14299, *Deploying Advanced Nuclear Reactor Technologies for National Security*, § 4(a), 90 Fed. Reg. 22581, 22582 (May 29, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-05-29/pdf/2025-09796.pdf>.

⁶⁰ Decl. of Cameron Stanley, DoW Chief Digital and AI Officer, ¶¶ 2, 9, *NAACP v. X.AI Corp.*, No. 3:26-cv-00074 (N.D. Miss.), ECF No. 85-1, PageID 2217, 2220 (signed June 15, 2026; filed July 7, 2026, as an exhibit to the United States' Amended Motion to Intervene and Motion to Dismiss, ECF No. 85) (a litigant's exhibit, not a finding; it also invokes "DoW's strategic computing reserves", discussed in Section 8), <https://www.courtlistener.com/docket/73188848/85/1/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; United States' Notice of Appeal at 1, *id.*, ECF No. 123, PageID 3209 (Sept. 18, 2026), <https://www.courtlistener.com/docket/73188848/national-association-for-the-advancement-of-colored-people-v-xai-corp/>. Procedural history and stay motion: note 163.

⁶¹ U.S. Dep't of Energy, *Energy Department Announces Partnership to Expand Reliable, Affordable Energy Access and Power America's AI Future in Western Kentucky* (July 29, 2026) (privately funded project; Big Rivers wholesale and Jackson Purchase Energy Cooperative retail service), <https://www.energy.gov/articles/energy-department-announces-partnership-expand-reliable-affordable-energy-access-and-power>.

⁶² National Security Memorandum on Critical Infrastructure Security and Resilience (NSM-22), "Systemically Important Entities" (Apr. 30, 2024), <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2024/04/30/national-security-memorandum-on-critical-infrastructure-security-and-resilience/>; CISA, *National Critical Functions Set* (no compute or cloud function listed), <https://www.cisa.gov/national-critical-functions-set>; Exec. Order No. 14239, *Achieving Efficiency Through State and Local Preparedness*, § 3(b), 90 Fed. Reg. 13267, 13267-68 (Mar. 21, 2025) (signed Mar. 18, 2025) (directing review of critical-infrastructure policies, including NSM-22; the 180-day review passed with no public result as of Sept. 27, 2026), <https://www.govinfo.gov/content/pkg/FR-2025-03-21/html/2025-04973.htm>.

now. RT-9 asks only for a named cross-sector risk entry in DOE's sector risk assessment, defined by configuration. An Energy subsector stays conditional on a DOE gap finding. The entity route has a cost: the Systemically Important Entity list "will not be made available to the public", and the NCF set has no compute function. It answers "is it critical" by taking "who decides" out of public view.

Rival view: decline to lend critical-infrastructure status. At full strength (AI Now, the Southaven plaintiffs), security status is a claim to override public forums. DOJ says the suit "threatens American national, economic, and energy security"; the plaintiffs reply that Congress wrote no national-security exemption into the citizen-suit provision (Section 8).⁶³ *Reply*: the report does not endorse the status; security claims are moves inside bargains that need published criteria. Declining the term does not remove documented hazards: NERC reports data-center loads that "responded to, and amplified, grid instability".

Rival view: price the label. At full strength, the fiscal term matters more than the status. The PJM market monitor treats avoided regulatory cost as co-location's core feature (Section 6); federal protection for a private asset widens that avoidance, a transfer unless priced.⁶⁴ *Reply*: adopted in part, as a pricing rule. Where the federal government supplies land or credit, the lessee bears the full cost and any below-market rent or credit exposure is disclosed (Section 10, RT-8). Security work above the reliability baseline needs a named appropriation, not a charge to retail rate-payers without a commission finding (RT-9).

4.3 The coupling takes five forms, and islanding removes FERC and NERC review

Financial and front-of-meter power purchase agreements stay inside RTO dispatch and are excluded: Crane, and Susquehanna, which moved to a "front-of-the-meter" arrangement in April 2026.⁶⁵

⁶³ United States' Mem. in Supp. of Am. Mot. for Intervention and Dismissal at 1, *NAACP v. X.AI Corp.*, ECF No. 86, PageID 2232 (July 7, 2026), <https://www.courtlistener.com/docket/73188848/86/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; NAACP Mem. in Opp'n to United States' Mot. to Intervene and Dismiss at 22, *id.*, ECF No. 92, PageID 2368 (July 10, 2026) (citing 42 U.S.C. §§ 7412(i)(4), 7418(b); CAA § 304, 42 U.S.C. § 7604; quoted in Section 8, note 165), <https://www.courtlistener.com/docket/73188848/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; Sofia Guerra & Heidy Khlaaf, *Fission for Algorithms: The Undermining of Nuclear Regulation in Service of AI*, AI Now Inst., at 15, 20, 33 (Nov. 11, 2025) (nuclear-specific; the "former order" discussed is EO 14299), https://ainowinstitute.org/wp-content/uploads/2025/11/Fission-for-Algorithms_The-Undermining-of-Nuclear-Regulation-in-Service-of-AI_Nov-11-2025_1402PM.pdf; see also Terrence Kelly & Jessica Maksimov, *The Invisible Backbone*, Ams. for Responsible Innovation, at 13 (Aug. 2026) (pairing critical-infrastructure status with streamlined permitting), https://ari.us/wp-content/uploads/2026/08/ARI_AI_Backbone_Report_080626.pdf; NERC, *Accelerated Large Load Action Plan*, Docket No. RM26-4-000, at 1 (Mar. 20, 2026) (large data center loads "have responded to, and amplified, grid instability"), https://www.nerc.com/globalassets/who-we-are/legal--regulatory/filings--orders/nerc-filings-to-ferc/2026/nerc-accelerated-ll-action-plan_rm26-4_signed.pdf.

⁶⁴ PJM Independent Market Monitor (Monitoring Analytics), Comments, Docket No. AD24-11-000, at 4-5 (Dec. 16, 2024) (quoted in Section 6, note 121), https://www.monitoringanalytics.com/filings/2024/IMM_Comments_Docket_No_AD24-11-20241216.pdf; 16 U.S.C. § 824o-1(b)(6)(B), *supra* note 58.

⁶⁵ Constellation Energy, *Constellation to Launch Crane Clean Energy Center* (Sept. 20, 2024), <https://www.constellationenergy.com/news/2024/Constellation-to-Launch-Crane-Clean-Energy-Center-Restoring-Jobs-and-Carbon-Free-Power-to-The-Grid.html>; Talen Energy Corp., *Talen Energy Expands Nuclear Energy Relationship with Amazon* (June 11, 2025), <https://ir.talenenergy.com/news-releases/news-release-details/talen-energy-expands-nuclear-energy-relationship-amazon>; Talen Energy Corp., Form 10-Q for the quarter ended June 30, 2026, Glossary, "AWS PPA" (revised AWS PPA for "up to 1,920 MW of power in a 'front-of-the-meter' model through 2042"; "The transition to the revised AWS PPA occurred in April 2026."), accession 0001622536-26-000066, <https://www.sec.gov/Archives/edgar/data/1622536/000162253626000066/tln-20260630.htm>; Space Exploration Technologies Corp., Prospectus (Form 424B4) (June 12, 2026), business section (Colossus passage); MD&A, at printed page 96 (COLOSSUS II passage; the "primarily powered" passage describes grid capacity "that we are directly funding through our local utility partners") and Note 9 (Stateline Power, LLC), <https://www.sec.gov/Archives/edgar/data/1181412/000162828026042639/spaceexplorationtechnologi.htm>; La. Pub. Serv. Comm'n, Order No. U-37425 (Entergy Louisiana / Meta Hyperion), at 6 (decided Aug. 20, 2025; issued Aug. 29, 2025), <https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=nDwnJuc2+A%3D>.

FIGURE 5

Section 215A's defense test is site-level and excludes owner-operated generation

Four criticality tests read against the coupling of compute and dedicated generation. Cells quote or paraphrase each instrument. Filled cell: the exclusion Section 4.2 turns on. Small text: subsection of 16 U.S.C. 824o-1.

Test	What the test asks	Who pays	Disclosure	Owner-operated generation
42 U.S.C. 5195c(e) <i>Asset; national threshold</i>	Systems and assets so vital that incapacity would have a "debilitating impact" on security, national economic security, national public health or safety	Not set: a definition only	No disclosure rule: a definition only	Ownership-neutral, but the threshold is national: a single coupling probably fails
Federal Power Act section 215A 16 U.S.C. 824o-1 <i>Site: a designated facility</i>	Designated facility "critical to the defense of the United States" and "vulnerable to a disruption" of power from "an external provider" (c)	Facility owners or operators "shall bear the full incremental costs" of emergency measures (b)(6)(B)	Critical electric infrastructure information (engineering, vulnerability and design detail) exempt from FOIA and state disclosure law (d)(1)	Excluded. Defense critical electric infrastructure covers only infrastructure "not owned or operated by the owner or operator of such facility". A self-supplied campus may also fail the external-provider test. (a)(4); (c)(2)
NSM-22 Systemically Important Entities <i>Entity</i> <i>Review directed by EO 14239 (Mar. 2025)</i>	Entities whose disruption could cause "nationally significant and cascading negative impacts"	No cost rule for listed entities	List "will not be made available to the public"	Reaches organizations that "own, operate, or otherwise control" critical infrastructure; configuration is not a criterion
CISA National Critical Functions <i>Function</i>	Functions whose disruption would have a "debilitating effect" on security, national economic security, national public health or safety	Not addressed	Public set; no compute or cloud function	Configuration and ownership are not criteria

EO 14299 sec. 4(a) directs DOE to "initiate the process for designating" DOE-sited AI data centers as critical defense facilities "where appropriate"; no designation had been made public.

An executive order cannot bring owner-operated generation inside the statutory exclusion.

Source: 42 U.S.C. 5195c(e); 16 U.S.C. 824o-1(a)(2), (a)(4), (b)(6)(B), (c), (d)(1); 18 C.F.R. 388.113(c); NSM-22 (Apr. 30, 2024); EO 14239 sec. 3(b); EO 14299 sec. 4(a); CISA, National Critical Functions Set. As of September 27, 2026.

Abbreviations: CISA, Cybersecurity and Infrastructure Security Agency; DOE, Department of Energy; EO, Executive Order; FOIA, Freedom of Information Act; NSM-22, National Security Memorandum on Critical Infrastructure Security and Resilience.

Section 215A ties a facility's criticality to its power supply site by site; grid-connected generation can still qualify as bulk-power-system critical electric infrastructure, but that test ignores the facility it serves.

- 1. Utility-owned single-customer generation.** At Entergy's Hyperion plants, commission conditions set incidence.
- 2. Co-location with existing generation** (PJM EL25-49; Texas SB 6): avoided transmission cost and withdrawal of a resource ratepayers paid for.
- 3. Grid-tied campuses whose on-site generation runs in normal operation or curtailment.** Colossus 1 buys grid power "as available" and relies on self-generation "when grid power is curtailed".⁶⁵
- 4. Bridging generation.** Colossus 2 (styled "COLOSSUS II" in the SpaceX prospectus) can run on a behind-the-meter gas plant alone. It is still expected to be "primarily powered by a dedicated natural gas power plant, supplemented over time by additional grid capacity".⁶⁵
- 5. Islanded generation blocks** (below).

Islanded supply is emerging, not established. Ohio certificated Williams's Socrates South plant to serve an adjacent Meta-affiliate data center and "not be physically connected to the electric power grid". At least 0.8 GW of islanded gas is certificated in Ohio (about 1 GW if Socrates North is also islanded).⁶⁶ The unit is the generation block, not the campus. Meta says its nuclear deals supply the grids serving its New Albany supercluster. The population is volatile: Cheyenne's 1.8 GW project now expects Black Hills tariff service. Reliability exposure attaches to computational load: when 1,500 MW of load dropped at once, "the data centers transferred their loads to their backup power systems".⁶⁷ Section 215A's defense branch turns on ownership, not the grid tie, so a third-party islanded plant could still be designated; the forums that remain in every case are state siting and air permits.

4.4 Load-side actors differ in credit use, utilities in demand risk

"Hyperscaler" is too coarse for the load side. Investment-grade hyperscalers rely on public pledges and parent credit. Colocation developers plan their own supply: EdgeConneX plans up to 140 MW of on-site gas generation as the primary supply for a New Albany data center. AI labs self-build, as xAI does, or contract through intermediaries. Financiers set tenor and exit terms. Alphabet had backstopped up to \$7.6 billion of counterparties' equipment procurement as of June 30, 2026.⁶⁸ Hyperscalers can control through credit, often without being the utility's customer of record.

Utilities differ in their stake in demand risk. Integrated utilities such as Entergy Louisiana put new plant in rate base, and wires-only utilities such as PPL Electric want transmission contributions. Independent power producers such as Talen can use co-location to contract with a single load.⁶⁹

⁶⁶ Ohio Power Siting Bd., *OPSB Approves Construction of Licking County Natural Gas-Fired Power Plant*, Case No. 25-0185-EL-BLN (June 9, 2025) (Socrates South, 200 MW; customer Sidecat, LLC, a Meta affiliate), <https://opsb.ohio.gov/news/opsb-approves-construction-of-licking-county-natural-gas-fired-power-plant>; Ohio Power Siting Bd., Case No. 26-0169-EL-BLN (Socrates the Younger, 250 MW gas plus 116 MW storage) (June 26, 2026), <https://opsb.ohio.gov/news/opsb-authorizes-construction-of-licking-county-power-plant-0626>; Ohio Power Siting Bd., Case No. 25-973-EL-BGN (Apollo, 350 MW plus about 120 MW storage) (Feb. 3, 2026), <https://opsb.ohio.gov/news/opsb-authorizes-construction-of-wood-county-power-plant>. The 0.8 GW figure counts Socrates South, Socrates the Younger and Apollo, each certificated as not physically connected to the grid; Socrates North's 200 MW is counted only in the conditional figure.

⁶⁷ Meta Platforms, Inc., *Meta Announces Nuclear Energy Projects, Unlocking Up to 6.6 GW to Power American Leadership in AI Innovation* (Jan. 9, 2026) (the deals "deliver power to the grids that support our operations, including our Prometheus supercluster in New Albany"), <https://about.fb.com/news/2026/01/meta-nuclear-energy-projects-power-american-ai-leadership/>. Black Hills Corp., *Black Hills Corp. Provides Update on 1.8 Gigawatt Project in Cheyenne* (June 10, 2026), <https://ir.blackhillscorp.com/news-releases/news-release-details/black-hills-corp-provides-update-18-gigawatt-project-cheyenne>. NERC, *Incident Review: Considering Simultaneous Voltage-Sensitive Load Reductions*, at 1-4 (Jan. 8, 2025), https://www.nerc.com/globalassets/our-work/reports/event-reports/incident_review_large_load_loss.pdf.

⁶⁸ EdgeConneX, *PowerConneX New Albany Energy Center* (project page), <https://www.edgeconnex.com/pcx-new-albany-energy-center/>; SpaceX Form 424B4, *supra* note 65, Note 9 (Stateline Power, LLC, a joint venture with a Solaris Energy Infrastructure subsidiary formed "to provide off-grid power to CTC's data center campus pursuant to a long-term equipment rental arrangement"); Alphabet Inc., Quarterly Report (Form 10-Q) for the quarter ended June 30, 2026, Note 10, Financial Guarantees ("backstop agreements with varying terms through September 2026"), <https://www.sec.gov/Archives/edgar/data/1652044/000165204426000071/goog-20260630.htm>. For financiers' tenor and exit terms at the Hyperion venture (Blue Owl funds' 80 percent stake; Meta's residual value guarantee), see notes 129 and 194.

⁶⁹ La. PSC Order No. U-37425, *supra* note 65, at 6 (project-specific transmission upgrades excluded from other customers' rates; parent guaranty); Talen, *supra* note 65 (Talen as seller of up to 1,920 MW; PPL Electric as the transmission utility).

FIGURE 6

Moving toward islanded supply removes FERC and NERC review

Six supply configurations, ordered by grid coupling, against five review forums. Shade and word give each forum's reach under statutes and proposed rules. Status as of September 27, 2026.

Reach:	Reaches, required		Partial, proposed, limited, late		Possible, unclear, by owner		Does not reach, none		n/a			
	Forums that remain when islanded											
	1 2 3 4 5											
CONFIGURATION	Excluded: financial or front-of-meter PPA Utility-owned single-customer generation Co-location with existing plant Grid-tied campus, on-site generation Bridging generation Islanded generation block											
GRID TIE	Full: plant sells to the grid Full: utility plant in the utility system Via the generator side of the point of interconnection Yes: "as available"; self-generates "when grid power is curtailed" Planned: grid "supplemented over time" None: "not be physically connected"											
	GRID-TIED → ISLANDED											
FERC FPA 201	Reaches wholesale sale, interstate transmission		Partial retail sale to Meta is state-regulated		Reaches EL25-49; compliance open		Limited TVA, MLGW outside FPA; RM26-4 pending		Does not reach on-site supply		Does not reach no transmission or wholesale sale	
NERC FPA 215, ERO	Reaches BES generator		Reaches BES generator		Proposed generator yes; load registration proposed		Proposed load proposed; units likely E2-excluded		Does not reach not supplied from the BPS		Does not reach "only the bulk-power system"	
FPA 215A left: bulk-power (a)(2); right: defense (a)(4)	Possible (a)(2)	n/a	Possible (a)(2)	Possible (a)(4)	Possible (a)(2)	If third-party (a)(4)	Unclear (a)(2)	By owner (a)(4)	No (a)(2)	By owner (a)(4)	No (a)(2)	By owner (a)(4)
State approval siting or commission	None for offtake NRC carries restart review		Required LPSC certification with conditions		Partial SB 6: ERCOT only; none in PJM states		None municipal and TVA service		None air permits only		Required OPSB certificate; local approvals preempted	
Air permit Clean Air Act	n/a nuclear		Required stationary-source permits		n/a nuclear; existing permits		Required local permit		Late MDEQ treated interim units as exempt; PSD permit Mar. 2026; CAA suit		Required Ohio EPA permit	
Example	Crane (restart, grid sale); Susquehanna after April 2026 move to front-of-meter		Entergy Louisiana plants for Meta Hyperion (LPSC U-37425)		Susquehanna 2024 ISA (rejected); PJM EL25-49; Texas SB 6		xAI Colossus 1, Memphis (boundary: Stargate Abilene, gas as backup only)		xAI Colossus 2, turbines in Southaven, Miss.		Williams Socrates South and Socrates the Younger for a Meta affiliate (Ohio)	
Incidence channel	RTO market and transmission charges		Rate base; LPSC keeps project-specific transmission upgrades out of other customers' rates		Avoided transmission cost; withdrawal of a resource ratepayers paid for		Retail tariff for grid share; local air burden		Neighbors bear the air burden; Governor says rates insulated		No retail rate channel; siting and air effects fall locally	

Sources: 16 U.S.C. 824(b)(1), (f); 16 U.S.C. 824(o)(i)(1); 16 U.S.C. 824o-1(a)(2), (a)(4), (b)(1); NERC proposed Rules of Procedure App. 2 and App. 5B (Aug. 19, 2026); NERC Glossary, BES Exclusion E2; Tex. Util. Code 39.169; 193 FERC 61,217; La. PSC Order U-37425; OPSB Cases 25-0185-EL-BLN, 26-0169-EL-BLN; Ohio Rev. Code 4906.13(B); SpaceX Form 424B4 (June 12, 2026); 91 Fed. Reg. 1910, 1926 (Jan. 15, 2026); 91 Fed. Reg. 41591; NAACP v. X.AI Corp., No. 3:26-cv-00074 (N.D. Miss.). Notes 51 to 53, 65 to 67.

Configuration typology. Moving from grid-tied toward islanded supply removes FERC and NERC review, leaving state siting and air permits as the forums that remain. NERC's computational-load registration is proposed, not in force, and no configuration has a public section 215A designation. As of September 27, 2026.

No forum sets common terms for the coupling

No forum holds the coupling as a unit; Texas comes closest. FERC's PJM co-location track sets transmission-service terms and the PUCT reviews existing-generator pairings for reliability; neither sets security, disclosure or exit terms. FPA section 201(b) splits federal wholesale and transmission authority from state authority over retail sales, distribution and generation.⁷⁰ The forums coordinate on jurisdiction, grid-interface reliability and a cost-causation principle, agreed across states so far in one term (the PJM backstop), but share no terms for security and control, exit, disclosure, stranded-asset risk or islanded service.

Cooperative-federalists in FERC's June 2026 concurrences see the densest federal-state coordination on large loads in a generation, citing a DOE section 403 proposal; six show-cause orders reserving retail terms, sellers and siting to the states; a NERC standards directive; and Commissioner LaCerte's call for "consistent, coordinated action".⁷¹ These instruments allocate who decides but set no shared terms, and the standing venues hold no decision rights. FERC's Federal and State Current Issues Collaborative with the National Association of Regulatory Utility Commissioners (NARUC) exists to "share perspectives, increase understanding, and, where appropriate, identify potential solutions".⁷²

The strongest statutory objection is that the gap is built in: DOE may propose, but FERC "shall have exclusive jurisdiction", and only Congress can assign the coupling to one forum. The report adopts the diagnosis, not the remedy: FPA section 209(a) already lets FERC refer "any matter" to a board of members from the affected states. Per FERC's guide, the Southwest Power Pool (SPP) Regional State Committee "makes the decisions" on "certain proposals regarding transmission planning, cost allocation, or resource adequacy". It is the best joint model, though it reaches neither disclosure nor security. Texas confirms the diagnosis: ERCOT escapes the section 201 line only by being intrastate.⁷³

⁷⁰ Federal Power Act § 201(b), 16 U.S.C. § 824(b), <https://www.law.cornell.edu/uscode/text/16/824>; *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260 (2016); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150 (2016).

⁷¹ U.S. Sec'y of Energy, Letter to FERC under DOE Organization Act § 403 on Interconnection of Large Loads (Oct. 23, 2025), <https://www.energy.gov/sites/default/files/2025-10/403%20Large%20Loads%20Letter.pdf>; FERC, Notice Inviting Comments, Docket No. RM26-4-000 (Oct. 27, 2025), eLibrary accession 20251027-3056 (no proposed rule issued as of Sept. 26, 2026); *PJM Interconnection, L.L.C.*, Order Instituting Proceeding Under Section 206 of the Federal Power Act, 195 FERC ¶ 61,211, Docket No. EL26-67-000, at 34 (June 18, 2026) (all five Commissioners concurring) ("Nothing in this order is intended to intrude upon state authority over retail service to large loads."), <https://www.ferc.gov/sites/default/files/2026-06/EL26-67-000.pdf>; companion orders in Docket Nos. EL26-68-000 (SPP), EL26-69-000 (NYISO), EL26-70-000 (MISO), EL26-71-000 (CAISO), EL26-72-000 (ISO-NE); Comm'r LaCerte, concurrence, Docket No. EL26-71-000 (June 18, 2026), <https://www.ferc.gov/news-events/news/e-10-commissioner-lacertes-concurrence-california-independent-system-operator>.

⁷² FERC, Federal and State Current Issues Collaborative, Docket No. AD24-7-000, purpose statement, <https://www.ferc.gov/federal-state-current-issues-collaborative>; NRC-FERC Memorandum of Agreement (2009, renewed 2015 and 2022) ("developing solutions to regulatory issues shall be done independently by the parties outside the terms of this MOA"), <https://cms.ferc.gov/sites/default/files/2021-04/mou-us-nucr-09.pdf> (quotations from the 2009 text). The same memorandum states a purpose that includes "coordination of activities related to cybersecurity".

5.1 Grid-interface convergence is real, dated and reliability-only

FERC's July 16 order in RD26-7 directs NERC to file Reliability Standards by December 31, 2026, and expects registry criteria by then.⁷⁴ NERC's August 19 posting would register Computational Load Owners and Operators at 50 MW or more supplied at 100 kV or above, once adopted and approved.⁷⁵ Order No. 912 gives NERC 18 months to submit revised supply-chain risk management standards; NERC's draft CIP-013-4 failed its initial ballot on July 17, 2026.⁷⁶ As of September 26, 2026, none is in force, and FERC's six large-load section 206 proceedings are in abeyance, with responses due November 16, 2026 (SPP: November 20).⁷⁷

RD26-7 and the draft Computational Load Owner standards contain no cyber, CIP, supply-chain or co-located-generation provision; NERC defers the last to a possible 2027 request. A Computational Load Site must be supplied from the bulk-power system, which excludes islanded supply (Section 4.3).⁷⁸ FERC preliminarily defines a large load as 50 MW or more interconnecting above 69 kV, excluding co-location arrangements. A 60 MW campus at 80 kV is inside FERC's test but below NERC's registry criteria, though NERC can still register it on a showing of material impact; at 69 kV it falls below both voltage thresholds, and the same material-impact route remains open. Islanded supply is outside every reliability and interconnection instrument.⁷⁹

The strongest counter, argued by the National Rural Electric Cooperative Association and implicit in RD26-7, is that section 215 avoids a retail-jurisdiction fight. It reaches "all users, owners and operators of the bulk-power system", including public power; its standards include "cybersecurity protection"; and registration binds the data center itself, in ERCOT and at cooperatives too. The report adopts this security route (Section 10.2), with limits. Section 215 excludes "facilities used in the local distribution of electric energy", cannot require new capacity, binds only registered sites and reaches "only the bulk-power system". Cyber duties can therefore attach to a site's grid-facing control and ride-through systems but not to the compute, which only supply or lease conditions reach.⁸⁰

⁷³ 42 U.S.C. § 7173(b), <https://www.law.cornell.edu/uscode/text/42/7173>; Comm'r Chang, concurrence, 195 FERC ¶ 61,211 (PDF p. 103); FPA § 209(a)-(b), 16 U.S.C. § 824h(a)-(b), <https://www.law.cornell.edu/uscode/text/16/824h>; FERC, *Federal and State Current Issues Collaborative; Notice Announcing Appointees*, 91 Fed. Reg. 58,113 (Sept. 14, 2026) (Collaborative established by order of Mar. 21, 2024 "pursuant to section 209(b) of the Federal Power Act"), <https://www.federalregister.gov/documents/2026/09/14/2026-18638/federal-and-state-current-issues-collaborative-notice-announcing-appointees>. The Collaborative is thus a section 209(b) conference, not a section 209(a) board. FERC, *An Introductory Guide for Participation in Southwest Power Pool Processes*, <https://www.ferc.gov/introductory-guide-participation-southwest-power-pool-processes>.

⁷⁴ *Reliability Standard(s) Pertaining to Computational Load Integration*, 196 FERC ¶ 61,031, Docket No. RD26-7-000, at 1 and ordering paragraphs (July 16, 2026) ("directs NERC to develop revisions to NERC's Rules of Procedure, including registry criteria ... and expects NERC to submit the proposed revisions by December 31, 2026"), <https://www.ferc.gov/sites/default/files/2026-07/RD26-7-000.pdf>. The order also directs an informational Phase II workplan by Mar. 1, 2027.

⁷⁵ NERC, Proposed Rules of Procedure, App. 5B, § III.c.1 (Aug. 19, 2026 posting), <https://www.nerc.com/globalassets/who-we-are/rules-of-procedure/proposed/appendix-5b-clean---august-2026-posting.pdf>; FPA § 215(f), 16 U.S.C. § 824o(f). The posting revises NERC's April 2026 proposed criteria (20 MW or more at a single bulk-power-system interconnection at 60 kV or more, hosting at least 1 MW of Computational Load; posted Apr. 2, 2026). Status: proposed; comment period closed Sept. 18, 2026; subject to NERC Board and FERC approval.

⁷⁶ *Supply Chain Risk Management Reliability Standards Revisions*, Order No. 912, 90 Fed. Reg. 45,661 (Sept. 23, 2025), Docket Nos. RM24-4-000, RM20-19-000, PP 1, 12, 69, <https://www.govinfo.gov/content/pkg/FR-2025-09-23/html/2025-18394.htm>; NERC Project 2025-06 SAR (Oct. 2025), https://www.nerc.com/globalassets/standards/projects/2025-06/informal-posting-1/2025-06-ferc-order-912-supply-chain-risk-management-sar_october2025.pdf; NERC, Project 2025-06 Supply Chain Risk Management, project page (initial ballot of July 8-17, 2026: CIP-013-4 received 30.64% weighted segment approval and did not pass), <https://www.nerc.com/standards/reliability-standards-under-development/2025-06-supply-chain-risk-management>. Paragraphs 1 and 12 run the 18 months from the Sept. 18, 2025 issuance; paragraph 69 runs them from the Nov. 24, 2025 effective date. CIP-013-3 (Project 2016-02, virtualization) is not the Order No. 912 product.

⁷⁷ FERC letter orders granting abeyance (Aug. 14, 2026), eLibrary accessions 20260814-3059 (PJM, EL26-67), 20260814-3060 (SPP, EL26-68, to Nov. 20, 2026), 20260814-3068 (NYISO), 20260814-3058 (MISO); Order Granting Rescission and Abeyance Requests, EL26-71 (CAISO), accession 20260814-3061; ISO-NE, accession 20260814-3056; *PJM Interconnection, L.L.C.*, 196 FERC ¶ 61,214, Docket No. EL26-67-001 (Sept. 21, 2026) (rehearing requests dismissed because the orders are not final), accession 20260921-3020.

5.2 Each forum decides one face of the coupling

A forum is any body with binding authority to set a who-pays, who-controls or who-decides term for a coupling. The definition adopts county land-use and fiscal analysts' objection that one shared gap is asserted, not shown: counties, the Nuclear Regulatory Commission (NRC) and RTO processes each decide different terms, leaving different gaps.

- **FERC, NERC and the Regional Entities, with the NRC for restarts.** FERC directs co-location into defined PJM transmission services.⁸¹ DOE wants one national rule with security conditions. But FERC "does not pursue the broad assertion", no court has tested the theory, and such a rule would miss ERCOT, TVA and non-jurisdictional public power.⁸² NARUC answers that "There is no regulatory gap", but special contracts can stay sealed.⁸³ Consumer advocates rightly press FERC to use its transmission-rate authority (Section 10.2), which leaves retail and exit terms untouched.⁸⁴ FERC's restraint is sequencing, not concession: Commissioner LaCerte warned that inadequate filings "will result in the Commission dictating the solutions", and Chairman Swett left a rulemaking open.⁸⁵ The NRC reviews the Crane restart.⁸⁶
- **State commissions** set retail cost, exit and disclosure terms case by case. Appointed commissions in Wisconsin and Indiana pressed hardest on disclosure, though Indiana's Google terms stay sealed (Section 6.2).⁸⁷
- **ERCOT and the PUCT.** In Docket 59220 (July 24, 2026) the PUCT approved a 260 MW AI load behind the 265.5 MW Goodnight wind plant, requiring curtailment within 30 minutes of ERCOT's instruction and finding no stranded assets.⁸⁸
- **TVA and public power.** The TVA Board, which must approve new firm power above 100 MW, approved 150 MW for xAI in Memphis contingent on "certain demand response terms offered

⁷⁸ NERC, Proposed Rules of Procedure, App. 2 (definition of "Computational Load Site", prong 2) (Aug. 19, 2026) (proposed; comment period closed Sept. 18, 2026; subject to NERC Board and FERC approval), <https://www.nerc.com/who-we-are/rules-of-procedure/proposed-changes-to-rules-of-procedure>; NERC, Project 2026-02 FAQ, at 12 (Aug. 19, 2026) (co-located generation; potential 2027 SAR under the Large Load Working Group's SAR Priority Roadmap), <https://www.nerc.com/globalassets/standards/projects/2026-02/formal-posting-1/formal-posting-1/project-2026-02-faq---august-19-2026.pdf>; Ohio Power Siting Bd., Case No. 25-0185-EL-BLN (Socrates South), news release (June 9, 2025) ("will not be physically connected to the electric power grid"), <https://opsb.ohio.gov/news/opsb-approves-construction-of-licking-county-natural-gas-fired-power-plant>. The draft Computational Load Owner standards' initial ballots passed Sept. 18, 2026; NERC Board approval is targeted for Dec. 2026, with filing due Dec. 31, 2026.

⁷⁹ 195 FERC ¶ 61,211, P 58, at 39-40 & n.2 (large load "interconnects to the transmission system at a voltage level of greater than 69 kV, and ... is not part of a co-location arrangement"); *Co-Located Load Configurations in PJM*, 193 FERC ¶ 61,217, Docket Nos. EL25-49-000 et al., P 164 (Dec. 18, 2025). The June 2026 order reaches large co-located loads of 50 MW or more through generator interconnection service, 195 FERC ¶ 61,211, at 62-63. NERC, Proposed Rules of Procedure, App. 5B, Determination of Material Impact, *supra* note 75 (an entity below the criteria "may nevertheless be registered if it can be demonstrated that the entity has a material impact on the reliability of the BPS").

⁸⁰ 196 FERC ¶ 61,031, *supra* note 74; NRECA, Comments, Docket No. RM26-4-000, at 6 (Nov. 21, 2025); 16 U.S.C. § 824o(a)(1), (a)(3), (b)(1), (i)(1)-(2), <https://www.law.cornell.edu/uscode/text/16/824o>. Section 215(b)(1) reaches "all users, owners and operators of the bulk-power system". Section 215(a)(3) excludes from reliability standards "any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity"; § 215(i)(1) gives the ERO authority over standards "for only the bulk-power system"; § 215(i)(2) withholds authority to order construction of additional generation or transmission capacity.

⁸¹ FERC, Fact Sheet, *FERC Directs Nation's Largest Grid Operator to Create New Rules to Embrace Innovation* (Dec. 18, 2025), <https://www.ferc.gov/news-events/news/fact-sheet-ferc-directs-nations-largest-grid-operator-create-new-rules-embrace>; 193 FERC ¶ 61,217. The fact sheet states the order "declines to address jurisdictional matters regarding the interconnection of retail loads served through a co-location arrangement."

⁸² DOE § 403 Letter, *supra* note 71, at 1 (load interconnection "falls squarely within" FERC's jurisdiction); Comm'r Chang, concurrence, 195 FERC ¶ 61,211 (PDF p. 103) ("The Commission does not pursue the broad assertion of jurisdictional authority contemplated in the Advanced Notice of Proposed Rulemaking"); Edison Elec. Inst., Comments, RM26-4-000, at 25 (Nov. 21, 2025), accession 20251121-5301 ("the courts have never addressed this issue").

⁸³ NARUC, Supplemental Comments, RM26-4-000, at 2 (Apr. 13, 2026), accession 20260413-5278. State regulators in MISO concede the gap: Org. of MISO States, Answer, Docket No. EL26-70, at 3 (Aug. 7, 2026) ("a comprehensive solution requires concerted coordination and partnership between state and federal regulators"), accession 20260807-5186. On the count of state large-load tariffs, see Section 6.

for similar customer loads". Those terms sit in a non-public term sheet outside state commission and FERC rate review.⁸⁹

- **State treasuries and siting law.** Ohio's Power Siting Board sites generation of 50 MW or more and preempts local conditions; county zoning governs the load (Section 7).⁹⁰ Virginia's consumption tax defines data center operators to include those using self-supplied generation.⁹¹
- **Environmental and resource permitting.** Delegated Clean Air Act programs, with citizen suits as a last resort; state water allocation; and, given a federal nexus, NEPA review.⁹²
- **Federal security instruments.** EO 14299 only directs DOE to start designating DOE-sited AI data centers, and no designation is public (Section 4.2).⁹³ At Southaven the United States sought to intervene and have a citizen suit dismissed on national-security grounds (Section 8.2).⁹⁴ The report treats override as a design constraint, met by RT-9's published criteria.

Two layers cut across these forums. In the **RTO, governor and White House channel**, governors and the National Energy Dominance Council say the largest who-pays term is struck in public. On January 16, 2026, the Secretaries of Energy and the Interior and the governors of all 13 PJM states signed principles committing the governors to use their authorities so that commissions allocate backstop capacity costs to "new data center loads that have not otherwise procured capacity or agreed to be curtailable". PJM filed the procurement (ER26-3380).⁹⁵ This public, multi-lateral term qualifies the bilateral-terms finding but awaits FERC and leaves retail incidence to

⁸⁵ Comm'r LaCerte, concurrence, 195 FERC ¶ 61,211 (PDF pp. 113-14); Chairman Swett, concurrence, *id.* (PDF p. 87); 195 FERC ¶ 61,211, at 32 (prior exercise of jurisdiction over "the interconnection of wholesale load to the transmission system").

⁸⁶ NRC and DOE, Crane Clean Energy Center, Environmental Assessment and Finding of No Significant Impact, Docket No. 50-289, 91 Fed. Reg. 60,988 (Sept. 25, 2026) (FONSI issued Sept. 18, 2026; license amendments and exemption pending), <https://www.federalregister.gov/documents/2026/09/25/2026-19603/Pa.-Pub.-Util.-Comm'n-Final-Order-Interconnection-and-Tariffs-for-Large-Load-Customers>, Docket No. M-2025-3054271 (entered May 12, 2026), <https://www.puc.pa.gov/pcdocs/1929842.pdf>; 66 Pa.C.S. §§ 2802(14), 2806(a), <https://law.justia.com/codes/pennsylvania/title-66/chapter-28/section-2802/>; *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205, 212 (1983). The Crane license is not yet reinstated. As of Sept. 26, 2026, Pennsylvania's PUC has no Crane-specific proceeding, only the generic large-load model tariff, because the 1996 restructuring removed generation from utility regulation, not because of preemption, which covers radiological safety; the legislature can revisit it.

⁸⁷ Pub. Serv. Comm'n of Wis., Press Release, Docket 6680-TE-115, at 1 (May 7, 2026) (ALJ direction of Feb. 2026 to refile "with fewer redactions"), <https://psc.wi.gov/Documents/PressReleases/05.08.26PressRelease.PDF>; Ind. Util. Regulatory Comm'n, Order, Cause No. 46276, ¶ 9 and ordering ¶ 4 (Apr. 29, 2026), https://www.in.gov/iurc/files/ord_46276_042926.pdf. The Wisconsin ALJ directed Alliant to refile with fewer redactions; Indiana's commission invoked the statutory duty "to err on the side of transparency", though the Google terms stay sealed pending subdocket 46276 S1 (Order Initiating Subdocket, Apr. 30, 2026; pending, with an attorney conference scheduled by docket entry of Aug. 28, 2026), <https://www.in.gov/iurc/files/Weekly%20Filings%20List%208.24.26-8.28.26.pdf>. Georgia, by contrast, elects its commissioners statewide, O.C.G.A. § 46-2-1.

⁸⁸ Tex. S.B. 6, 89th Leg., R.S. (2025) (enrolled), adding Tex. Util. Code §§ 39.169(d), 39.170(a), 37.0561(c) (PUC review of existing-generator pairings with new large loads; 75 MW default threshold), <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00006F.pdf>; signed June 20, 2025, <https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=89R&Bill=SB6>; Pub. Util. Comm'n of Tex., Order, Docket No. 59220, *Application of Crusoe Energy Systems LLC, FGE Goodnight I, LLC and Ensign Infrastructure LLC for Approval of a Net Metering Arrangement*, Findings of Fact 57 (conditions), 59 (no stranded assets), Conclusions of Law 11, 14, Ordering ¶ 1 (Condition 1, curtailment within 30 minutes of ERCOT's instruction; Condition 6, joint reapplication at 36 to 60 months), and exhibit list (ERCOT Exhibits 1A, 2A, 3A confidential) (July 24, 2026), https://interchange.puc.texas.gov/Documents/59220_69_1668205.PDF. The 260 MW load is operated by Ensign; the Goodnight plant already nets the 265 MW Crusoe One load approved in Docket No. 58881 (Apr. 23, 2026).

⁸⁴ 196 FERC ¶ 61,214, *supra* note 77 (summarizing Joint Consumer Advocates' July 17, 2026 rehearing request); NASUCA, Initial Comments, RM26-4-000, at 1 (Nov. 21, 2025), accession 20251121-5537. The advocates' premise is that states cannot redistribute charges fixed in the tariff.

⁸⁹ Tenn. Valley Auth., Board Resolution and Memorandum, *Greater than 100 MW Firm Power Arrangement with CTC Property LLC (xAI)*, Exhibit 11/07/24G (approved Nov. 7, 2024) (Board approval required for "new amounts of firm power exceeding 100 megawatts"), <https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcm/docs/default-source/about-tva/board-of-directors/november--7-2024/resolutions/reading-room-11072024g-grtr-100mw-ctc-xai-reso-memo.pdf>.

⁹⁰ Ohio Rev. Code §§ 4906.01(B)(1)(a), 4906.13(B), <https://codes.ohio.gov/ohio-revised-code/section-4906.13>; Loudoun County, Va., *Data Centers: Land Use Considerations* (Mar. 18, 2025), <https://www.loudoun.gov/6410/Land-Use-Considerations>.

commissions. Coordination also crosses domains: the Texas Governor's August 2026 directive, not a rule, ties interconnection to water audits.⁹⁶ The second layer is **courts**: the Southaven appeal (Section 8.2) and the Wisconsin open-records ruling (Section 6.2).

5.3 The security gap is narrower than claimed

NERC compliance staff object, correctly, that the generation side of a grid-tied coupling is already registered; Project 2026-02 leaves Generator Owner and Operator criteria unchanged.⁹⁷ Coverage is graded. CIP-013 binds high and medium impact systems, for generation mostly 1,500 MW or more. Smaller Bulk Electric System (BES) generation carries only low-impact controls unless a planner or reliability coordinator identifies it under medium-impact criterion 2.3 or 2.6, and Order No. 912 declined "to include low impact assets". Under Exclusion E2, customer-side generation of any size serving retail load can fall outside the BES (75 MVA or less net to the BES, with standby service arranged). Islanded generation and all compute are uncovered.⁹⁸ Most of this applies equally to a merchant plant; only FERC's co-location carve-out, Exclusion E2, the islanded exclusion and NERC's co-located-generation deferral are coupling-specific.

5.4 Price and exit terms stay sealed until forced open

Table 5-1 compares five couplings with two controls. B binding, in force; P pending (load: NERC Computational Load registration); N no instrument; *pub* terms public; *wh* terms withheld or never filed; B-*pub* binding and public. Gen generation side; load data-center grid interface; compute IT equipment. CIP NERC Critical Infrastructure Protection; DR demand response; ESA electric service agreement; ISA interconnection service agreement; LDEQ Louisiana Department of En-

⁹¹ 2026 Va. Acts, Spec. Sess. I, ch. 1 (H.B. 30, approved June 29, 2026), Item 3-5.24(A)(2) ("Data center operator" means any person who (i) owns, operates, or occupies a data center in the Commonwealth, or (ii) owns or operates a data center in the Commonwealth that utilizes self-supplied electricity generation."), <https://budget.lis.virginia.gov/get/budget/5311/HB30>; Conference Report amendment 3-5.24 #1c, <https://budget.lis.virginia.gov/amendment/2026/2/HB30/Introduced/CR/3-5.24/1c>.

⁹² Clean Air Act § 304, 42 U.S.C. § 7604, <https://www.law.cornell.edu/uscode/text/42/7604>; National Environmental Policy Act § 102(2)(C), 42 U.S.C. § 4332(2)(C), <https://www.law.cornell.edu/uscode/text/42/4332>; Minn. Laws 2025, 1st Spec. Sess., ch. 12, § 3 (DNR preapplication review of data-center water appropriation), <https://www.revisor.mn.gov/laws/2025/1/Session+Law/Chapter/12/>.

⁹³ Exec. Order No. 14299, *Deploying Advanced Nuclear Reactor Technologies for National Security*, § 4(a), 90 Fed. Reg. 22,581, 22,582 (May 29, 2025) (signed May 23, 2025) (directing the Secretary of Energy to "initiate the process" of designation), <https://www.govinfo.gov/content/pkg/FR-2025-05-29/pdf/2025-09796.pdf>. Defense critical electric infrastructure excludes infrastructure owned or operated by the owner or operator of the defense facility, 16 U.S.C. § 824o-1(a)(4); no designation is public as of Sept. 26, 2026.

⁹⁴ United States' Mem. in Supp. of Am. Mot. for Intervention and Dismissal at 1, *NAACP v. X.AI Corp.*, No. 3:26-cv-00074 (N.D. Miss. July 7, 2026), ECF No. 86 (invoking "American national, economic, and energy security"), <https://www.courtlistener.com/docket/73188848/86/national-association-for-the-advancement-of-colored-people-v-xai-corp/>. The plaintiffs' section 7604 argument, the stay motion and the Paducah contrast are in Section 8 (notes 158, 163 and 165).

⁹⁵ *Statement of Principles Regarding PJM* (Jan. 16, 2026), <https://www.energy.gov/documents/statement-principles-regarding-pjm>; Office of Gov. Josh Shapiro, *Gov Shapiro Secures Federal Support to Extend PJM Price Cap* (Jan. 16, 2026) ("In total, all 13 governors from PJM states have signed onto the Principles"), <https://www.pa.gov/governor/newsroom/2026-press-releases/gov-shapiro-secures-federal-support-to-extend-pjm-price-cap>; Exec. Order No. 14213, *Establishing the National Energy Dominance Council*, 90 Fed. Reg. 9945 (Feb. 20, 2025), <https://www.federalregister.gov/documents/2025/02/20/2025-02928/establishing-the-national-energy-dominance-council>; PJM, *Reliability Backstop Procurement to Address Resource Adequacy Concerns Stemming from Large Loads*, Docket No. ER26-3380-000, at 2, 15-16 (July 31, 2026), accession 20260731-5214, <https://www.pjm.com/pjmfiles/directory/etariff/FercDockets/9806/20260731-er26-3380-000.pdf>. FERC has not ruled as of Sept. 27, 2026.

⁹⁶ Office of the Texas Governor, *Governor Abbott Directs TWDB to Penalize Data Center Reporting Failures* (Sept. 14, 2026) (describing the Aug. 3, 2026 directive to the PUCT and ERCOT; the release's text reads "Any data center project that fails to complete the audit process must be denied interconnection."), <https://gov.texas.gov/news/post/governor-abbott-directs-twdb-to-penalize-data-center-reporting-failures>.

⁹⁷ NERC, Project 2026-02 FAQ, *supra* note 78, at 12 ("Neither the ROP modifications nor the new NERC Reliability Standards being developed under Project 2026-02 are modifying the registry criteria that exists for Generator Owners (GOs) or Generator Operators (GOPs)."). Initial ballots passed Sept. 18, 2026; NERC Board approval is targeted for Dec. 2026, with filing due Dec. 31, 2026.

vironmental Quality; LPSC Louisiana Public Service Commission; MISO Midcontinent Independent System Operator; OPSB Ohio Power Siting Board; PUC public utility commission; PUCT Public Utility Commission of Texas.⁹⁹

Security coverage separates coupled from control rows only through the islanded exclusion; disclosure is the sharper pattern. Price, minimum-take, exit, collateral and walk-away terms in bilateral contracts stay withheld until a regulator or court forces them open. Curtailment terms are public where a regulator imposed them, as the PUCT did for Goodnight, and in the control rows; elsewhere they sit in private contracts or term sheets. Siting decisions are public. This is the "who knows" gap of Section 6.2.

⁹⁸ NERC Reliability Standard CIP-002, Attachment 1, criteria 2.1 (1,500 MW), 2.3 (generation designated "as necessary to avoid an Adverse Reliability Impact") and 2.6 (generation "critical to the derivation of Interconnection Reliability Operating Limits"), and CIP-013-2, R1, <https://www.nerc.com/pa/Stand/Reliability%20Standards/CIP-013-2.pdf>; NERC CIP-003-9 (low-impact vendor remote access, effective Apr. 1, 2026); NERC Glossary of Terms, "Bulk Electric System", Exclusion E2(i)-(ii), and NERC, Bulk Electric System Definition Reference Document, Exclusion E2 ("the net capacity provided to the BES does not exceed 75 MVA"); Order No. 912, *supra* note 76, P 64 ("we decline to expand the scope of the directive as proposed in the NOPR to include low impact assets"); 10 C.F.R. § 73.54 (nuclear cyber security under NRC).

⁹⁹ Notes 78, 79, 81, 87, 88, 89, 90, 97, 98, 114; *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,078, Docket No. ER24-2172-000 (Nov. 1, 2024) (amended ISA rejected), https://www.ferc.gov/sites/default/files/2024-11/20241101-3061_ER24-2172-000.pdf (petitions for review, 5th Cir. Nos. 25-60019, 25-60264, transferred from the Fifth Circuit to the Third Circuit on Nov. 3, 2025); Talen Energy, press release filed as SEC exhibit (June 11, 2025), <https://www.sec.gov/Archives/edgar/data/1622536/000162253620250611pressreleasebusin.htm>; Talen Energy Corp., Form 10-Q for the quarter ended June 30, 2026, Glossary, "AWS PPA" (up to 1,920 MW front-of-the-meter through 2042; "The transition to the revised AWS PPA occurred in April 2026."), accession 0001622536-26-000066, <https://www.sec.gov/Archives/edgar/data/1622536/000162253626000066/tln-20260630.htm>; La. Pub. Serv. Comm'n, Order No. U-37425 (decided Aug. 20, 2025; issued Aug. 29, 2025), <https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=nDwn/juc2+A%3D>; Alliance for Affordable Energy & Union of Concerned Scientists, Motion for Investigation, LPSC Docket No. U-37425 (Jan. 14, 2026) (allegation; the Commission declined to take up the motion on Feb. 25, 2026, so it was not adjudicated); *Meta data center pollution permit doesn't account for all its emissions, Sierra Club says*, La. Illuminator (Aug. 4, 2026) (LDEQ approved the Laidley permit revisions June 6, 2026; Sierra Club comments of July 30, 2026 contest minor-source status), <https://lailluminator.com/2026/08/04/meta-data-center-pollution-permit-doesnt-account-for-all-its-emissions-sierra-club-says/>; NAACP & Young, Gifted & Green, Appeal of Air Permit No. 01156-01PC (CTC Property LLC) to the Memphis and Shelby County Air Pollution Control Board, at 1-2 (July 16, 2025) (Shelby County Health Department permit issued July 2, 2025), <https://cdn.arstechnica.net/wp-content/uploads/2025/07/NAACP-and-YGGs-xAI-Air-Permit-Appeal-7-15-2025.pdf>.

TABLE 5-1

Couplings and controls (as of September 27, 2026)

Coupling (forum)	Reliability, security	Wholesale cost	Retail price, exit	Curtailement, control	Siting, permits
Susquehanna, behind meter until April 2026 (FERC, NRC)	Gen B-pub (cyber: NRC); load P; compute N	Amended ISA rejected (FERC 2024), B-pub; prior ISA in effect to April 2026	Headline pub; terms wh	wh	NRC B-pub; no PUC
Goodnight wind, AI load (PUCT)	Gen B-pub (low-impact CIP); PUCT: no cyber term; load P; compute N	ERCOT B-pub	Price wh; stranded-asset finding pub	B-pub; study partly wh	N (no Texas generation siting)
Hyperion (LPSC)	Gen P (plants not yet in service); load P; compute N	Upgrade term B-pub	ESA wh; walk-away alleged, unadjudicated	wh	LPSC generation certificate B-pub; LDEQ air permit revised June 2026, contested by Sierra Club
xAI Memphis (TVA)	Compute N	Outside FERC	wh	DR terms wh	County air permit B-pub, appealed
Socrates generation (OPSB), is-landed	Gen N (not grid-connected); compute N	N	wh	wh	OPSB B-pub
Control: Alliant-Meta, grid-only hyperscale contract	Load P; compute N	MISO tariff B-pub	Partly pub (termination charge, Meta guaranty); price and minimum demand wh	MISO and utility emergency rules pub	Local zoning
Control: grid-tied merchant plant	Gen B-pub (CIP by tier)	B-pub	Not applicable	Market rules pub	State siting B-pub where one exists

Codes: NERC Computational Load registration); N no instrument; *pub* terms public; *wh* terms withheld or never filed; B-pub binding and public. Gen generation side; load data-center grid interface; compute IT equipment. CIP NERC Critical Infrastructure Protection; DR demand response; ESA electric service agreement; ISA interconnection service agreement; LDEQ Louisiana Department of Environmental Quality; LPSC Louisiana Public Service Commission; MISO Midcontinent Independent System Operator; OPSB Ohio Power Siting Board; PUC public utility commission; PUCT Public Utility Commission of Texas. Shading follows the leading term of a cell: binding, public or met partial, pending or headline only withheld or unmet none or not applicable

FIGURE 7

Each forum decides one face of the coupling; none sets all of it

Panel A: which forum holds a binding instrument on which term. Panel B: which instruments see a coupling, by size and voltage. Instruments as of September 27, 2026. Disclosure and exit terms are set out in Table 5-1.

Key: **Binding** **Pending** **Voluntary** *none* *n/a: outside the remit. Split: generation left, load right. See Section 8: orders not cited here.*

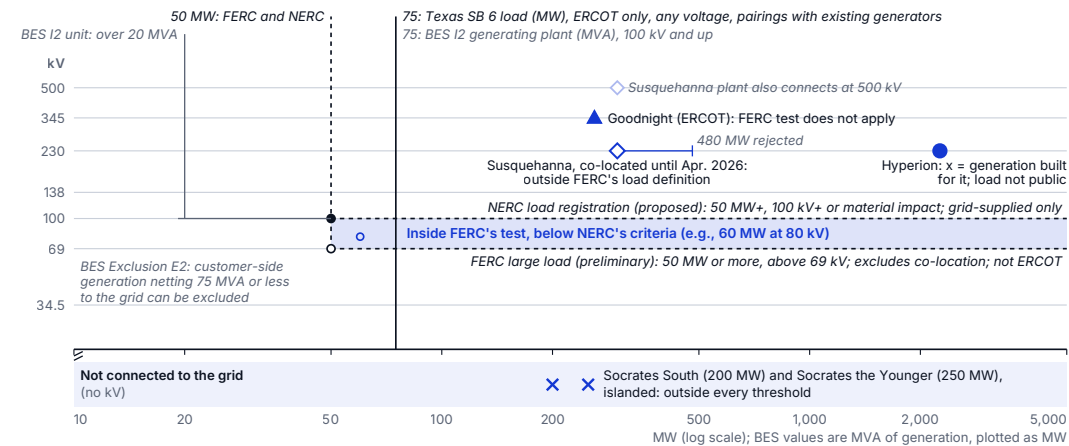
A. Forums by term

Forum	Rates	Reliability	Fiscal	Siting	Environmental	Security
FEDERAL						
FERC	Binding: PJM only; others preliminary	Pending: RD26-7, due Dec. 2026	<i>none</i>	<i>none</i>	<i>none</i>	Pending: Order No. 912 (CIP-013-4)
NERC and Regional Entities	<i>n/a</i>	Gen.: Binding Load: Pending	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	Gen.: Binding Load: <i>none</i>
DOE	Pending: section 403 proposal	<i>none</i>	<i>none</i>	<i>none</i>	<i>none</i>	Pending: EO 14299
NRC <i>restarts only</i>	<i>none</i>	<i>none</i>	<i>none</i>	Pending: Crane amendments	Binding: Crane EA and FONSI	Binding: plant only (10 C.F.R. 73.54)
STATE						
State utility commissions	Binding: retail cost, exit, by case	<i>none</i>	<i>none</i>	Binding: utility-built plants	<i>none</i>	<i>none</i>
State siting boards <i>Ohio OPSB</i>	<i>none</i>	<i>none</i>	<i>none</i>	Binding: 50 MW+, preempts local	<i>none</i>	<i>none</i>
State treasuries <i>Virginia</i>	<i>none</i>	<i>none</i>	Binding: covers self-supply	<i>none</i>	<i>none</i>	<i>none</i>
State environmental and water agencies	<i>none</i>	<i>none</i>	<i>none</i>	<i>none</i>	Binding: air permits, water use	<i>none</i>
LOCAL						
Counties and parishes	<i>none</i>	<i>none</i>	Binding: where executed	Binding: zoning of the load	Binding: where air permits delegated	<i>none</i>
VARIANTS OUTSIDE THE USUAL FEDERAL-STATE SPLIT						
ERCOT and PUCT <i>Texas, outside FPA 201 line</i>	Binding: outside FERC rate review	Binding: SB 6 (Docket 59220)	<i>none</i>	<i>none</i>	<i>none</i>	<i>none</i>
TVA Board <i>self-regulated public power</i>	Binding: over 100 MW, sealed	Binding: non-public terms	<i>none</i>	<i>none</i>	<i>none</i>	<i>none</i>
LAYERS THAT ACT ACROSS FORUMS						
Executive channel <i>White House, NEDC, governors</i>	Voluntary: PJM principles	<i>none</i>	see Section 8	see Section 8	Binding: Texas directive, not a rule	see Section 8
Courts	Binding: FPA 201(b) line	<i>none</i>	<i>none</i>	<i>none</i>	Pending: Southaven appeal	<i>none</i>

B. Which instruments see a coupling depends on its size and voltage

Load or generation size (MW, log scale) by interconnection voltage (kV, log scale). Dashed: not in force. Solid: binding.

Cases: ◇ hollow: co-located ● filled: grid-served ▲ triangle: ERCOT ✕ cross: islanded



Sources: Section 5 notes 70 and 74 to 99 (Panel A: FERC, NERC, DOE, NRC, PUCT, TVA, Ohio, Virginia and executive instruments cited there). Panel B: 195 FERC 61,211 at 1-2 n.2, 39-40; NERC proposed Rules of Procedure, App. 2 and 5B; NERC Glossary, BES 12 and E2; Tex. Util. Code 37.0561(c), 39.169; 189 FERC 61,078; PUCT Docket 59220; LPSC Order U-37425; OPSB Cases 25-0185-EL-BLN, 26-0169-EL-BLN; EIA-860 (2025). Case kV values are plant interconnection voltages; Hyperion's load is not public and is plotted at the generation built for it.

FERC and the PUCT each review one face of co-location (transmission service in PJM, reliability of the pairing in ERCOT), no forum sets all the terms of a coupling, and islanded supply sits outside every threshold. Status as of September 27, 2026; FERC's test is preliminary and NERC's proposed, and neither is in force.

Bargain 1: hyperscaler and utility contest who carries demand risk

The central term is demand risk: who pays if forecast load does not arrive, arrives smaller, or leaves before the assets built for it are paid off. In Bargain 1 the hyperscaler, usually through a special-purpose affiliate, wants firm capacity on a schedule the grid did not plan for. The utility wants the load and the earnings it brings. The commission wants both without shifting cost to other customers. *Settlement* means the allocation defined in Section 2; an agreement among docket parties is a docket stipulation.

6.1 Demand-risk terms are now common, but security terms still differ

Six terms work as one class: minimum demand or take-or-pay, contract term, exit fee, collateral, a credit floor deciding who must post it, and the identity of the signing party. By an Edison Electric Institute count, 25 states had approved at least one large-load tariff by September 2026, and 7 more were pending.¹⁰⁰ On July 9, 2025, the Public Utilities Commission of Ohio (PUCO) adopted a docket stipulation and directed AEP Ohio to file its data-center tariff, effective July 23, 2025. It covers loads of 25 MW and above, with an 85 percent demand minimum, a term of the ramp period plus eight years and an exit fee of 36 months of minimums (appeal pending before the Supreme Court of Ohio). On November 25, 2025, the Virginia State Corporation Commission (SCC) created the GS-5 large-load class, later described as carrying "collateral requirements, minimum demand charges, exit fees, and a 14-year term period".¹⁰¹ Each of these tariffs pairs a term, a minimum bill and an exit charge, at different levels; Georgia's January 2025 rule leaves the levels to each contract.

¹⁰⁰ Edison Elec. Inst., *Large Load Projects and Tariffs* (Sept. 2026), <https://www.eei.org/-/media/Project/EEI/Documents/Issues%20and%20Policy/List%20of%20Large%20Customer%20Projects%20and%20Tariffs> ("As of September 2026, 25 states have approved at least one large load tariff, and another 7 states have pending large load tariffs.").

¹⁰¹ Ga. Pub. Serv. Comm'n, Order Approving Revisions to Georgia Power Company's Rules and Regulations, Docket No. 44280 (vote Jan. 23, 2025; order Jan. 28, 2025) (rule for new customers of 100 MW or more; utility to exercise its discretion "in a manner designed to protect existing customers from bearing any of the costs of adding these large customers"), <https://services.psc.ga.gov/api/v1/External/Public/Get/Document/DownloadFile/221165/102330>; Georgia Power Co., Rules and Regulations for Electric Service, Rules D.13, D.14 (added Feb. 1, 2025) (no percentage, term or collateral amount stated), <https://www.georgiapower.com/content/dam/georgia-power/pdfs/tariffs/rules-reg.pdf>; Ind. Util. Regulatory Comm'n, Order, Cause No. 46097, at 30-38 (Feb. 19, 2025) (Large Load Terms at 70 MW or more at a site or 150 MW aggregated; initial term of at least 12 years after a ramp of up to 5 years; 80% minimum monthly billing demand; exemption from collateral for customers rated A-/A3 with liquidity above 10 times the requirement), https://www.in.gov/iurc/files/ord_46097_021925.pdf; Pub. Utils. Comm'n of Ohio, Opinion and Order, Case No. 24-508-EL-ATA (July 9, 2025), reh'g denied (Sept. 3, 2025), appeal pending, *In re Application of Ohio Power Co.*, Sup. Ct. of Ohio No. 2025-1458; Pub. Utils. Comm'n of Ohio, Press Release, Case No. 24-508-EL-ATA (July 9, 2025) (the Commission "issued an order directing AEP Ohio to file new tariffs applying to data centers"), <https://content.govdelivery.com/accounts/OHPUC/bulletins/3e8bb79>; AEP Ohio, *Data Center Tariff* (Schedule DCT, effective July 23, 2025) (25,000 kW threshold; 85 percent minimum billing demand; initial term of the load ramp period plus eight years; exit fee of 36 months of minimum charges; collateral of "50% of the total minimum charges for the full term"; exemption only for customers rated "A- from S&P Global Inc. and A3 from Moody's Corporation" with cash and cash equivalents above 10 times the collateral requirement), <https://www.aepohio.com/company/about/rates/data-center-tariff/>; Va. State Corp. Comm'n, Final Order, Case No. PUR-2025-00058, at 23-27 (Nov. 25, 2025) (Rate Schedule GS-5), <https://www.scc.virginia.gov/docketsearch/DOCS/89g601!.PDF>; Va. State Corp. Comm'n, Final Order, Case No. PUR-2026-00056, at 13 (July 31, 2026), <https://www.scc.virginia.gov/docketsearch/DOCS/8dt001!.PDF> (quoted); Va. State Corp. Comm'n, *SCC Data Center Initiatives* fact sheet (posted Feb. 24, 2026) (GS-5 covers customers that "meet or exceed certain capacity and energy usage thresholds"), <https://www.scc.virginia.gov/media/sccvirginia.gov-home/about-the-scc/fact-sheets/scc-data-center-initiatives-02-2026.pdf>.

Wisconsin wrote security most fully into a published rule. In 6630-TE-113 the PSC set a 15-year minimum term and cut the eligibility threshold from 500 MW to 100 MW. It removed the utility's sole discretion to waive financial support and tightened the exemption from collateral: a customer must now hold A- (S&P) and A3 (Moody's), up from BBB or Baa2, and meet a net-worth or liquidity test.¹⁰² The A-/A3 exemption was not new: Indiana and AEP Ohio already use it, with a liquidity or cash test.¹⁰¹ What Wisconsin added is that the utility cannot waive security for a customer below that standard.

The terms discipline speculative requests. AEP Ohio reported in February 2026 that of about 30 GW of interest before the tariff, 13 GW asked and paid for a study.¹⁰³ PUCO found the docket stipulation "safeguards other non-data center customers from cost-shifting risks of underused investments".¹⁰⁴ The hedge is real for the contract term and up to the posted collateral, but it is forward-dated and partial. In Virginia the term and collateral apply only to contracts from January 1, 2027. The 85 percent minimum covers transmission and distribution, and a 60 percent minimum covers generation. Collateral is \$1.5 million per MW, reducible by up to 70 percent for credit.¹⁰⁵ Half the states have no approved large-load tariff, and cooperative, municipal and TVA load sits largely outside state tariff authority.

A forecast-inflation view holds that tariffs can legitimize inflated forecasts. The Ohio Manufacturers' Association says AEP raised the tariff value it uses in PJM load submissions from 60 to 85 percent, "inflating its load forecast by at least 3.3 gigawatts".¹⁰⁶ The report accepts the channel but not the figure. Both can hold: a tariff can cut the number of requests while raising the share of each that enters the PJM forecast, which load in PJM's capacity market pays for (6.4).

The contested term is security, not price. The Ratepayer Protection Pledge commits signatories to "pay those rates, and for their infrastructure, whether they use the electricity or not"; it says nothing about collateral.¹⁰⁷ In Wisconsin the utility and a customer both pressed to loosen the floor. On June 10, 2026, We Energies, joined by developers Vantage and Cloverleaf, sought rehear-

¹⁰² Pub. Serv. Comm'n of Wis., Final Decision, Docket 6630-TE-113, at 2-3, 7, 43-44, 56 (Ordering ¶¶ 31-32) (May 21, 2026) (PSC REF# 591873) (exemption requires ratings of A- from S&P and A3 from Moody's and either tangible net worth of 2.0 times or liquidity above 10 times the required security), <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=591873>; Pub. Serv. Comm'n of Wis., Press Release, *PSC Overhauls We Energies' Data Center Tariff*, Docket 6630-TE-113 (Apr. 24, 2026), <https://content.govdelivery.com/accounts/WIPSC/bulletins/4147a70>; Pet. for Judicial Review ¶¶ 37, 51 and the paragraph describing the original BBB/Baa2 Financial Support Requirements, *Oracle Am. Cloud Servs. LLC v. Pub. Serv. Comm'n of Wis.*, No. 2026CV000256 (Ozaukee Cnty. Cir. Ct. filed June 19, 2026), <https://wisconsinwatch.org/wp-content/uploads/2026/06/2026CV256-1.pdf>.

¹⁰³ AEP Ohio, Press Release, *AEP Ohio Updates PUCO on Data Center Load: Figures Show Tariff is Working* (Feb. 13, 2026) ("Of the initial 30,000 MW that expressed interest prior to the PUCO's adoption of the Data Center Tariff, 13,022.7 MW asked and paid for a study."), <https://www.aepohio.com/company/news/view?releaseID=10753> (linking the PUCO filing, <https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A26B12B61453D00940>).

¹⁰⁴ PUCO Press Release, *supra* note 101; PUCO Opinion and Order, *supra* note 101 (appeal pending, Sup. Ct. of Ohio No. 2025-1458).

¹⁰⁵ PUR-2025-00058 Final Order, *supra* note 101, at 25 ("minimum distribution charge of 85% contracted demand; (2) minimum transmission charge of 85% contracted demand; and (3) minimum generation charge of 60% contracted demand"), 23-27 (collateral of \$1.5 million per MW, reducible by up to 70 percent for credit); Va. State Corp. Comm'n, News Release, *In Biennial Review Ruling, SCC Creates New Class for Large-Scale Energy Users* (Nov. 25, 2025) (customers "required to pay a minimum of 85% of contracted distribution and transmission demand, and 60% of generation demand"), <https://www.scc.virginia.gov/about-the-scc/newsreleases/release/scc-issues-order-on-dev-biennial-review-2025/scc-rules-in-dev-biennial-review-case.html>; SCC fact sheet, *supra* note 101 (14-year term and collateral "will apply to new large load customers who contract for service on or after January 1, 2027").

¹⁰⁶ Ohio Mfrs.' Ass'n, *Inflated Ohio Utility Load Forecasts Drive Electric Prices Higher*, Retooling Ohio, at 4-5 (Feb. 2026) (quotation at 5), https://www.ohiomfg.com/wp-content/uploads/2026/02/RetoolingOhio_AEP_Feb.pdf.

¹⁰⁷ Proclamation No. 11014, *Ratepayer Protection Pledge*, 91 Fed. Reg. 11,439 (Mar. 9, 2026) (signed Mar. 4, 2026), <https://www.federalregister.gov/documents/2026/03/09/2026-04645/ratepayer-protection-pledge>; <https://www.whitehouse.gov/presidential-actions/2026/03/ratepayer-protection-pledge-proclamation>.

ing for a graduated collateral table for customers rated below A-/A3. The petition was deemed denied on July 10, 2026, when the Commission did not act within 30 days (Wis. Stat. § 227.49(5)).¹⁰⁸ On June 19, 2026, an Oracle subsidiary petitioned for judicial review of the A-/A3 floor. Oracle moved on August 17 to dismiss voluntarily, and the court record lists the case as closed.¹⁰⁹ The floor stands. A utility seeking looser security for its own customers shows that the utility's incentive, not only the customer's, shapes who carries default risk.

The signing party is rarely the parent company. The Indiana counterparty is "a special purpose entity". Entergy's Hyperion service agreement is signed by Laidley LLC.¹¹⁰ Default risk sits with the weakest credit in that chain unless a tariff requires security from it.

6.2 Disclosure is contested, and special contracts are approved with terms still sealed

Terms are public in a tariff and sealed in a special contract, and which applies has become a term of the bargain. In Indiana Utility Regulatory Commission (IURC) Cause 46276, Indiana Michigan Power sought trade-secret treatment for its Google contract, and its own proposed order would have granted it.¹¹¹ The Commission's April 29, 2026 final order approved the contract but found that I&M "has failed to provide sufficient information" to decide confidentiality. It said it "struggle[s] to accept I&M's arguments supporting a finding of confidentiality, particularly when state law requires the Commission to err on the side of transparency". It opened subdocket 46276 S1 on eight categories of contract information, including load size, duration, the bill-credit calculation and the counterparty's identity. They stay confidential "pending the resolution of the subdocket".¹¹² The Commission, the Indiana Office of Utility Consumer Counselor (OUCC) and the Citizens Action Coalition saw the unredacted contract; the public did not. The issue is public verifiability, not concealment from the regulator. The utility's counter-argument has weight: protection covered information "that could influence future discussions between I&M and other customers".¹¹³ Section 10 answers it by separating structural terms (load, term, exit, security, counterparty) from unit price.

¹⁰⁸ Pet. for Judicial Review ¶ 38, *supra* note 102 (rehearing petition of Wisconsin Electric, Vantage and Cloverleaf, June 10, 2026); Pub. Serv. Comm'n of Wis., ERF document list, Docket 6630-TE-113 (Joint Petition for Reopening or Rehearing, June 10, 2026; no order after the May 21, 2026 Final Decision), <https://apps.psc.wi.gov/ERF/ERFsearch/content/searchResult.aspx?UTIL=6630&CASE=TE&SEQ=113&START=none&END=none&TYPE=ORD&SERVICE=none&KEY=none&NON=N>. Rehearing was deemed denied on July 10, 2026, 30 days after filing, Wis. Stat. § 227.49(5), <https://docs.legis.wisconsin.gov/statutes/statutes/227/iii/49/5>.

¹⁰⁹ Pet. for Judicial Review ¶ 37, *supra* note 102; voluntary dismissal motion of Aug. 17, 2026, reported in Wisconsin Watch, *Oracle drops lawsuit challenging Wisconsin data center credit rules* (Aug. 2026), <https://wisconsinwatch.org/2026/08/oracle-drops-lawsuit-challenging-wisconsin-data-center-credit-rules/>; Wis. Circuit Court Access, *Oracle Am. Cloud Servs. LLC v. Pub. Serv. Comm'n of Wis.*, No. 2026CV000256 (Ozaukee Cnty.) (status Closed), <https://wcca.wicourts.gov/>.

¹¹⁰ Ind. Util. Regulatory Comm'n, Order, Cause No. 46276, at 1, 11-13 (approved Apr. 29, 2026), https://www.in.gov/iurc/files/ord_46276_042926.pdf; Alliance for Affordable Energy & Union of Concerned Scientists, Motion for Investigation at 1, LPSC Docket No. U-37425 (Jan. 14, 2026), <https://www.all4energy.org/wp-content/uploads/2026/01/2026-01-14-U-37425-AAE-UCS-Mtn-for-Investigation.pdf>.

¹¹¹ IURC Order, Cause No. 46276, *supra* note 110, at 7-8 (Google affidavit; parties' access); OUCC, Exceptions to Indiana Michigan Power Company's Proposed Order (Dec. 17, 2025) (redlining I&M's proposed order), https://iurc.portal.in.gov/_entity/sharepointdocumentlocation/e2e5b537-85db-f011-8544-001dd803db57/bb9c6bba-fd52-45ad-8e64-a444aef13c39?file=46276+OUCC+Exceptions+to+Proposed+Order+12.17.2025.doc.pdf.

¹¹² IURC Order, Cause No. 46276, *supra* note 110, Finding ¶ 9 at 12-13 and Ordering ¶¶ 4-5 at 13. Cause No. 46276 S1 (Order Initiating Subdocket Apr. 30, 2026) pending; attorney conference scheduled by docket entry of Aug. 28, 2026, <https://www.in.gov/iurc/files/Weekly%20Filings%20List%208.24.26-8.28.26.pdf>.

¹¹³ I&M proposed order ¶ 9 (summarizing rebuttal testimony of I&M witness Loveman, and noting that "the OUCC did not challenge I&M's redactions"), in OUCC Exceptions, *supra* note 111. The Commission did not adopt this finding; see IURC Order, *supra* note 110, Finding ¶ 9. The challenge was left to other intervenors and the Commission.

FIGURE 8

Demand-risk terms are now common; security terms still differ

Six large-load tariffs and contracts, by effective date. Each cell gives the term as written in the order, tariff sheet or commission summary, and is shaded by whether it is on the public record. As of September 27, 2026.

Record: **Public** **Sealed** n/a

Sealed: not in the public record, whether redacted or never filed. Bold word leads each cell that is not public.

Tariff or contract	Threshold	Minimum demand	Term	Exit fee basis	Collateral	Credit floor and waiver	Effective date and grandfathering
Georgia Power rule Ga. PSC Dkt. 44280 In force Feb. 1, 2025	Expected peak 100 MW or more on one tract or contiguous tracts	T&D Sealed . Set per contract to recover transmission and generation costs; method not published Gen Sealed . Same minimum bill; no separate percentage	"Longer term of contract" at utility discretion; no fixed term in rule (PSC release: 5 to 15 years)	Minimum bills for the remaining term; rule allows recovery of D, T and G costs incurred	Sealed . Performance and credit provisions the utility deems appropriate; amounts in each contract	No floor in rule; utility discretion; Staff may object within 30 days of contract filing	Order Jan. 28, 2025 (vote Jan. 23); Rules D.13 and D.14 added Feb. 1, 2025; new customers only
I&M large-load terms (Tariff I.P.) IURC Cause 46097 In force Feb. 19, 2025	70 MW or more at one site, or 150 MW aggregated	T&D 80% of contract capacity, one figure for all demand Gen Same 80% (not split by function)	12 years after a load ramp of up to 5 years	After year 5: remaining minimum on capacity cut beyond 20%, for 1 to 5 years; 42 months' notice	24 times the maximum monthly non-fuel bill	Exempt at A-/A3 plus liquidity over 10x; unrated with 10x: 50% off (cap \$250M)	Feb. 19, 2025; new load or expansions on or after Jan. 1, 2024
AEP Ohio Schedule DCT PUCO 24-508-EL-ATA In force July 23, 2025	Data centers of 25 MW (25,000 kW) or more	T&D 85% of contract capacity (stepped above 25 MW, capped at 85%) Gen n/a. No separate generation figure	Load ramp (up to 4 years) plus 8 years	After year 5 post-ramp: 36 months of minimum charges	50% of total minimum charges for the full term	Exempt at A-/A3 plus cash over 10x; waiver authority not stated	July 23, 2025 (PUCO order July 9); new data centers and expansions
SINGLE CONTRACT Alliant (WPL) data-center agreement PSCW 6680-TE-115 Decided May 7, 2026	n/a. One customer's agreement under the Individual Contract Rate tariff	T&D Sealed . Minimum demand levels redacted in public version Gen Sealed . Redacted in public version	10-year agreement	Sealed . Multipliers redacted; PSC closed a gap in the termination charge	None required; Meta guaranty equal to the termination charges owed	Sealed . Rating threshold redacted; PSC declined an A-/A3 floor, one commissioner dissenting	Decided May 7, 2026; written order June 18, 2026; future customers to take a stand-alone tariff
We Energies VLC tariff PSCW 6630-TE-113 In force June 1, 2026	Mandatory at 100 MW or more of new load	T&D Transmission billed on at least the initial forecast demand (100% of forecast) Gen Firm Service charges; supply via Bespoke Resources (capacity-only option removed)	15 years minimum, then annual renewal	Undepreciated book value of dedicated distribution; transmission pass-through up to 16 months	Net book value of dedicated distribution plus 1.3 x 24 months of core charges plus net book value of subscribed Bespoke Resources	Exempt at A-/A3 plus net worth 2x or liquidity over 10x; utility's sole-discretion waiver removed	June 1, 2026 (Final Decision May 21, 2026); new load only
Today, September 27, 2026							
Dominion Rate Schedule GS-5 Va. SCC PUR-2025-00058 Starts Jan. 1, 2027	25 MW or more on a contiguous site and load factor of at least 75%	T&D 85% distribution and 85% transmission of contracted demand Gen SCC adopted 60%	14 years, including a load ramp of up to 4 years	Outstanding minimum charges for the remaining term, less reassigned capacity	\$1.5 million per MW, reducible by up to 70% for credit	Credit-based reduction; no rating floor or waiver rule	Jan. 1, 2027; term and collateral for ESAs signed from then; minimums exempt pre-2016 customers

Sources: Georgia PSC Docket 44280 orders (Jan. 28 and Apr. 17, 2025) and Georgia Power Rules A.1, D.13, D.14; IURC Cause 46097 order (Feb. 19, 2025) and Tariff I.P.; AEP Ohio Schedule DCT; PSC of Wisconsin release and Final Decision, 6680-TE-115 (May 7 and June 18, 2026), and redacted agreement (Apr. 28, 2026); We Energies Rate Schedule VLC (6630-TE-113); Virginia SCC Final Order, PUR-2025-00058 (Nov. 25, 2025), and fact sheet (Feb. 2026). Notes 100 to 102 and 105. T&D: transmission and distribution. Gen: generation.

Minimum and term provisions have converged on a common structure, but security, waiver and grandfathering have not: collateral is set as a multiple of monthly bills, a share of minimum charges or book value plus bills, and Georgia leaves it to each contract.

Wisconsin cut the redactions before approving, but the approved contract still hides its price, minimum demand and credit floor. In docket 6680-TE-115 the ALJ in February 2026 directed Alliant "to refile its application and other related documents with fewer redactions". The PSC approved it on June 18, 2026, after closing a gap in the termination charge, requiring a Meta guaranty equal to the termination charges owed and ordering a stand-alone large-load tariff. It declined to require collateral or an A-/A3 floor, over one commissioner's dissent.¹¹⁴ On August 17, 2026, a Dane County judge ruled from the bench that the PSC had unlawfully withheld Meta's Beaver Dam load projections. The PSC had claimed trade secrecy and transmission-system security, the security-as-secrecy channel that Section 4 bounds and RT-1 answers. On August 27 the PSC, deciding not to appeal, gave the requester the single ATC page containing the demand totals.¹¹⁵

Louisiana is the counter-case. The Louisiana Public Service Commission (LPSC) approved Entergy's Hyperion generation while the service agreement stayed in highly sensitive protected materials. Staff stated that it "explicitly is not expressing approval of" that agreement. On February 25, 2026, the Commission declined to take up intervenors' motion alleging that later financing changes weakened the ratepayer protections.¹¹⁶ In a separate docket on Entergy's application to certify generation for Meta's adjacent Richland campus, the Commission voted 3-1 on August 12, 2026 to vacate an ALJ subpoena requiring Meta to disclose how it calculated its job, investment and electricity-load projections.¹¹⁷

A rival reading sees standardization in progress, with trade-secret claims receding as tariffs spread (Section 2). It fits the direction of change but not the record: Indiana and Wisconsin approved their special contracts with structural terms still sealed, and Louisiana certified Hyperion generation without approving the sealed service agreement. The disclosure won so far came

¹¹⁴ Pub. Serv. Comm'n of Wis., Final Decision, Docket 6680-TE-115, at 1, 3; Findings 3-4, 20-22; Opinion at 27-30 (June 18, 2026) (PSC REF# 594678) (10-year term; termination gap closed; guaranty "equal to the sum of termination charges"; "Meta serve as the guarantor"; stand-alone tariff for "new loads of 100 MW or greater"; Commissioner Nieto dissenting on the credit floor), <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=594678>; Wis. Power & Light Co., Amended and Restated ESA (redacted copy), Docket 6680-TE-115 (Apr. 28, 2026) (PSC REF# 589144) (credit rating, termination multipliers and minimum demand blank), <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=589144>; Pub. Serv. Comm'n of Wis., Press Release, *PSC Ensures Stronger Public Transparency, Customer Protections in Review of Alliant Energy's Data Center Service Agreement*, Docket 6680-TE-115, at 1-2 (May 7, 2026) (ALJ directive), <https://psc.wi.gov/Documents/PressReleases/05.08.26PressRelease.PDF>.

¹¹⁵ Midwest Env'tl. Advocates, *Legal Victory! Judge Orders Release of Information About Energy Use at Meta's Beaver Dam Data Center* (Aug. 18, 2026) (announcing the oral ruling of Judge Stephen Ehlke, Dane County Circuit Court, Aug. 17, 2026), <https://midwestadvocates.org/legal-victory-judge-orders-release-of-information-about-energy-use-at-metas-beaver-dam-data-center/>; Wis. Circuit Court Access, *Midwest Env'tl. Advocates v. Wis. Pub. Serv. Comm'n*, No. 2025CV004023 (Dane Cnty.) (filed Dec. 9, 2025; status Closed), <https://wcca.wicourts.gov/>; PSC grounds (trade secret; transmission-system security) and the Aug. 27 decision and single ATC page reported in Wisconsin Law Journal, *Judge: PSC unlawfully withheld data center records* (Sept. 11, 2026), <https://wislawjournal.com/2026/09/11/judge-wisconsin-psc-unlawfully-withheld-data-center-records/>.

¹¹⁶ La. Pub. Serv. Comm'n, Order No. U-37425, at 6 (decided Aug. 20, 2025; issued Aug. 29, 2025), <https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=nDWN/juc2+A%3D;AAE&UCS> Motion, *supra* note 110; La. Pub. Serv. Comm'n, Minutes of February 25, 2026 B&E (revised), Ex. 10, at 3 ("After discussion, the Commission declined to take action on the Motion."), https://lpsc.louisiana.gov/docs/minutes/Feb_25_2026_Minutes_revised.pdf; Union of Concerned Scientists, *Louisiana Won't Investigate Risky Meta Data Center Financing* (Feb. 25, 2026), <https://www.ucs.org/about/news/louisiana-wont-investigate-risky-meta-data-center-financing>.

¹¹⁷ La. Pub. Serv. Comm'n, Docket No. U-37882, *Entergy Louisiana, LLC, ex parte* (vote of Aug. 12, 2026, 3-1), reversing ALJ Subpoena Ruling of July 10, 2026, referred by Referral of Interlocutory Ruling (July 31, 2026), <https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=XUggTpCKCj4%3D>; La. Pub. Serv. Comm'n, Minutes of August 12, 2026 B&E, Ex. 20 ("the Commission voted to reverse the Tribunal's ruling and vacate the subpoena, rendering the motion to quash moot. The motion passed 3:1."), https://lpsc.louisiana.gov/docs/minutes/August_12_2026_Minutes.pdf; La. Pub. Serv. Comm'n, B&E Open Session Transcript, Ex. 20, at 5-6 (Aug. 12, 2026) (requests for Meta's analyses of "the level of investment and permanent job creation" and "the amount of electricity load the Richland Data Center will need"), <https://www.lpsc.louisiana.gov/docs/transcripts/August-12-2026-BE.pdf>.

from an ALJ and a court, not from the contracting parties or a commission acting alone. Wisconsin's ALJ order came before approval, the Dane County ruling after it, and Indiana's subdocket is unresolved.

6.3 Attempted exit through co-location returns on the regulator's terms

Co-location is the clearest case of demand risk, since load behind a generator's point of interconnection may pay less toward the shared network. At Talen's Susquehanna plant, the contested filing in Docket ER24-2172 would have raised co-located load from the 300 MW a 2023 agreement allowed to 480 MW. On November 1, 2024, FERC rejected the amendment 2-1, holding that "PJM has failed to meet the high burden to demonstrate the non-conforming provisions are necessary". It made no cost-shift finding. The language about co-located load avoiding "the cost of the existing transmission system, to the detriment of other customers" summarizes the Exelon and AEP protest.¹¹⁸ An April 10, 2025 rehearing order sustained the result and clarified that future non-conforming filings were not barred. Susquehanna's petitions for review of both orders were transferred from the Fifth Circuit to the Third Circuit on November 3, 2025. On June 11, 2025, Talen announced up to 1,920 MW of front-of-the-meter supply to Amazon through 2042; Talen reports that the transition occurred in April 2026.¹¹⁹

FERC then standardized the terms. Its December 18, 2025 order in EL25-49 directed PJM to offer three alternatives to network service: interim non-firm service and firm and non-firm Contract Demand services. A June 18, 2026 order set the December order aside in part but kept the three services, set certain of their rates and terms, and found the contract-demand designs insufficiently flexible.¹²⁰ The attempted partial exit returned to regulated, cost-bearing service. Whether co-location is exit at all is contested. The market monitor called "avoiding the costs associated with both state and federal regulation" the "core feature of the co-located approach". The Electric Power Supply Association (EPSA) answered that "the avoidance of fees and charges is not a focus for new large loads".¹²¹

¹¹⁸ *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,078, Docket No. ER24-2172-000 (Nov. 1, 2024) (protest summary and discussion), https://www.ferc.gov/sites/default/files/2024-11/20241101-3061_ER24-2172-000.pdf. The amended ISA was filed June 3, 2024 and amended Sept. 3, 2024; the 2023 ISA was accepted by delegated letter order effective Jan. 19, 2023. Amendment rejected Nov. 1, 2024, 189 FERC ¶ 61,078; rehearing addressed Apr. 10, 2025; petition transferred to the 3d Cir. Nov. 3, 2025.

¹¹⁹ *PJM Interconnection, L.L.C.*, Order Addressing Arguments on Rehearing and Granting Clarification, In Part, 191 FERC ¶ 61,025, Docket No. ER24-2172-002 (Apr. 10, 2025), eLibrary accession 20250410-3081 (rehearing was deemed denied by operation of law Dec. 23, 2024, accession 20241223-3003); *Susquehanna Nuclear, LLC v. FERC*, Nos. 25-60019, 25-60264 (5th Cir.) (transferred to the 3d Cir. Nov. 3, 2025), <https://www.courtlistener.com/docket/69556919/susquehanna-nuclear-v-ferc/>; Talen Energy Corp., press release filed as SEC exhibit (June 11, 2025), <https://www.sec.gov/Archives/edgar/data/1622536/000162253625030559/a20250611pressreleasebusin.htm>; Talen Energy Corp., Quarterly Reports (Form 10-Q) for the quarters ended Mar. 31, 2026 (filed May 5, 2026, accession 0001622536-26-000036) and June 30, 2026 (filed Aug. 5, 2026, accession 0001622536-26-000066), Glossary, "AWS PPA" ("up to 1,920 MW"; "The transition to the revised AWS PPA occurred in April 2026."), <https://www.sec.gov/Archives/edgar/data/1622536/000162253626000066/tln-20260630.htm>.

¹²⁰ *Co-Located Load Configurations in PJM*, Order on Show Cause Proceeding, Directing Compliance Filings, Establishing Paper Hearing, and Granting in Part and Denying in Part Complaint, 193 FERC ¶ 61,217, Docket Nos. EL25-49-000 et al. (Dec. 18, 2025), eLibrary accession 20251218-3081; *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,209, Docket No. EL25-49-002 et al. (June 18, 2026), eLibrary accession 20260618-3103 (rehearing deemed denied by operation of law Aug. 20, 2026, accession 20260820-3008), as described in *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,211, Docket No. EL26-67-000, P 14 & n.51 (June 18, 2026) (order "setting aside the order in part" and "establishing as just and reasonable certain rates, terms, and conditions for the new transmission services"), <https://www.ferc.gov/sites/default/files/2026-06/EL26-67-000.pdf>; PJM, *Public Overview of June 18 Co-Located Load and Large Load Show Cause Orders* (July 30, 2026) (contract-demand designs "insufficiently flexible"), <https://www.pjm.com/-/media/DotCom/committees-groups/workshops/cllsco/2026/20260730/20260730-item-02---co-located-load-and-large-load-show-cause-orders---presentation.pdf>.

¹²¹ PJM Indep. Mkt. Monitor, Comments, Docket No. AD24-11-000, at 4-5 (Dec. 16, 2024), https://www.monitoringanalytics.com/filings/2024/IMM_Comments_Docket_No_AD24-11_20241216.pdf; Elec. Power Supply Ass'n, Post-Conference Comments, Docket No. AD24-11-000, at 10 (Dec. 9, 2024), <https://epsa.org/wp-content/uploads/2024/12/EPSCo-Location-Conf-Comments-AD24-11-000.pdf>.

FIGURE 9

Contracts stayed sealed; an ALJ and a court won disclosure

Seven proceedings through five stages, one row each. Stages are ordered, not scaled to time; cells are shaded by what the public could see at that step. *Italic:* who took the step. Status as of September 27, 2026.

Public view: **Public or disclosed** Partial Sealed, withheld or refused Open or not approved n/a

 Drafting or modification step  Outlined: the one disclosure step that came before approval

Proceeding	Drafted	Modified by regulator	Approved or withheld	Disclosure step	Status, Sept. 2026
SPECIAL CONTRACTS AND RECORDS <i>Terms filed under seal or withheld as trade secret</i>					
Alliant and Meta contract Wis. PSC 6680-TE-115 <i>Special contract</i>	<i>Alliant with Meta affiliate</i> 10-year agreement filed with confidential attachments; customer named by alias Apr. 2025	► <i>PSC</i> Termination gap closed; Meta named guarantor; no collateral and no A- / A3 floor; large-load tariff ordered May 2026 oral; June 2026 written	► <i>PSC</i> Sealed Price, minimum demand, termination and credit terms blank in public version June 2026	► <i>ALJ</i> Before approval, partial Refiling ordered with fewer redactions Feb. 2026	► Still sealed in part Structural terms still redacted
Dane County records case Dane Cnty. Cir. Ct. 2025CV004023 <i>Records request, same Meta project</i>	n/a <i>Records request, not a contract</i>	► n/a	► <i>PSC</i> Withheld Load projections claimed as trade secret and grid security Nov. 2025	► <i>Court, on requester's suit</i> Ordered Bench ruling: PSC unlawfully withheld the projections Aug. 2026	► Disclosed on ruling PSC did not appeal; released one page of demand totals Aug. 2026
I&M and Google contract IURC Cause 46276 <i>Special contract</i>	<i>I&M with Google affiliate</i> Contract filed with a trade-secret request July 2025	► <i>IURC</i> Approved as modified; I&M's trade-secret finding not adopted Apr. 2026	► <i>IURC</i> Sealed Load, term, bill credit and counterparty confidential pending subdocket Apr. 2026	► <i>Intervenor CAC; IURC</i> <i>Open</i> IURC opened subdocket S1; OUCC did not challenge redactions Oct. 2025; Apr. 2026	► Still sealed Subdocket undecided
Entergy and Meta Hyperion LPSC U-37425 <i>Special contract</i>	<i>Entergy with Meta affiliate</i> Service agreement signed by Laidley LLC 2025	► <i>LPSC</i> Project transmission upgrades kept out of other customers' rates Aug. 2025	► <i>LPSC</i> Sealed Generation certified; agreement held as highly sensitive, not approved Aug. 2025	► <i>Intervenor AAE and UCS; LPSC</i> Not taken up LPSC declined to act on motion to investigate financing changes Jan. to Feb. 2026	► Still sealed
Meta Richland subpoena LPSC U-37882 <i>Generation application, adjacent Meta campus</i>	<i>Entergy</i> Application to certify about 5,200 MW of generation	► n/a <i>Not decided at the vote</i>	► <i>Not approved</i> Pending at the Aug. 12 vote	► <i>ALJ; then LPSC, 3-1</i> Refused ALJ ordered Meta's job and load analyses; LPSC vacated the subpoena July to Aug. 2026	► Disclosure refused
PUBLISHED TARIFFS <i>Terms public from filing; no disclosure contest</i>					
We Energies large-load tariff Wis. PSC 6630-TE-113 <i>Published tariff</i>	<i>We Energies</i> Utility kept sole waiver discretion; floor BBB / Baa2 Mar. 2025	► <i>PSC</i> 15-year term; 100 MW threshold; waiver struck; floor A- / A3 Apr. to May 2026	► <i>PSC</i> Public terms Intervenor data under protective order May 2026	► n/a <i>Contest was over security, not secrecy</i>	► Public A- / A3 floor stands
AEP Ohio data-center tariff PUCO 24-508-EL-ATA <i>Published tariff</i>	<i>AEP Ohio, Staff, OCC and others</i> Docket stipulation; hyperscaler stipulation not adopted Oct. 2024	► <i>PUCO</i> Adopted the stipulation; tariff filed July 2025	► <i>PUCO</i> Public terms 25 MW, 85% minimum, 36-month exit fee July 2025	► n/a <i>No disclosure contest</i>	► Public

Sources: PSC Wis. Final Decisions, 6630-TE-113 (May 21, 2026) and 6680-TE-115 (June 18, 2026), and the public service agreement (Apr. 28, 2026); Wis. Circuit Court Access, Dane County 2025CV004023, and Wisconsin Law Journal; PUCO release (July 9, 2025) and AEP Ohio data-center tariff; IURC Order, Cause 46276 (Apr. 29, 2026); LPSC Order U-37425 and minutes of Feb. 25, 2026; LPSC minutes and transcript of Aug. 12, 2026 (U-37882). Notes 102, 108 to 117.

Indiana and Wisconsin approved special contracts with structural terms sealed, and Louisiana certified Hyperion generation without approving the sealed service agreement; the disclosure that was won came from an ALJ and a court, not from the contracting parties or a commission acting alone; published tariffs were public from filing. Stages are ordered, not scaled to time; Wisconsin's ALJ-ordered refiling came before approval, and Indiana's subdocket is unresolved.

The service election is itself a demand-risk term. On a flexibility view, curtailable load needs less firm build, so under-forecasting becomes curtailment borne by the data center and over-forecasting strands less. Duke's Nicholas Institute estimates "76 GW of headroom" at a 0.25 percent curtailment rate.¹²² The report adopts this as RT-4 (Section 10), with a limit. Flexibility shrinks exposure but does not assign what remains. It is priced only where a forum defines the product, as PJM and Texas SB 6 (Section 5) do.

6.4 The incidence figures measure different things

Four terms matter. A cross-subsidy is a class paying less than the costs it causes; none has been shown historically for data centers, and none is claimed. Cost allocation is how caused costs are assigned across classes. A price effect is new demand raising the price all buyers pay. Prospective exposure is modeled future cost. Virginia's legislative auditor, JLARC, found that "Data centers are currently paying their full cost of service, but growing energy demand is likely to increase other customers' costs". It estimated that a typical Dominion residential customer "could experience generation- and transmission-related costs increasing by an estimated \$14 to \$37 monthly in constant (or real) dollars by 2040".¹²³ Both estimates precede GS-5.

The largest figure is a price effect. The PJM market monitor attributes to data-center load \$23.1 billion of capacity charges across three auctions, and \$29.4 billion (46.2 percent of charges) across four.¹²⁴ The report reads these as counterfactual transfers to capacity sellers; the monitor calls them "the total increase in costs to other PJM customers". Each auction is re-cleared without data-center load while "everything else had remained the same". Data centers pay part of the total, PJM does not adopt the figures, and two of the four delivery years lie ahead. The monitor would say the report under-claims, because current conditions "are not the result of organic load growth". The report accepts the timing but not the level. The monitor concedes that data-center load "does not mean that PJM would not have eventually reached a point where supply and demand were tight, but that trajectory was relatively slow".¹²⁵ That supports the report's narrower reading: data-center load brought forward a tightening that was already coming. On that reading, the cost attributable to data-center load is the premium for the years the tightening came early, and its size depends on how fast forums let supply respond. An E3 review points the same way, attributing "approximately 50% of the price increase to load growth" in the 2024/25 and 2025/26 auctions and the rest to supply-side factors.¹²⁶

¹²² Tyler H. Norris, Tim Profeta, Dalia Patino-Echeverri & Adam Cowie-Haskell, *Rethinking Load Growth: Assessing the Potential for Integration of Large Flexible Loads in US Power Systems*, NI R 25-01, Duke Univ. Nicholas Inst. (Feb. 2025), at 20 ("76 GW of headroom is available at an expected load curtailment rate of 0.25%") (filed as JNGO Ex. 2.08, Ill. Commerce Comm'n Docket Nos. 25-0677/25-0679 (consol.)), <https://www.icc.illinois.gov/docket/P2025-0679/documents/371138/files/650737.pdf>.

¹²³ Joint Legis. Audit & Review Comm'n, *Data Centers in Virginia*, Report 598, Summary at v; ch. 4 at 44, 47-48 & tbl. 4-2 (Dec. 9, 2024), <https://jlarc.virginia.gov/pdfs/reports/Rpt598.pdf>. The estimates are JLARC staff figures from E3 modeling, 2024 constant dollars, generation and transmission only. The \$14 is the half-of-unconstrained scenario and the \$37 the unconstrained scenario with Clean Economy Act costs.

¹²⁴ Monitoring Analytics, *Analysis of the 2027/2028 RPM Base Residual Auction, Part A 3* & tbl. 1 (Jan. 5, 2026), https://www.monitoringanalytics.com/reports/Reports/2026/IMM_Analysis_of_the_20272028_RPM_Base_Residual_Auction_Part_A_20260105.pdf; Monitoring Analytics, *Market Monitor Report to the Members Committee*, slides 3-4 (July 28, 2026), https://www.monitoringanalytics.com/reports/presentations/2026/IMM_MC_Market_Monitor_Report_20260728.pdf. The \$29.4 billion includes the \$23.1 billion; the 2027/28 attribution is net of the FERC-approved price collar.

¹²⁵ Monitoring Analytics, Part A, *supra* note 124, at 3 ("total increase in costs"), 6 (organic load growth), 7 (trajectory), 19-22 (scenarios; "everything else had remained the same").

Incidence is also uneven. Utility-finance analysts and Dominion note that utilities owning generation collect the higher price on their own units. Fixed resource requirement (FRR) load (12,201.9 MW in 2027/28) does not pay it.¹²⁷ The report agrees: the transfer is billed mainly to net-short load-serving entities and passed through to their customers. Virginia's exposure through this channel turns on Dominion's net capacity position, which the public record does not settle.

The adjudicated evidence is narrower and specific to cost categories. In Dominion's Rider T1 case the SCC on July 31, 2026 approved an amended twelve coincident peak (12-CP) method, which allocates transmission cost by each class's share of the twelve monthly system peaks. The change cut the projected residential increase from \$2.90 to \$0.94 a month. The SCC also ordered a mandatory contribution in aid of construction (CIAC) in Dominion's line-extension policy, net of expected transmission revenue, applied prospectively and only to "direct connect" facilities, where "the large-load customer would be the but-for cause". The SCC took "a more deliberate approach" to higher-order transmission and did not call the prior allocation a subsidy.¹²⁸ That is an allocation lag found and corrected prospectively, not a subsidy amount. Of the incidence figures, only this one ties a named class and cost to an ordered remedy.

What tariffs do not reach sits at the federal-state seam and in five channels outside project tariffs (Section 9.1); forecast error runs both ways (Section 9.2).

6.5 Exposure turns on the signing affiliate and its guarantor

Section 9.5 shows that pledges trail the state terms set out in 6.1. Laidley LLC, signatory to Entergy's 15-year Hyperion agreement, is now owned by the holding company of Meta's venture with Blue Owl funds.¹²⁹ Whether ratepayers are exposed turns on guaranties the public record does not show. Sections 9.3 to 9.5 trace the capital stack and the rival readings.

¹²⁶ E3 for the Data Center Coalition, *Are Data Centers Driving Up Electricity Rates?*, Key findings (May 18, 2026) (2024/2025 and 2025/2026 PJM auctions), <https://www.ethree.com/electricity-rate-drivers-data-center-role-2026/>.

¹²⁷ Monitoring Analytics, Part A, *supra* note 124, at 4 & tbl. 2 (FRR peak load ICAP 12,201.9 MW, 2027/28); Diana DiGangi, *Dominion says rate-payers will be insulated from PJM capacity auction impacts*, Utility Dive (Aug. 7, 2024) (quoting Mizuho utility analyst Anthony Crowdell: "They own their generation, so that if capacity prices are up for generation, their units caught the higher price" and "So they do have this natural hedge"; and Dominion spokesperson Aaron Ruby ("we also sell our own power generation into the same market, so that helps offset increased cost for customers")) on the natural hedge of owned generation), <https://www.utilitydive.com/news/dominion-rate-payers-capacity-auction-pjm-generation/723535/>.

¹²⁸ Va. State Corp. Comm'n, Final Order, Case No. PUR-2026-00056, *supra* note 101, at 6-7, 11-12, 14.

¹²⁹ Meta Platforms, Inc., Quarterly Report (Form 10-Q) for the quarter ended June 30, 2026, Note 5 (Non-Marketable Equity Investments) (filed July 30, 2026), accession 0001628280-26-050705, <https://www.sec.gov/Archives/edgar/data/1326801/000162828026050705/meta-20260630.htm>; Meta Platforms, Inc., press release, *Meta Announces Joint Venture with Funds Managed by Blue Owl Capital to Develop Hyperion Data Center* (Oct. 21, 2025), <https://www.prnewswire.com/news-releases/meta-announces-joint-venture-with-funds-managed-by-blue-owl-capital-to-develop-hyperion-data-center-302590584.html>; AAE & UCS Motion, *supra* note 110, at 1 (Laidley as sole signatory).

FIGURE 10

Four incidence terms, four questions; three have a figure

Each term's best figure in its own unit, basis and period, the strongest counter-figure, who produced it, and whether a third party can check it against a public record today. Rows cannot be summed, and their magnitudes cannot be compared. Status as of September 27, 2026.

Verify now: **Public record** **Partly** **Adjudicated: the only figure set in a commission final order**

Term	Best figure, in its own unit	Basis and period	Strongest counter-figure	Produced by	Verify now
Cross-subsidy A class paying less than the costs it causes	None shown No historical cross-subsidy for data centers	Historical cost recovery, as found by JLARC in December 2024: data centers "currently paying their full cost of service"	<i>None claimed</i>	JLARC staff	Partly JLARC report is public; no finding after GS-5
Cost allocation How caused costs are assigned across classes ADJUDICATED	\$2.90 > \$0.94 a month: projected residential Rider T1 increase, before and after the amended method	Amended twelve coincident peak (12-CP) method, ordered July 31, 2026. Fix ordered: contribution in aid of construction (CIAC) for direct-connect facilities, prospective; higher-order transmission left for "a more deliberate approach"	<i>None</i>	Va. SCC, Final Order	Public record Order is public; the figure is a projection
Price effect New demand raising the price all buyers pay	\$29.4 billion 46.2 percent of capacity charges over four auctions, nominal dollars	Each auction re-cleared without data-center load, all else the same; delivery years 2025/26 to 2028/29, two still ahead; 2027/28 net of the price collar. Includes \$23.1 billion over the first three	About 50 percent of the capacity price increase to load growth (E3 for the Data Center Coalition); an earlier and overlapping window, 2024/25 and 2025/26; a share of the price increase, not of charges; all load growth, not data centers alone	PJM market monitor; counter-figure from a consultant commissioned by industry	Partly Monitor's reports are public; the figure is a counterfactual and PJM does not adopt it
Prospective exposure Modeled future cost	\$14 to \$37 a month by 2040, 2024 dollars, typical Dominion residential customer	Generation and transmission only; \$14 at half of unconstrained demand, \$37 unconstrained with Virginia Clean Economy Act costs; modeled in 2024, before GS-5	<i>None published after GS-5</i>	JLARC staff, from E3 modeling	Partly JLARC report is public; the figure is modeled to 2040

Figures differ in unit, period and base; no row is a subset or total of another.

Sources: JLARC, Data Centers in Virginia, Report 598, at v, 44, 47-48 and table 4-2 (Dec. 2024); Monitoring Analytics, Analysis of the 2027/2028 RPM Base Residual Auction, Part A, at 3 and table 1 (Jan. 2026), and Market Monitor Report to the Members Committee, slides 3-4 (July 2026); E3 for the Data Center Coalition (May 2026); Va. SCC, Final Order, Case No. PUR-2026-00056, at 6-7, 11-12, 14 (July 31, 2026). Notes 123 to 128.

Four incidence terms, four questions; three have a figure. Each figure answers a different question, and only the adjudicated one ties a named class and cost to an ordered remedy. The figures sit in different units, periods and bases and cannot be summed; the price-effect counter-figure covers an earlier and overlapping window (the 2024/25 and 2025/26 auctions) and all load growth, and the JLARC range predates GS-5. Sources: JLARC, the PJM market monitor, E3 and the Virginia SCC, as of September 27, 2026.

Bargain 2: states and localities grant tax terms they rarely verify

Who pays turns on an unfixed but-for share. The second bargain joins data-center developers to host states and localities. The state gives tax expenditures and a siting path, the locality zoning and property-tax terms, and the firm investment and, increasingly, fees, minimum valuations and payments in lieu of taxes (PILOTs). The coupling enters where a state taxes self-supplied electricity or a siting board decides generation. Control runs through recapture clauses, which few deals contain.

7.1 The fiscal ledger turns on the but-for share

State treasuries pay on the inframarginal share, above all on owner refresh; the sign of the combined state and local ledger is undetermined. Georgia's state auditor reports a Carl Vinson Institute of Government estimate of \$474.2 million in forgone state revenue in FY2025. The Institute found "30% of data centers in Georgia could be attributed to the tax exemption (i.e., 70% would exist in the absence of the exemption)."¹³⁰

Washington's legislative auditor found the colocation-oriented urban preference used "only for refurbishment projects": "No new urban data centers were built using the preference."¹³¹ On Washington's findings, location is open at first siting but sunk at each refresh. Yet Virginia's executive-branch report (RD40) applies one 90 percent but-for share to all qualifying investment, over a window that "aligns with the average refresh cycle of data center equipment." RD40 concedes "the expense of constructing a data center encourages the continued use of the building."¹³²

¹³⁰ Ga. Dep't of Audits & Accounts, *Tax Incentive Evaluation: Georgia Data Center Sales & Use Tax Exemption* (DOAA summary of Carl Vinson Institute of Government report, Dec. 2025, rev. Jan. 2026), "Impact on Employment, Economic Activity, and Revenue" and impact table (4% fiscal ROI and 289% economic ROI as reported by DOAA), <https://www.audits2.ga.gov/wp-content/uploads/2025/12/Data-Center-Tax-Exemption-Summary-Revised.pdf>.

¹³¹ Wash. Joint Legislative Audit & Review Comm., *2026 Tax Preference Review: Data Centers in Urban Counties* (Preliminary Report, July 2026), Legislative Auditor's Conclusion; Part 1 (2026 legislative change); Key Points and Figure 2 ("Ten exemptions: four for owners' refurbishments and six for tenants"; "Data center owners said it helped attract some new tenants"); Part 2 ("some of these capital investments would have occurred even without the exemption"); Appendix A, <https://leg.wa.gov/jlarc/taxReports/2026/data/1/report.html>; ESSB 6231, 69th Leg., 2026 Reg. Sess., ch. 266, 2026 Wash. Sess. Laws (signed Apr. 1, 2026; eff. June 11, 2026) (removed the exemption for replacement server equipment), <https://lawfilesexternal.wa.gov/biennium/2025-26/Pdf/Bills/Session%20Laws/Senate/6231-S.SL.pdf>.

¹³² Va. Dep't of Taxation & Va. Econ. Dev. P'ship, *Biennial Data Center Retail Sales and Use Tax Exemption Report* (RD40, Jan. 2, 2026), at 3 (inputs "self-reported by data center operators and ... not independently validated by VEDP or the Department"), 4 (refresh-cycle window), 4-5 (Table 2, gross revenue-to-cost ratio 1.7; JLARC 90% but-for share retained, p. 5), 6 (Table 3 and note 1, counterfactual), 7 (Assumptions, saved jobs), 8 (Limitations, continued use of the building), <https://rga.lis.virginia.gov/Published/2026/RD40/PDF>. Break-even share is calculated from Tables 2 and 3: $(A - B)/(A + B) = \$2,111,680,000 / \$8,579,374,000$. Counted once, break-even is $A/(A + B) = 62.3$ percent if A is net of the exempt tax, or $(A - B)/A = 39.5$ percent if A includes it.

RD40 assumes refresh saves jobs, since a data center "could become obsolete and close without the equipment replacement incentivized by the program."¹³² Six of Washington's ten exemptions went to tenants, whose servers can move. The report adopts the split only for owner-operated campuses; evaluations should score first siting, owner refresh and tenant purchases separately.

RD40, the only analysis netting state and local revenue, states the strongest opposing case: \$5.35 billion of combined five-year revenue against \$3.23 billion of exemption value, a gross ratio of 1.7 that counts all revenue as induced. Applying JLARC's 90 percent but-for share, its counterfactual shows combined net revenue \$1.25 billion lower without the exemption.¹³² All bordering states exempt, Loudoun drew 39 percent of its FY2026 budget from data centers, and industry unanimously told JLARC expiry would hurt attraction and retention.^{133 134}

Yet on RD40's own method, the combined ledger breaks even when about 24.6 percent of data-center investment would have come anyway (\$2.11 billion divided by \$8.58 billion). Counting the exemption's value once rather than on both sides raises break-even to about 40 to 62 percent, depending on whether RD40's revenue estimate includes the exempt tax. Georgia's 70 percent, a facility share, would reverse the sign. RD40's inputs are self-reported and "not independently validated."¹³²

On the state ledger alone the sign is clear: JLARC finds the exemption "does not pay for itself when considering just the state portion," returning 48 cents per dollar.¹³³ Fiscal watchdogs cite Bartik's finding that typical incentives tip only 2 to 25 percent of incented firms.¹³⁵ But that range describes typical-sized incentives; JLARC drew its 90 percent from Bartik's own scale as an upper bound for an exemption worth 21 percent of twenty-year operating costs.¹³³ The literature narrows Virginia's figure without refuting it.

Good Jobs First finds 14 of 37 exempting states do not publish revenue losses on time, and seven publish no cost figure.¹³⁶

¹³³ Va. Code Ann. § 58.1-609.3(18) (through June 30, 2035; extensions under § 58.1-609.3(19)), <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-609.3/>; Joint Legislative Audit & Review Comm'n (Va.), *Data Centers in Virginia*, Report 598 (Dec. 9, 2024), at viii (2035 expiry; data center representatives "unanimously reported" that expiration would affect attraction and retention), 20 (\$683 million; small number of companies), 21 (equipment replaced every five years), 22 (bordering states; state portion), 23 (Table 2-2, 48 cents), <https://jlarc.virginia.gov/pdfs/reports/Rpt598.pdf>; JLARC, *Data Center and Manufacturing Incentives*, Report 518 (2019), at 14 (savings equal to "21 percent of operating costs for this new activity over a 20-year period"; "Based solely on this cost analysis, the exemption is estimated to induce up to 90 percent," citing Bartik), <https://jlarc.virginia.gov/pdfs/reports/Rpt518-1.pdf>.

¹³⁴ Loudoun County, Va., *Data Centers: The Loudoun Story* (FY2026 data center real and personal property tax revenue of \$1.2 billion, 39 percent of the county budget), <https://www.loudoun.gov/6408/Data-Centers-The-Loudoun-Story>; Loudoun County, *Data Centers: Tax Revenues and County Budget* (real property rate "lowered from \$1.145 in tax year 2016 to \$0.805 cents per \$100 in assessed value for tax year 2026"; revenue plateau), <https://www.loudoun.gov/6409/Tax-Revenues-County-Budget>.

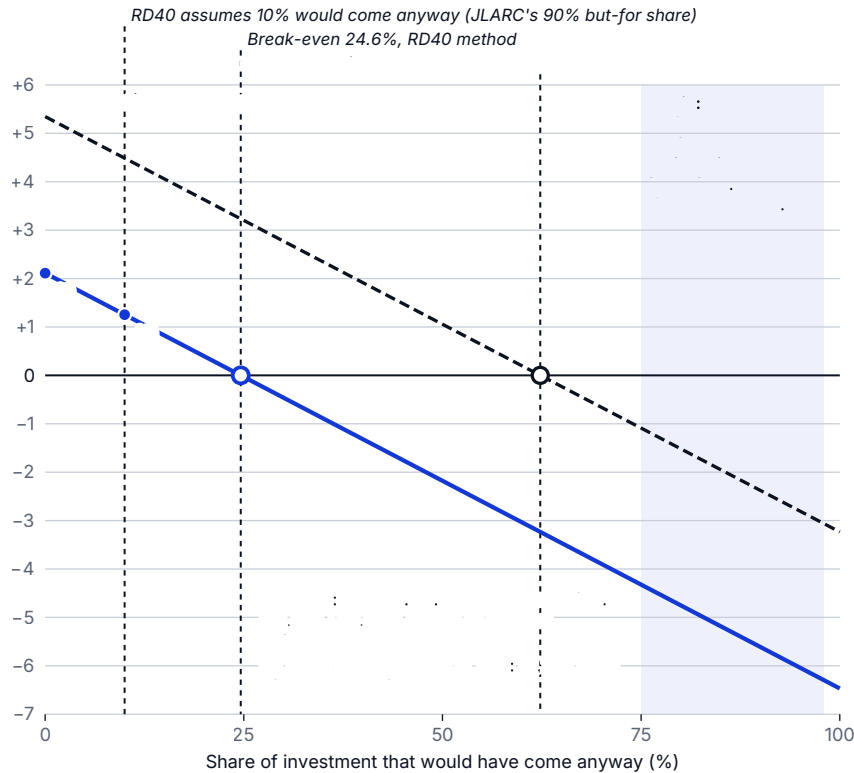
¹³⁵ Timothy J. Bartik, W.E. Upjohn Inst., *"But For" Percentages for Economic Development Incentives* (typical incentives tip "somewhere between 2 percent and 25 percent of incented firms"), <https://www.upjohn.org/research-highlights/percentages-economic-development-incentives>.

¹³⁶ Good Jobs First, *Even Cloudier with a Greater Loss of Spending Control* (June 2026), Executive Summary (no cost figure found for Alabama, Arkansas, Louisiana, Mississippi, North Dakota, Oklahoma or Utah), <https://goodjobsfirst.org/even-cloudier-with-a-greater-loss-of-spending-control-how-data-center-tax-abatements-undermine-public-budgets/>.

FIGURE 11

The fiscal ledger turns on the but-for share

Net state plus local tax revenue with the exemption minus without, \$ billions, by share of investment that would have come anyway. FY2024 and FY2025 investment; five-year revenue, 2024 to 2029. Linear scale. As of September 27, 2026.



Other measures, each in its own unit

No shared scale with the chart

30 / 70

Ga. DOAA / Vinson Inst.

percent of data centers, Georgia
70% would exist without the exemption;
facility count, not dollars

0

Wash. JLARC

new urban data centers built with the
preference, Washington
10 exemptions: 4 owner
refurbishments, 6 tenants

48¢

Va. JLARC 598

state revenue per \$1 of exemption, Virginia
State only; the chart is state plus local

39%

Loudoun County

of Loudoun's FY2026 budget
Data center real and personal
property tax, \$1.2B

14 of 37

Good Jobs First

exempting states not publishing
losses on time
Count, April 2026

Sources: Va. Dep't of Taxation and VEDP, RD40 (Jan. 2, 2026), Tables 2 and 3; Bartik, Upjohn Inst., "But For" Percentages for Economic Development Incentives; Ga. DOAA, summarizing Carl Vinson Inst. (Dec. 2025, rev. Jan. 2026); Wash. JLARC (July 2026); Va. JLARC Reports 598 and 518; Loudoun County; Good Jobs First (June 2026). Lines and break-evens are calculated from RD40 inputs. Counted-once line: $A - s(A + B)$; if A includes the exempt tax, break-even is 39.5% instead (not plotted). Notes 130 to 136.

Virginia's exemption adds revenue on the combined state and local ledger only if the share of investment that would have come anyway is under 25 percent on RD40's method, or under about 62 percent if the exemption's value is counted once (39.5 percent if RD40's revenue estimate includes the exempt tax). RD40's inputs are self-reported and unvalidated; Bartik's band counts firms and Georgia's figure counts facilities, not dollars.

7.2 States cap, pause and reprice exemptions instead of repealing

Virginia's 2026 Appropriation Act (HB 30, Item 3-5.24) levies \$0.011 per kWh on electricity consumed at each data center from July 1, 2026 through June 30, 2028. Operators include one that "utilizes self-supplied electricity generation"; receipts above \$600 million a year are refunded.¹³⁷ It is a revenue instrument, not a security designation. The sales-tax exemption, expiring June 30, 2035 subject to statutory extensions, is untouched.¹³³

¹³⁷ 2026 Va. Acts, Spec. Sess. I, ch. 1 (H.B. 30, approved June 29, 2026), Item 3-5.24(A)-(E), [https://budget.lis.virginia.gov/get/budget/5311/HB30;Conference Report amendment 3-5.24 #1c](https://budget.lis.virginia.gov/get/budget/5311/HB30;Conference%20Report%20amendment%203-5.24%20#1c), <https://budget.lis.virginia.gov/amendment/2026/2/HB30/Introduced/CR/3-5.24/1c>; Office of the Governor of Virginia, Governor Spanberger Highlights First-of-Its-Kind Data Center Energy Consumption Tax (July 6, 2026) (enactment), <https://www.governor.virginia.gov/newsroom/news-releases/2026/july-releases/name-1120725-en.html>.

Minnesota extended its exemption to 2042 or later for annual fees of \$2 million to \$5 million and prevailing-wage and green-building conditions. A companion statute directs the PUC to consider how to achieve "required outcomes," the first of which assigns very large customers' non-exempt costs to their own class. The law also made nonpublic "fee data collected under this section" and water pre-application exchanges.¹³⁸ The bargain was repriced and the price withheld. On May 27, 2026, Ohio's governor directed a pause on "any new data center tax exemption requests."¹³⁹

Governors decide the direction. Kemp's 2024 veto of a two-year pause on exemption certificates held Georgia's fiscal terms, citing investments made "in reliance on the recent extension." Youngkin's 2025 veto of a site-assessment bill (HB 1601) kept siting local until the 2026 statute. DeWine moved the other way.¹⁴⁰

Why cap and reprice instead of repeal? Reliance and credit-claiming may leave states the stronger hand, or concentrated benefits may outweigh diffuse costs.¹⁴¹ RT-6 (Section 10) works under either: publication exposes diffuse costs, a sunset schedules the vote, and reliance attaches to a known date.

¹³⁸ Minn. Laws 2025, 1st Spec. Sess., ch. 12 (H.F. 16), sec. 3 (DNR pre-application data), sec. 9 (Minn. Stat. § 216B.1622, subds. 1 (class to be defined by order by Dec. 15, 2026), 2(1) ("required outcomes"; costs "not exempt under subdivision 3"), 3), and sec. 16 (Minn. Stat. § 216B.72(a), (c)), <https://www.revisor.mn.gov/laws/2025/1/Session+Law/Chapter/12/>; Minn. Stat. § 216B.1622, subd. 2, as amended by Minn. Laws 2026, ch. 88, art. 1, sec. 91 (cross-reference only), <https://www.revisor.mn.gov/statutes/cite/216B.1622>; Minn. Senate Counsel, *Summary of H.F. 16* (June 2025), sec. 17 (fees) and sec. 18 (sunset extension; prevailing wage; green-building certification, with exemption "repaid" if not met), <https://assets.senate.mn/summ/bill/2025/1/HF16/25-05730%201st%20SS%20data%20centers%20summary.pdf>.

¹³⁹ Office of the Governor of Ohio, *Governor DeWine Announces Pause of Data Center Tax Exemption* (May 27, 2026), <https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-pause-of-data-center-tax-exemption> (archived Sept. 1, 2026, <http://web.archive.org/web/20260901024512/https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-pause-of-data-center-tax-exemption>).

¹⁴⁰ Governor Brian P. Kemp, 2024 Session of the Georgia General Assembly, Veto Messages, Veto 7 (H.B. 1192) (May 2024) (two-year pause; extension "through 2031"; "in reliance on the recent extension"), <https://gov.georgia.gov/document/2024-vetoed-legislation/2024-veto-messages/download>; Governor Glenn Youngkin, Veto of H.B. 1601 (May 2, 2025) ("This bill limits local discretion and creates unnecessary red tape"), <https://lis.virginia.gov/bill-details/2025/HB1601/text/HB1601VG>; for Ohio, *supra* note 139.

¹⁴¹ Nathan M. Jensen & Edmund J. Malesky, *Incentives to Pander: How Politicians Use Corporate Welfare for Political Gain* (Cambridge Univ. Press 2018); Kemp veto, *supra* note 140; JLARC Report 598, *supra* note 133, at 20 (Virginia's \$683 million FY2023 state share "by far the state's largest economic development incentive").

7.3 Host agreements publish prices, not verifiable values

TABLE 7-1

Host-agreement terms (as of September 27, 2026)

Site (party)	Terms	Offset or recapture	Recipients and approvers	Document status
Mount Pleasant, WI (Microsoft)	Mar. 2023: Microsoft may recoup 42 percent of its incremental property tax, capped at \$5M a year, after other tax incremental district (TID) obligations are met	Mar. 2023 repurchase right on 315 acres (deadlines 2026, 2033) released Nov. 27, 2023, after construction began; Nov. 2023 amendments: Village and County may repurchase new Area II land if building misses agreed dates; \$1.4B minimum assessed value by 2028; no additional financial incentives (Village counsel, per Wis. Pub. Radio)	Land-sale proceeds (net of costs) partly reimburse Foxconn's 2017 land advance; new increment pays the area's 12 percent share of TID costs; Village and County Boards approve	Fact sheet, county development release, TID report ¹⁴²
Richland Parish, LA (Laidley LLC, Meta)	30-year PILOT from certificate of occupancy: 40 percent of property tax otherwise due on immovable property, 20 percent if \$10B+ is certified by Jan. 1, 2033; 0 percent on movable property (servers)	Percentages, including servers' 0 percent, rise temporarily after two consecutive years of missed job targets (to 100 percent if the shortfall exceeds half)	Approval by finance authority, its beneficiary and Police Jury; payments: 53 percent school board, 35 percent police jury, 12 percent law enforcement district	Unsigned 2024 term sheet ¹⁴³
Sidney, OH (Amazon)	30-year exemption of 100 percent of each building's assessed value	PILOTs capped at \$46M over 14 years (§ 7(b)); one-time \$4M payment (§ 8); City may terminate, suspend or modify exemption after notice and cure (§ 12); repayment only for knowingly false statements on taxes or moneys owed the state (§ 22, R.C. 9.66(C)(2))	City reports \$50M in payments, half to Sidney City Schools; school board approved first	Executed agreement (Resolution 80-25, Oct. 27, 2025) ¹⁴⁴

¹⁴² Racine County Econ. Dev. Corp. (RCEDC), *Expansion of Microsoft Datacenter in Racine County* (Nov. 16, 2023) ("Microsoft will guarantee a minimum assessed value of \$1.4 billion on its investments in Areas II and III, by 2028"), <https://rcedc.org/expansion-of-microsoft-datacenter-in-racine-county/>; RCEDC, *Microsoft Data Center Campus Fact Sheet* (Mar. 28, 2023) (Development, Implementation and Purchase & Sale Agreement boxes: Microsoft "may recoup 42 percent," capped at \$5M a year, after "all other TID obligations"; Village and County repurchase right "at Microsoft's original per-acre price" if construction deadlines are missed; proceeds to Foxconn "(net of costs) as partial reimbursement"; new increment to the area's share of TID costs (12%); Timeline: Village Board and Racine County Board), <https://rcedc.org/wp-content/uploads/2023/04/Microsoft-Fact-Sheet-March-28-2023.pdf>; Ehlers for Village of Mount Pleasant, *Annual Tax Incremental District Report, TID No. 5* (Nov. 10, 2025), at 1, https://www.mtpleasantwi.gov/DocumentCenter/View/4878/Mount-Pleasant-TID-No-5-JRB-Supplemental-Report_FINAL_2025-11-10. The "no additional financial incentives" statement is by Village counsel Alan Marcuvitz, reported by Wis. Pub. Radio (Nov. 13, 2023), <https://www.wpr.org/economy/mount-pleasant-deal-microsoft-will-include-no-public-financial-incentives-under-agreement>. Village of Mount Pleasant, Village Board Meeting Minutes (Nov. 27, 2023), item G.1.a.iii ("Release of Repurchase Rights for Microsoft-owned land in Area 3B"), https://www.mtpleasantwi.gov/AgendaCenter/ViewFile/Minutes/_11272023-973; RCEDC, *Microsoft Datacenter Footprint Expansion* (Nov. 2023) ("In May 2023, Microsoft entered into agreements to acquire 315 acres of land in Area III. They committed to commencing the first building by 7/1/2026, but actually commenced construction August 2023"; Area II land: "Municipalities retain rights to repurchase if building does not occur by agreed upon dates"), <https://rcedc.org/wp-content/uploads/2023/11/Microsoft-Expansion-Fact-Sheet-Nov-23-Final.pdf>.

¹⁴³ Northwest Louisiana Finance Authority (NWLFA), *Economic Development Financing Term Sheet, Laidley, LLC* (2024), Exhibit A (preamble; PILOT chart; PILOT Section 2 (\$10 billion certified by Jan. 1, 2033); Term; PILOT Percentage Adjustments (two consecutive years; movable property; 100% if shortfall exceeds 50%); closing paragraph: "subject to the approval of the NWLFA and its Beneficiary and the Richland Parish Police Jury") (unsigned), <https://www.powermag.com/wp-content/uploads/2024/11/term-sheet-project-suc-re-submitted-for-approval.pdf>. Recipient shares: Shreveport-Bossier City Advocate, *infra* note 146.

¹⁴⁴ City of Sidney, Ohio, Res. No. 80-25, *A Resolution Authorizing the City Manager to Enter into a Community Reinvestment Area Agreement with Amazon Data Services, Inc.* (passed Oct. 27, 2025), with executed CRA Agreement, recitals (Sidney City School District approval by resolution of Oct. 8, 2025, of "a thirty (30) year exemption of one hundred percent (100%) of the assessed value of each Building"), § 7 (PILOTs for 14 years), § 7(b) ("the sum of all PILOTs ... will equal no more than \$46,000,000"), § 8 (one-time \$4,000,000 payment "In addition to and separate from the PILOTs"), § 12 (modification of exemption for material failure), § 22 (repayment under R.C. 9.66(C)(2) for knowingly false statements on delinquent taxes or other moneys owed), pages marked "AMAZON CONFIDENTIAL", <https://www.sidneyoh.com/DocumentCenter/View/4356/80-25---Authorizing-a-CRA-Agreement---Amazon-Data-Services-Inc-PDF>; City of Sidney, *Sidney Data Center FAQ* (last updated Sept. 10, 2026) (\$50 million in PILOT payments, \$25 million to Sidney City Schools; school board approval preceded council approval), <https://www.sidneyoh.com/526>.

First, the deals split the coupling: shell, compute (0 percent at Richland) and generation are taxed separately, and Texas's Jobs, Energy, Technology and Innovation Act program excludes any "nondispatchable electric generation facility."¹⁴⁵ Second, "communities" are two parties. Recipient institutions (school boards, police juries, sheriffs) are paid and often approve; host residents bear site effects, with only zoning hearings and litigation as recourse. Third, deals fail on verifiability more than visibility. Sidney's agreement is public, yet its pages are marked "AMAZON CONFIDENTIAL."¹⁴⁴ St. Joseph County, Indiana's Amazon break, which a resident put at \$3 billion (per WSBT), has no official valuation.¹⁴⁶

Control is written into recapture: Mount Pleasant's Area II repurchase right, the PILOT escalator, and Minnesota's repayment if green-building certification fails.¹³⁸ The firm controls timing and refresh; the state holds the renewal vote. Industry's case rests on these clauses: PILOTs front-load school revenue, and escalators are clawbacks. The report agrees; RT-6 would standardize recapture across deals.

Visibility also fails before execution. Transparency advocates argue terms are fixed at siting, before any docket opens, through pseudonymous counterparties, nondisclosure agreements and nonpublic pre-application reviews. Pennsylvania's Executive Order 2026-05 bars such agreements on data-center projects for agencies under the Governor, not municipalities.¹⁴⁷ The report agrees: RT-6's filing-before-approval rule targets this stage.

Microsoft's January 2026 pledge not to "ask local municipalities to reduce their local property tax rates" promises a "full and fair share of local property taxes" without defining it or mentioning abatements, rebates or equipment exemptions.¹⁴⁸

7.4 Counties, development agencies and siting boards each decide one part

Counties and municipalities hold land use: Loudoun made data centers a special-exception use in 2025, and Virginia's 2026 site-assessment statute leaves approval local.¹⁴⁹ Legislatures, city councils and school boards set fiscal terms, as do special-purpose authorities for single projects

¹⁴⁵ Tex. Gov't Code § 403.602(8)(B), added by Tex. H.B. 5, 88th Leg., R.S. (2023), <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB00005F.htm>.

¹⁴⁶ St. Joseph County: WSBT-22 (Aug. 13, 2024) (abatement terms; quoting resident Steve Francis: "\$3 billion tax cut"), <https://wsbt.com/news/local/amazon-data-center-final-vote-approve-buildings-jobs-construction-economy-revenue-funds-community-enhancement-agreement-redevelopment-commission-council-new-carlisle-st-joseph-county-indiana>; WNDU-16 (Aug. 14, 2024) (resident economist Steve Francis, \$4.2 billion against \$2.2 billion), <https://www.wndu.com/2024/08/14/st-joseph-county-council-gives-final-approval-11b-amazon-data-center/>; enabling law for local equipment exemptions, Ind. Code § 6-1.1-10-44. Richland recipient shares (53 percent school board, 35 percent police jury, 12 percent law enforcement district): Shreveport-Bossier City Advocate (Dec. 31, 2024; updated May 19, 2026), reporting LED and NWLFA documents, https://www.shreveportbossieradvocate.com/business/a-first-look-at-lease-terms-tax-benefits-for-richland-meta-ai-data-center/article_037b70ea-c6dc-11ef-b454-1331871da095.html. For a non-hyperscaler case, Hut 8's prepayment in West Feliciana Parish, Louisiana, paid to the school board, parish and sheriff through a board of their heads, see WBRZ-2 (2026), <https://www.wbrz.com/news/west-feliciana-parish-council-and-industrial-development-board-accept-agreement-for-prepayment-from-data-center>; WBRZ-2 (Sept. 7, 2026), <https://www.wbrz.com/news/how-hut-8-s-10-million-pre-payment-to-west-feliciana-parish-was-spent>.

¹⁴⁷ Pa. Exec. Order No. 2026-05, *Protecting Pennsylvania Consumers from Data Center Impacts* (Aug. 18, 2026), § 2(a), at 5, http://www.pa.gov/content/dam/copapwp-pagov/en/governor/documents/eo2026_05_protecting%20pennsylvania%20consumers%20from%20data%20center%20impacts_final_executed.pdf; on pseudonymous counterparties such as Laidley LLC, see Section 6.

¹⁴⁸ Brad Smith, *Building Community-First AI Infrastructure*, Microsoft On the Issues (Jan. 13, 2026), Commitment 4, <https://blogs.microsoft.com/on-the-issues/2026/01/13/community-first-ai-infrastructure/>.

¹⁴⁹ Loudoun County, *Data Centers: Land Use Considerations* (Zoning Ordinance amendments of Mar. 18, 2025), <https://www.loudoun.gov/6410/Land-Use-Considerations>; Va. H.B. 153 (2026 Va. Acts ch. 567), <https://lis.virginia.gov/bill-details/20261/HB153/text/CHAP0567>, and S.B. 94 (2026 Va. Acts ch. 568), <https://lis.virginia.gov/bill-details/20261/SB94/text/CHAP0568>, effective July 1, 2026.

such as Richland.¹⁴³ Where a certificate regime exists, a state body such as Virginia's State Corporation Commission decides generation. Ohio's Power Siting Board certifies plants of 50 MW or more, including the islanded Socrates plants (Section 4.3), and preempts local conditions, as does Minnesota's site permit. In Texas, self-supplied generation falls outside the utility and certificate statutes, leaving air and any water permits as the principal state approvals for an islanded plant.¹⁵⁰ The local veto is real: Microsoft's 10-K lists "state and local moratoriums, and hyper-local dissent" among challenges that "may delay projects ... or increase costs".¹⁵¹

Host-community and environmental-justice counsel make the strongest counter-case: decisions are moving upward and inward. Beyond Ohio's preemption and Minnesota's sealed exchanges, EO 14318 presumes that federal financial assistance below 50 percent of project cost is not substantial federal control, hence no major federal action under NEPA.¹⁵² They seek public dockets, non-preemption of local law, security claims routed through time-limited exemptions such as Clean Air Act section 112(i)(4), and community monitoring. The report adopts the core. RT-7 puts dedicated generation on a public record with host governments, including townships, as parties. Yet counties hold the load-side veto and often win fiscally. Section 112(i)(4) is not a general exemption; it reaches only section 112 standards and requires that control technology be unavailable (Section 8.2).

7.5 Conditions belong where the inputs sit

Conditionality advocates (Mazzucato and Rodrik; AI Now) would attach "bold, enforceable conditions onto all existing federal funding" for data centers, on the CHIPS clawback model.¹⁵³ The report conditions inputs in state tax codes (RT-6); AI Now itself records that many CHIPS conditions "were rolled back in the implementation process." Ratepayer advocates want binding floors because protections can loosen after approval: Hyperion's lease terms show how (Section 9.4).¹⁵⁴ The report adopts floors in Bargain 1 (RT-2) and recapture here; Minnesota already writes cost assignment into statute.

¹⁵⁰ Ohio Rev. Code §§ 4906.01(B)(1)(a), 4906.13(B), <https://codes.ohio.gov/ohio-revised-code/section-4906.13>; Minn. Stat. §§ 216I.02, subd. 9, 216I.05, subd. 1(a), 216I.18, subd. 1 (site permit "supersedes and preempts all zoning, building, or land use rules"), <https://www.revisor.mn.gov/statutes/cite/216I/full>; Va. Code Ann. § 56-580(D), <https://law.lis.virginia.gov/vacode/title56/chapter23/section56-580/>; Ohio Power Siting Bd., Case No. 25-0185-EL-BLN (Socrates South) (June 9, 2025), <https://opsb.ohio.gov/news/opsb-approves-construction-of-licking-county-natural-gas-fired-power-plant> (see Section 4.3); Tex. Util. Code §§ 31.002(6)(J), 37.051; see Section 5 on SB 6, which reaches only ERCOT-registered, grid-connected arrangements.

¹⁵¹ Microsoft Corp., Form 10-K for fiscal year ended June 30, 2026, Item 1A ("may delay projects, restrict development opportunities, impose additional compliance obligations, or increase costs"), <https://www.sec.gov/Archives/edgar/data/789019/000119312526323660/msft-20260630.htm>.

¹⁵² Ohio Rev. Code § 4906.13(B), *supra* note 150; Minn. Laws 2025, 1st Spec. Sess., ch. 12, sec. 3, *supra* note 138; Exec. Order No. 14318, § 5(c), 90 Fed. Reg. 35385, 35385-87 (July 28, 2025) (presumption resting on 42 U.S.C. § 4336e(10)(B)(iii)), <https://www.govinfo.gov/content/pkg/FR-2025-07-28/html/2025-14212.htm>; 42 U.S.C. § 7412(i)(4), <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/html/USCODE-2023-title42-chap85-subchapl-partA-sec7412.htm>.

¹⁵³ Mariana Mazzucato & Dani Rodrik, *Industrial Policy with Conditionalities: A Taxonomy and Sample Cases*, UCL IIPP Working Paper 2023-07, <https://www.ucl.ac.uk/bartlett/publications/2023/oct/industrial-policy-conditionalities-taxonomy-and-sample-cases>; AI Now Inst., *North Star Data Center Policy Toolkit: Policy Interventions* (updated Jan. 2026), PDF p. 101 ("bold, enforceable conditions"), p. 102 (CHIPS), <https://datacenters.ainowinstitute.org/wp-content/uploads/2026/03/North-Star-Data-Center-Policy-Toolkit-Policy-Interventions.pdf>; 15 C.F.R. § 231.202.

¹⁵⁴ Alliance for Affordable Energy & Union of Concerned Scientists, Motion for Investigation, La. Pub. Serv. Comm'n Docket No. U-37425 (Jan. 14, 2026), at 10, <https://www.all4energy.org/wp-content/uploads/2026/01/2026-01-14-U-37425-AAE-UCS-Mtn-for-Investigation.pdf>; on Meta's lease terms, see Section 9.4.

FIGURE 12

Who decides each part of the coupling

Who decides load and land use, fiscal terms and dedicated generation in six states, and how visible each decision is. Decider named in bold; visibility category in italics. As of September 27, 2026.

Visibility: **Public** **Partial** *Not documented* **PREEMPTS LOCAL** *generation decider overrides local zoning*

Public: the decision and its instrument are on the public record. Partial: part of the instrument is withheld, sealed, unsigned or nonpublic by statute, or no approval docket exists. Binding: executed or in force. Not documented: no decider or record is named for this part.

State	Load and land use	Fiscal terms	Dedicated generation
Virginia	Loudoun County Board of Supervisors Special exception required; data centers no longer by-right (Mar. 2025) <i>Public, binding</i>	General Assembly; county sets tax rate Sales-tax exemption kept; \$0.011/kWh tax (2026 to 2028) reaches self-supplied power; receipts above \$600M a year refunded <i>Public, binding</i>	State Corporation Commission; Department of Environmental Quality (air) Commission permits generating plants; the Department permits on-site engines <i>Public, binding</i>
Ohio	No decider named Land-use approval for the Sidney site <i>Not documented</i>	Sidney City Council and school board 30-year, 100 percent exemption; payments in lieu of taxes capped at \$46M over 14 years; Governor paused new state exemption requests (May 2026) <i>Public, binding; pages marked confidential</i>	Power Siting Board PREEMPTS LOCAL Certificate for plants of 50 megawatts or more, including the islanded Socrates plants <i>Public, binding</i>
Louisiana	No decider named Land-use approval for the Richland Parish site <i>Not documented</i>	Finance authority, its beneficiary and the Richland Parish Police Jury 30-year payment in lieu of taxes; servers taxed at 0 percent <i>Partial: unsigned term sheet</i>	Public Service Commission Generation approved in a public order; service agreement sealed; subpoena to Meta vacated (Aug. 2026) <i>Partial: order public; agreement sealed</i>
Minnesota	Department of Natural Resources (water) Data center pre-application exchanges with the Department are nonpublic by statute <i>Partial: pre-application exchanges nonpublic</i>	Legislature Exemption extended with fees, prevailing wage and repayment if certification fails <i>Partial: terms public; fee data nonpublic by statute</i>	Public Utilities Commission PREEMPTS LOCAL Site permit for plants of 50 megawatts or more preempts local zoning <i>Public, binding</i>
Pennsylvania	No decider named The executive order does not reach municipalities <i>Not documented</i>	No decider named Executive order bars nondisclosure agreements for agencies under the Governor <i>Partial: nondisclosure agreements barred for state agencies only</i>	No decider named Approval for dedicated generation <i>Not documented</i>
Texas	No decider named Land-use approval for data-center sites <i>Not documented</i>	No decider named Jobs, Energy, Technology and Innovation Act program excludes nondispatchable generation <i>Not documented</i>	No certificate; air and any water permits Self-supply falls outside the utility and certificate statutes; these permits are the main state approvals for a self-supplied islanded plant <i>Partial: permits only; no certificate docket</i>

Sources: Loudoun County zoning ordinance amendments (Mar. 18, 2025); Va. H.B. 30 (2026) Item 3-5.24; Va. Code 56-580(D); Va. DEQ engine permitting guidance (GDoc DEQ 5121); Sidney, Ohio, Res. 80-25 (Oct. 27, 2025); Ohio Governor's release (May 27, 2026); Ohio R.C. 4906.01, 4906.13; Ohio Power Siting Board release (Socrates); Project Sucre term sheet (Northwest Louisiana Finance Authority); La. PSC Order U-37425; La. PSC Docket U-37882, vote and minutes of Aug. 12, 2026; Minn. Laws 2025, 1st Spec. Sess., ch. 12; Minn. Stat. 216B.72, 216I.05, 216I.18; Pa. Exec. Order 2026-05, s. 2(a); Tex. Util. Code 31.002(6)(J), 37.051; Tex. Gov't Code 403.602(8)(B) (H.B. 5, 2023). Notes 31, 116, 117, 137, 138, 139, 143, 144, 145, 147, 149, 150.

Who decides each part of the coupling. No state gives all three parts to one body, and in Ohio and Minnesota the generation decider preempts local zoning; fiscal terms are seldom sealed outright but are often unsigned, nonpublic in part, or open to nondisclosure agreements outside state agencies. As of September 27, 2026.

Section 10.5 answers the separation and no-new-terms positions, and Section 8.5 the claim that emergency authorities already secure priority.¹⁵⁵

¹⁵⁵ Positions and holders, each stated and answered in Section 10.5: fiscal conditions (fiscal-oversight actors citing GASB Statement No. 77 and the Georgia and Washington evaluations, *supra* notes 130, 131), adopted as RT-6; FERC as allocation forum (wholesale-market advocates citing FERC, News Release, *FERC Launches Aggressive Targeted Action to Speed Large Load Integration* (June 18, 2026), <https://www.ferc.gov/news-events/news/ferc-launches-aggressive-targeted-action-speed-large-load-integration>; proceedings in abeyance, see Section 5), adopted for transmission only, since FERC cannot reach tax expenditures, PILOTs or land use; separation (antimonopoly advocates, citing Monitoring Analytics (PJM IMM), Post-Technical Conference Comments, FERC Docket No. AD24-11-000 (Dec. 16, 2024), https://www.monitoringanalytics.com/filings/2024/IMM_Comments_Docket_No_AD24-11_20241216.pdf; FERC's choice of priced participation, *Co-Located Load Configurations in PJM*, 193 FERC ¶ 61,217 (Dec. 18, 2025), kept on rehearing in part, Docket No. EL25-49-002 (June 18, 2026)); no new terms (hyperscaler regulatory counsel and the Administration's permitting officials, citing Exec. Order No. 14318, § 1, 90 Fed. Reg. 35385, 35385-87 (July 28, 2025), and CHIPS instability, AI Now, *supra* note 153). On emergency authorities and priority access to compute, see Section 8.5.

Bargain 3: the security state's gives are public instruments; its gets are asserted, not secured

Bargain 3 has no signed instrument. Nothing public ties what the security state gives to what it gets, so the public cannot see what the state receives. The security state gives federal sites whose sponsors the executive selects, a section 3 financial-support initiative with no public award at the federal sites, and litigation cover at Southaven. It also gives a NEPA presumption that federal assistance below 50 percent of total project costs is not "substantial Federal control and responsibility".¹⁵⁶ It procures frontier-AI services through Chief Digital and AI Office awards (not tied to Colossus 2 on the public record) and a declared dependence. A Department of War declaration at Southaven names xAI as one of three enterprise providers able to sustain classified operations and invokes "DoW's strategic computing reserves".¹⁵⁷ No public instrument secures a priority, surge, reserve or lease right, and no Defense Production Act rated order, the general priority tool (Section 8.5), is public for these facilities. That authority lapses on December 11, 2026 unless Congress extends it.

Private developers pay on the record. Ratepayers pay where costs shift to them, including cooperative members at Paducah. Taxpayers carry contingent credit and any decommissioning not backed by financial assurance. Host residents bear the air emissions. Private owners control the generation. DOE chooses sponsors and lease terms; state regulators and courts decide the power and air terms. The public knows the principles but not the terms.

¹⁵⁶ Exec. Order No. 14318, *Accelerating Federal Permitting of Data Center Infrastructure*, §§ 3, 5(c), 9(a), 90 Fed. Reg. 35385, 35385-87 (July 28, 2025) (signed July 23, 2025) (§ 5(c): assistance "representing less than 50 percent of total project costs shall be presumed not to constitute substantial Federal control and responsibility"), <https://www.govinfo.gov/content/pkg/FR-2025-07-28/html/2025-14212.htm>. The DOE federal-site releases in notes 158 and 159 describe privately funded projects; no federal loan or guarantee to a federal-site project is public as of Sept. 27, 2026. On the Southaven intervention see note 163.

¹⁵⁷ CDAO, *CDAO Announces Partnerships with Frontier AI Companies to Address National Security Mission Areas* (July 14, 2025) (awards to Anthropic, Google, OpenAI and xAI, "each with a \$200M ceiling"), <https://www.ai.mil/News/PR-View/Article/4242822/cdao-announces-partnerships-with-frontier-ai-companies-to-address-national-secu/>. The CDAO awards are not tied to Colossus 2 on the public record. Decl. of Cameron Stanley ¶¶ 2-9, *NAACP v. X.AI Corp.*, No. 3:26-cv-00074-DMB-JMV (N.D. Miss.), ECF No. 85-1, PageID 2217-20 (executed June 15, 2026; filed July 7, 2026) (¶ 2: submitted "in support of the United States' motion to intervene"; ¶ 4 classified-network providers; ¶ 8 surge capacity and "a matter of paramount national security"; ¶ 9 "DoW's strategic computing reserves" and cost "to DoW and thus the American taxpayers"), <https://www.courtlistener.com/docket/73188848/85/1/national-association-for-the-advancement-of-colored-people-v-xai-corp/>.

FIGURE 13

The security state's gives are public instruments; its gets are asserted, not secured

Bargain 3 ledger: what the security state gives developers, what it gets, and the forums that decide the power and air terms at Paducah and Southaven. Fill shows how much of each item is on the public record; hatching marks a right asserted in a public filing that no instrument secures. As of September 27, 2026.

Public record: **Public** **Partly public or pending** **Asserted, not secured** *Not documented*

"Not documented": absent from the public record.

Gives security state to developers	Gets developers to security state	Decides forums that set the power and air terms
FEDERAL SITES, EO 14318 Federal-site sponsor selection EO 14318 sec. 9(a) Public Sites selected: Paducah and Savannah River DOE (Brookfield, NextEra); NNSA (Amentum); no executed lease shown Partly public: selections public, lease terms undisclosed NEPA presumption EO 14318 sec. 5(c): assistance under 50 percent of project cost Public Financial-support initiative EO 14318 sec. 3: loans and loan guarantees, grants, tax incentives, offtake agreements Public; no public award at federal sites	CHIEF DIGITAL AND AI OFFICE (CDAO) Contracted frontier-AI services CDAO, July 14, 2025; up to \$200M ceiling each; not tied to Colossus 2 Partly public: award terms undisclosed DEPT. OF WAR (DOW) DECLARATION Declared dependence Stanley declaration at Southaven, para. 4: one of three classified-network providers Public (sworn exhibit) Surge capacity Stanley declaration para. 8 Asserted, not secured Strategic computing reserves Stanley declaration para. 9 Asserted, not secured ANY PUBLIC INSTRUMENT Priority, surge, reserve or lease right For these facilities <i>Not documented</i> Defense Production Act rated order For these facilities <i>Not documented</i>	PADUCAH Kentucky Public Service Commission Power service agreement (Big Rivers, Jackson Purchase) Pending: approval required, no public order SOUTHAVEN Miss. Dept. of Environmental Quality (MDEQ) Determination, July 29, 2025: turbines treated as mobile sources Public; units exempted Miss. Environmental Quality Permit Board Prevention of Significant Deterioration (PSD) permit, Mar. 11, 2026: 41 stationary turbines Public; permit issued Miss. Commission on Environmental Quality Agreed order, July 30, 2026, amended Sept. 11, 2026: all mobile units retire by July 14, 2027 Public; bilateral order U.S. District Court, N.D. Miss. NAACP v. X.AI Corp.: intent to deny intervention stated Aug. 24, 2026, per U.S. filings; no written order Pending

Dashed line: the Department of War declaration was filed in support of this motion.

Sources: Exec. Order No. 14318, 90 Fed. Reg. 35385 (2025); DOE, NNSA and NextEra releases (July and Aug. 2026); CDAO release (July 14, 2025); Stanley declaration and docket, NAACP v. X.AI Corp. (N.D. Miss.); MDEQ determination (July 29, 2025), as quoted in the State of Mississippi amicus brief (ECF No. 81); Miss. Commission on Environmental Quality, Agreed Order No. 7739-26 (July 30, 2026) and Amendment (Sept. 11, 2026). As of September 27, 2026. Notes 156 to 166. Abbreviations: DOE, Department of Energy; EO, Executive Order; EPA, Environmental Protection Agency; NEPA, National Environmental Policy Act; NNSA, National Nuclear Security Administration; N.D. Miss., Northern District of Mississippi.

The security state's gives are public instruments, though federal-site lease terms are not. Its gets are public as agency announcements and a litigant's sworn assertions, and no public instrument secures a priority, surge, reserve or lease right.

8.1 Federal sites offer land and a pledge, not power

At Paducah, DOE selected Brookfield to operate a 1.8 GW campus and NextEra to build and own up to 2 GW of grid-connected gas and 2.6 GW of storage in a "privately funded" project. Power comes through a cooperative under an agreement awaiting Kentucky Public Service Commission approval.¹⁵⁸ At Savannah River, NNSA selected Amentum to negotiate a phased lease for a 1 GW data center with about 2 GW of on-site gas, warning that "Selection for negotiations does not constitute a final lease award."¹⁵⁹

Both releases invoke the Ratepayer Protection Pledge: gets stated, not contracted. Rent, term, cost recovery and backup obligations are undisclosed. No public term backs decommissioning with financial assurance, which would leave DOE as residual claimant. Neither site shows an executed lease: DOE's cleanup office calls the Paducah acreage "leased land", but NextEra reports definitive documentation still to be negotiated.¹⁶⁰ The federal-site deals rely on the Pledge for who pays and on a state commission to check it, the clearest current instance of the thesis.

8.2 At Southaven a court, not the executive, has decided so far

Plaintiffs allege that xAI and its subsidiary MZX Tech began operating 27 gas turbines without an air permit between August and December 2025 to power Colossus 2; the State's July 2026 order lists 69, and its September 11 amendment records that one of them was never delivered. The complaint alleges a potential to emit "over 1,700 tons of smog-forming NOx" and nine schools within three miles.¹⁶¹ The Mississippi Department of Environmental Quality (MDEQ) treated the trailer-mounted units as exempt mobile sources, provided each stayed on site "for less than twelve (12) months." The load sits a mile away in Memphis, Tennessee. The Governor's request for intervention states the trade: residents "do not face electricity rate hikes from surging demand". No permit proceeding weighed the air emissions before the units ran.¹⁶²

The United States, for EPA, moved to intervene under 42 U.S.C. 7604(c)(2), which gives it a right to intervene, and separately asked the court to dismiss the suit, arguing that intervention carries a right to dismiss and that any other reading raises Article II questions. The statute itself says nothing about dismissal. By its account, the court said on August 24 that it intends to deny the motion; no written order has issued. The United States (not xAI) appealed what it calls a constructive denial on September 18 and sought a stay, which xAI supports. No stay ruling had issued as of September 27.¹⁶³

¹⁵⁸ DOE, *Energy Department Announces Partnership to Expand Reliable, Affordable Energy Access and Power America's AI Future in Western Kentucky* (July 29, 2026) (penultimate para.: Big Rivers Electric Power Corporation wholesale, Jackson Purchase Energy Cooperative retail; PSC approval), <https://www.energy.gov/articles/energy-department-announces-partnership-expand-reliable-affordable-energy-access-and-power>; NextEra Energy, *DOE Site in Western Kentucky Revitalized with Data Center Campus and Dedicated Energy Project* (July 29, 2026), <https://newsroom.nexteraenergy.com/2026-07-29-DOE-Site-in-Western-Kentucky-Revitalized-with-Data-Center-Campus-and-Dedicated-Energy-Project,-Creating-Jobs-and-Protecting-Residents-and-Businesses-from-Costs>; DOE Office of Environmental Management, *Energy Secretary Announces New American Energy Hub at Paducah Site* (Aug. 4, 2026), final para. ("approximately 785 acres of leased land"), <https://www.energy.gov/em/articles/energy-secretary-announces-new-american-energy-hub-paducah-site>. No Kentucky PSC case on the Paducah agreement is public as of Sept. 27, 2026.

¹⁵⁹ DOE/NNSA, *NNSA Selects Amentum for AI Data Center and Energy Project at Savannah River Site* (July 20, 2026), paras. 1, 4 and penultimate, <https://www.energy.gov/nnsa/articles/nnsa-selects-amentum-ai-data-center-and-energy-project-savannah-river-site>.

¹⁶⁰ On the Ratepayer Protection Pledge, see the releases in notes 158 (surplus generation at Paducah) and 159 (no cost shift at Savannah River); on the executed-lease question, DOE Office of Environmental Management and NextEra Energy, *supra* note 158. DOE Office of Nuclear Energy, *Energy Department Seeks Proposals for AI Data Centers, Energy Projects at Idaho National Laboratory* (Sept. 8, 2025), paras. 3-4 (leases "solely funded by the applicants", who "must secure utility interconnection agreements" and are responsible for "building, operating, and decommissioning" each project; no INL selection public as of Sept. 27, 2026), <https://www.energy.gov/ne/articles/energy-department-seeks-proposals-ai-data-centers-energy-projects-idaho-national>. EO 14299's designation process is discussed at note 178.

¹⁶¹ Compl. ¶¶ 4, 6-8, 158, 177, 186, *NAACP v. X.AI Corp.*, ECF No. 1 (Apr. 14, 2026) (allegations; ¶ 7: Tennessee residents "are also exposed"; ¶ 158 gives the emission estimates "[o]n information and belief"; ¶ 186 quotes MDEQ's "flatbed trailer" description), <https://www.courtlistener.com/docket/73188848/1/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; for the 69-unit count see note 166.

¹⁶² MDEQ determination of July 29, 2025 (Compl. Ex. B-2), as quoted in Br. of the State of Mississippi as Amicus Curiae at 4, ECF No. 81 (July 1, 2026), <https://www.courtlistener.com/docket/73188848/81/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; Compl. ¶¶ 206, 208, ECF No. 1 (Colossus 2 at 5420 Tulane Road, Memphis, "about 1 mile away" from the plant); Letter from Gov. Tate Reeves to Acting Att'y Gen. Blanche and Adm'r Zeldin (May 29, 2026) at 1, ECF No. 85-2, <https://www.courtlistener.com/docket/73188848/85/2/national-association-for-the-advancement-of-colored-people-v-xai-corp/>.

Rival: the executive is not one actor. Five months before DOJ moved, EPA's final turbine rule said EPA "has not regulated combustion turbines, even those that may be portable, as nonroad engines, but rather as stationary sources". It created a temporary-turbine subcategory usable at one location for up to 24 months.¹⁶⁴ *Reply*: adopted. The executive had a published route to speed to power. But the rule sets new source performance standards, not whether a state permit was required.

Rival: Congress already decided. The plaintiffs argue that "Congress gave the Executive Branch authority to grant exemptions (including for national security reasons) in other parts of the Act, but chose not to do so in Section 7604".¹⁶⁵ *Reply*: the report finds the textual reading stronger and leaves the security claim to the court.

Rival: the State already decided. Mississippi's amicus brief says MDEQ's determination "was reasonable, and by law it was MDEQ's to make." A July 30, 2026 agreed order, amended September 11, 2026, retires the units on a schedule ending July 14, 2027. It lets 13 run to December 31, 2026, "beyond the original twelve-month period", and records that operation "has not violated Mississippi air permitting requirements".¹⁶⁶ *Reply*: state primacy is real, but the order renegotiated the exemption's terms bilaterally, not by generic rule, an instance of the thesis. EPA's rule sits in tension with the mobile-source reading. A host state also decided for a load, and part of the exposure, in another state.

Rivals: do not stake the case on the appeal, and see the doctrine. Fifth Circuit judges split closely en banc on citizen suits. Vladeck argues that DOJ's theory would reach any statute authorizing private enforcement. The executive may win party status, not a veto.¹⁶⁷ *Reply*: adopted. So

¹⁶³ United States' Mot. to Intervene and Mem., ECF Nos. 58-59 (June 15, 2026); United States' Mem. in Supp. of Am. Mot. for Intervention and Dismissal at 1, 9, ECF No. 86, PageID 2232 (July 7, 2026) (intervention carries a right to dismiss; other readings raise Article II questions; the United States' policy reasons "do not dictate" whether the court should dismiss), <https://www.courtlistener.com/docket/73188848/86/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; United States' Mot. for Entry of Written Order No Later Than September 10, ECF No. 117 (Sept. 2, 2026); Notice of Appeal, ECF No. 123 (Sept. 18, 2026); United States' Mot. to Stay and Mem., ECF Nos. 124-125, at 1, PageID 3216 (Sept. 21, 2026) (the court "stated" at the Aug. 24 conference "that it intends to deny" the motion; appeal taken from the court's "constructive denial"); Defs.' Resp. and Mem., ECF Nos. 126-127 (Sept. 22, 2026); docket as of Sept. 27, 2026, <https://www.courtlistener.com/docket/73188848/national-association-for-the-advancement-of-colored-people-v-xai-corp/>. Pls.' Mot. to Strike and Mem., *NAACP v. X.AI Corp.*, No. 3:26-cv-00074-DMB-JMV (N.D. Miss. July 1, 2026), ECF Nos. 82-83 (aimed at ECF Nos. 58-59; opposed, ECF No. 87; no ruling as of Sept. 27, 2026).

¹⁶⁴ EPA, *New Source Performance Standards Review for Stationary Combustion Turbines and Stationary Gas Turbines*, Final Rule, 91 Fed. Reg. 1910, 1914, 1925, 1926 n.81, 1926-27 (Jan. 15, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-01-15/html/2026-00677.htm>. NSPS applicability differs from whether a state permit was required; xAI says its units meet the temporary standard, see Defs.' Mem. in Supp. of Mot. to Dismiss at 5-6, ECF No. 55 (June 15, 2026), <https://www.courtlistener.com/docket/73188848/55/national-association-for-the-advancement-of-colored-people-v-xai-corp/>.

¹⁶⁵ Pls.' Mem. in Opp'n at 22-24, ECF No. 92, PageID 2368-70 (July 10, 2026) (at 23-24: Grok for Government "began before the Southaven Colossus Gas Plant was constructed" and xAI "has made billions selling off its excess data center capacity"), <https://www.courtlistener.com/docket/73188848/92/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; 42 U.S.C. §§ 7412(i)(4), 7418(b), 7604; *Riley v. St. Luke's Episcopal Hosp.*, 252 F.3d 749, 753 (5th Cir. 2001) (en banc) (Take Care Clause does not make executive litigation the exclusive means of enforcing federal law), <https://www.courtlistener.com/opinion/24236/riley-v-st-lukes-epis-hosp/>.

¹⁶⁶ Br. of the State of Mississippi as Amicus Curiae at 1, ECF No. 81, *supra* note 162; Miss. Comm'n on Env't Quality, Agreed Order, *Miss. Comm'n on Env't Quality v. MZX Tech LLC*, Order No. 7739-26, ¶¶ 1-2 and App. A (July 30, 2026) (Prevention of Significant Deterioration (PSD) permit for 41 stationary turbines voted by the Mississippi Environmental Quality Permit Board Mar. 10, 2026 and issued Mar. 11, 2026; 13 of 14 SMT-130 units to Dec. 31, 2026; units 1-3 added Aug. 1, 2025; units 68-69 retire July 14, 2027; ¶ 2.A), https://opcgis.deq.state.ms.us/ensearchonline/get_doc.aspx?dt=order&id=1862315; Amendment to Agreed Order, Order No. 7739-26, arts. 2-4 and Attachment A (Sept. 11, 2026) (revises retirement dates for units 15, 16, 57 and 58; final retirement date remains July 14, 2027; unit 53 never delivered), https://opcgis.deq.state.ms.us/ensearchonline/get_doc.aspx?dt=order&id=1871000, archived at <https://perma.cc/2U72-FZ3L>; see Defs.' Mem. ¶ 9 n.3, ECF No. 127, PageID 3238 (Sept. 22, 2026), <https://www.courtlistener.com/docket/73188848/127/national-association-for-the-advancement-of-colored-people-v-xai-corp/>. See also Mississippi Today (July 31, 2026), <https://mississippitoday.org/2026/07/31/southaven-xai-turbines-deadline/>.

far, a court applying Congress's scheme decides; a stay would change timing, not merits. That the test case for this theory was a coupling justified by compute security is political-economy evidence. RT-9 turns this into a rule (Section 10.4).

8.3 Allied siting runs on export conditions, not generation

Sovereignty, as defined in Section 2, concerns control of generation coupled to strategic compute.¹⁶⁸

Rival: sovereignty is stack control. At full strength, US control over allied compute comes from conditions, not generation. A Bureau of Industry and Security (BIS) rule effective July 10, 2026 moved the UAE to Country Group A:5 and let eight US-headquartered AI companies, including X.AI, receive advanced computing items there license-free. G42 and Core42 authority lapses on April 6, 2027 absent BIS notice, with continued status tied to their becoming US companies. Commerce says the G42 and Humain approvals "are conditioned on both companies meeting rigorous security and reporting requirements."¹⁶⁹ *Reply*: adopted for allied siting. There, Commerce and BIS are a federal security forum. The report's power claim covers only the pace of US-soil deployment. Abroad, the host state still controls the generation, the conditions are not public, and the exposure is physical: "In March 2026, for example, Iran struck two AWS data centers in the UAE and damaged another in Bahrain".¹⁷⁰

Rival: mirror-build reciprocity. The White House said the UAE committed "to invest in, build, or finance U.S. data centers that are at least as large and as powerful as those in the UAE". Emirati investor MGX is a Stargate equity funder.¹⁷¹ *Reply*: this may strengthen the coupling, adding demand on US generation and sovereign capital to who pays (a fact-sheet commitment with no metric beyond "at least as large and as powerful").

¹⁶⁷ *Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp.*, 123 F.4th 309 (5th Cir. 2024) (en banc) (Jones, J., dissenting, n.32), <https://www.courtlistener.com/opinion/10291916/env-tx-citizen-lobby-v-exxonmobil/>; *In re Fort Worth Chamber of Com.*, 100 F.4th 528 (5th Cir. 2024), <https://www.courtlistener.com/opinion/9499274/in-re-chamber-of-commerce/>; Steve Vladeck, *DOJ's Alarming Arguments in the xAI Case*, One First No. 234 (June 22, 2026), <https://www.stevevladeck.com/p/234-doj-citizen-suits-and-the-xai>.

¹⁶⁸ The compute-sovereignty literature asks the counterpart question for other states: Hawkins, Lehdonvirta & Wu, *AI Compute Sovereignty: Infrastructure Control Across Territories, Cloud Providers, and Accelerators* (SSRN 5312977, posted June 20, 2025; version of Apr. 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5312977; Song et al., *Sovereignty in the Age of AI: Strategic Choices, Structural Dependencies and the Long Game Ahead*, Tony Blair Inst. (Jan. 19, 2026), <https://institute.global/insights/tech-and-digitalisation/sovereignty-in-the-age-of-ai-strategic-choices-structural-dependencies>; Richardson et al., *How Sovereign Is Sovereign Compute? A Review of 775 Non-U.S. Data Centers*, arXiv:2508.00932, <https://arxiv.org/abs/2508.00932>.

¹⁶⁹ BIS, *Enhanced Favorable Treatment for the United Arab Emirates Under the Export Administration Regulations*, 91 Fed. Reg. 43034 (July 14, 2026) (effective July 10, 2026) (preamble; supp. no. 8 to pt. 740, para. (b) Note 2 and para. (c)) (G42 and Core42 authority lapses on Apr. 6, 2027 absent BIS notice, with continued status tied to their becoming US companies; the rule sets no frontier-training limit, though 15 C.F.R. pt. 744 end-use controls apply), <https://www.govinfo.gov/content/pkg/FR-2026-07-14/pdf/2026-14132.pdf>; Exec. Order No. 14320, § 3(b)(iii), 90 Fed. Reg. 35393 (July 28, 2025) (proposals for federal support must describe "which entities will build, own, and operate data centers"), <https://www.federalregister.gov/documents/2025/07/28/2025-14218.txt>; ITA, *American AI Exports Program; Call for Proposals for Pre-Set Consortia*, 91 Fed. Reg. 18412, 18414, § IV.C (Apr. 10, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-04-10/pdf/2026-06952.pdf>; Dep't of Commerce, *Statement on UAE and Saudi Chip Exports* (Nov. 19, 2025), para. 3, <https://www.commerce.gov/news/press-releases/2025/11/statement-uae-and-saudi-chip-exports>.

¹⁷⁰ Phillips-Robins, Tawil & Winter-Levy, *The Compute Coalition*, Carnegie Endowment (June 8, 2026) (Introduction and Parts I-II; US speed comes "largely in favorable regulatory environments like Texas, not California"; the time-to-power rankings come from a ten-country model that excludes China, with the United States at 24 months, second to the UAE "before accounting for possible delays from the war in Iran"), <https://carnegieendowment.org/research/2026/06/the-compute-coalition-how-to-build-the-future-of-ai-in-the-free-world>.

¹⁷¹ The White House, *Fact Sheet: President Donald J. Trump Secures \$200 Billion in New U.S.-UAE Deals and Accelerates Previously Committed \$1.4 Trillion UAE Investment* (May 15, 2025), <https://www.whitehouse.gov/fact-sheets/2025/05/fact-sheet-president-donald-j-trump-secures-200-billion-in-new-u-s-uae-deals-and-accelerates-previously-committed-1-4-trillion-uae-investment/>; OpenAI, *Announcing The Stargate Project* (Jan. 21, 2025) (MGX among initial equity funders), <https://openai.com/index/announcing-the-stargate-project/>.

8.4 Power increasingly sets the pace of US-soil deployment

Chips bind China today; power increasingly binds US-soil deployment. Carnegie estimates that China likely reached only 1 to 4 percent of US AI chip production in 2025 (projected 1 to 2 percent in 2026) and can power "every chip it can plausibly produce".¹⁷⁰ On power, the ratio of China's to US annual growth in electricity generated (China's National Bureau of Statistics (NBS), all scales; the US Energy Information Administration (EIA), utility-scale) was about 5.0:1 in 2024 and 4.0:1 in 2025, or 4.5:1 pooled, and China's increase exceeded the US increase in every year from 2020 to 2025.¹⁷² The ratio tracks demand, weather and hydrology, not headroom.

The export-control window turns mainly on chip-side channels, several of them policy choices: BIS licensing (case-by-case H200-class review since January 15, 2026), PRC import limits, high-bandwidth memory and equipment controls, diversion and remote access. The September 25, 2026 state-visit fact sheet changed no chip control.¹⁷³ US time to power, from interconnection request to energization or firm service, is a principal constraint on US-soil deployment and so on where US-controlled compute sits. If the largest cluster sets the frontier, time to energize is a direct lead-time cost.

Rival: speed for perimeter. At full strength, the United States is fast among peers because it trades regulatory and security perimeter for speed. Carnegie finds that "time to power is what matters most" and that US speed comes "largely in favorable regulatory environments like Texas, not California"; without behind-the-meter supply, "American data center timelines would look more like Germany's."¹⁷⁰ *Reply:* this refines a claim about pace, not a cap. The trade holds mainly for islanded and bridging configurations: a grid-tied site of 50 MW or more at 100 kV or above would fall inside NERC's proposed Computational Load Site registration, if FERC approves it, and EO 14421's bulk-power-system scope.¹⁷⁴ The unfinished settlement is itself a time-to-power cost, which public terms cut only where they make contested terms known.

¹⁷² Nat'l Bureau of Statistics of China, *Statistical Communiqué on 2025 National Economic and Social Development* (Feb. 28, 2026), https://www.stats.gov.cn/sj/zxfbhjd/202602/t20260228_1962662.html, and 2024 communiqué (Feb. 28, 2025), https://www.stats.gov.cn/sj/zxfb/202502/t20250228_1958817.html; for earlier years, the 2019 to 2023 communiqués, https://www.stats.gov.cn/sj/zxfb/202302/t20230203_1901004.html, https://www.stats.gov.cn/sj/zxfb/202302/t20230203_1901004.html, https://www.stats.gov.cn/sj/zxfb/202302/t20230203_1901393.html, https://www.stats.gov.cn/sj/zxfb/202302/t20230228_1919011.html and https://www.stats.gov.cn/sj/zxfb/202402/t20240228_1947915.html; EIA, *Electric Power Monthly*, Table 1.1 (annual totals 2019-2025), https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_1.01. NBS (all scales) and EIA (utility-scale): China +630.4 and +488.4 TWh; US +125.4 and +120.9 TWh. Pooled from 2021, 6.7:1; from 2020, 10.3:1. US utility-scale generation fell in 2020 and 2023. With EIA's estimated small-scale solar added to the US series: 4.6:1 (2024), 3.8:1 (2025) and 4.2:1 pooled. Microsoft Corp., Form 10-K for FY ended June 30, 2026, Item 1A (infrastructure risk factor), <https://www.sec.gov/Archives/edgar/data/789019/000119312526323660/msft-20260630.htm>.

¹⁷³ BIS, *Revision to License Review Policy for Advanced Computing Commodities*, 91 Fed. Reg. 1684 (Jan. 15, 2026) (case-by-case review of H200-class exports; HBM and equipment controls and remote access are further chip-side channels), <https://www.govinfo.gov/content/pkg/FR-2026-01-15/pdf/2026-00789.pdf>; NVIDIA Corp., Form 10-Q for quarter ended July 26, 2026, Risk Factors (licensed sales "were restricted by the PRC government"), <https://www.sec.gov/Archives/edgar/data/1045810/000104581026000075/nvda-20260726.htm>; The White House, *Fact Sheet: President Donald J. Trump Advances a Fair and Reciprocal Relationship with China While Hosting Historic State Visit* (Sept. 25, 2026) (no chip or semiconductor term), <https://www.whitehouse.gov/fact-sheets/2026/09/fact-sheet-president-donald-j-trump-advances-a-fair-and-reciprocal-relationship-with-china-while-hosting-historic-state-visit/>.

¹⁷⁴ NERC, Proposed Revisions to Rules of Procedure, App. 2 ("Computational Load Site") and App. 5B, § III.c.1 (Aug. 19, 2026 posting) (total connected load of 50 MW or more supplied at 100 kV or above; revises, not supersedes, NERC's April 2026 proposed criteria of 20 MW or more at a single interconnection of 60 kV or above; proposed, subject to NERC Board and FERC approval; filing due Dec. 31, 2026 under FERC's order in Docket No. RD26-7-000 (July 16, 2026)), <https://www.nerc.com/globalassets/who-we-are/rules-of-procedure/proposed/appendix-5b-clean-august-2026-posting.pdf>; Exec. Order No. 14421, *Declaring a National Emergency to Secure the United States Bulk-Power System*, §§ 2(a)-(b), 3(b), 5(a), 91 Fed. Reg. 55995, 55995-97 (Aug. 31, 2026) (signed Aug. 26, 2026) (DOE RFI published Sept. 9, 2026, 91 Fed. Reg. 57322 (Docket DOE-HQ-2026-1123), responses due Oct. 9, 2026; rules due about Dec. 24, 2026), <https://www.whitehouse.gov/presidential-actions/2026/08/declaring-a-national-emergency-to-secure-the-united-states-bulk-power-system/>.

Rival: social license. Holders say community consent binds deployment; Microsoft lists local opposition among its risks (Section 7.4).¹⁷² *Reply:* consent affects pace, which the claim covers, and its terms belong to Bargains 1 and 2.

Further positions: a democratic coalition, keep the frontier home, and lag not cap.¹⁷⁵ Carnegie proposes a coalition of allied compute hosts. CNAS and Senate Democrats would keep frontier compute at home. Duke Nicholas Institute researchers say power delays US deployment but does not cap it. *Reply:* the first two choose among offshore hosts, which the report does not; it asks that terms be public. Keep-home and lag both support the narrowed claim.

8.5 Security is a test inside each bargain

The declaration ties dependence on one operator to cost "to DoW and thus the American taxpayers".¹⁵⁷ Security and who pays are linked, so the report treats security as a test inside each bargain. Each who-controls answer asks whether security conditions can attach to walk-away and confidentiality terms (Bargain 1), tax deals (Bargain 2) and interconnection configuration (RT-5).

Rival: against security framing. AI Now and the Southaven plaintiffs say security claims are being used to remove review and should be tested, not credited. AI Now shows that the same executive-order package endorses NEPA categorical exclusions for reactors on federal sites.¹⁷⁶ *Reply:* the record does test them. DOJ's stay brief says the facility "enables effective targeting of enemy positions", but the declaration ties Colossus 2 to model training and the deployed model to targeting, so the facility-level claim goes beyond the declaration. The security state is still a party, with land, credit, a litigation position and, by its declarant's account, a dependence on the operator for classified compute. The remedy is published criteria (RT-9), not silence.

¹⁷⁵ Positions and holders. Democratic coalition: Carnegie, *supra* note 170 ("The countries that host compute can tax it, control who has access to it, and regulate what they do with it"). Keep the frontier home: Janet Egan, *Global Compute and National Security*, CNAS (July 29, 2025) ("Keeping the frontier of AI training in the United States and its closest allies"; "Domestically, U.S. companies face constraints in energy availability"), <https://www.cnas.org/publications/reports/global-compute-and-national-security>; Letter from Sens. Warren, Schumer, Slotkin, Coons, Reed, Warner, Gillibrand and Van Hollen to Sec'y Rubio and Sec'y Lutnick (May 19, 2025) (Gulf orders "will likely require deprioritizing U.S. customers"), https://www.banking.senate.gov/imo/media/doc/letter_to_rubio_and_lutnick_on_uae_chips_and_ai_519.pdf; see also Carnegie's warning against offshoring "the next critical technology to another such danger zone." *Supra* note 170. Lag not cap: compute-supply and grid-flexibility analysts, including the Duke Nicholas Institute load-flexibility authors, Norris et al., *Rethinking Load Growth: Assessing the Potential for Integration of Large Flexible Loads in US Power Systems*, NI R 25-01, Nicholas Inst. for Energy, Env't & Sustainability, Duke Univ. (Feb. 2025), Exec. Summ. (authors caution the results do not show demand can be met without new peaking capacity or grid expansion); also filed as JNGO Ex. 2.08, Ill. Com. Comm'n Docket Nos. 25-0677/25-0679 (consol.), <https://www.icc.illinois.gov/docket/P2025-0679/documents/371138/files/650737.pdf>. The study's figures are given in Section 6.

¹⁷⁶ Guerra & Khlaaf, *Fission for Algorithms: The Undermining of Nuclear Regulation in Service of AI*, AI Now Inst. (Nov. 11, 2025), https://ainowinstitute.org/wp-content/uploads/2025/11/Fission-for-Algorithms_The-Undermining-of-Nuclear-Regulation-in-Service-of-AI_Nov-11-2025_1402PM.pdf; United States' Mem. in Supp. of Mot. to Stay at 1, ECF No. 125, PageID 3216 (Sept. 21, 2026), <https://www.courtlistener.com/docket/73188848/125/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; Stanley Decl. ¶¶ 3, 5-7, ECF No. 85-1, *supra* note 157 (¶¶ 3, 7: Colossus 2 trains Grok models; ¶ 5: the Grok Gov Model supports "targeting" in Maven Smart Systems).

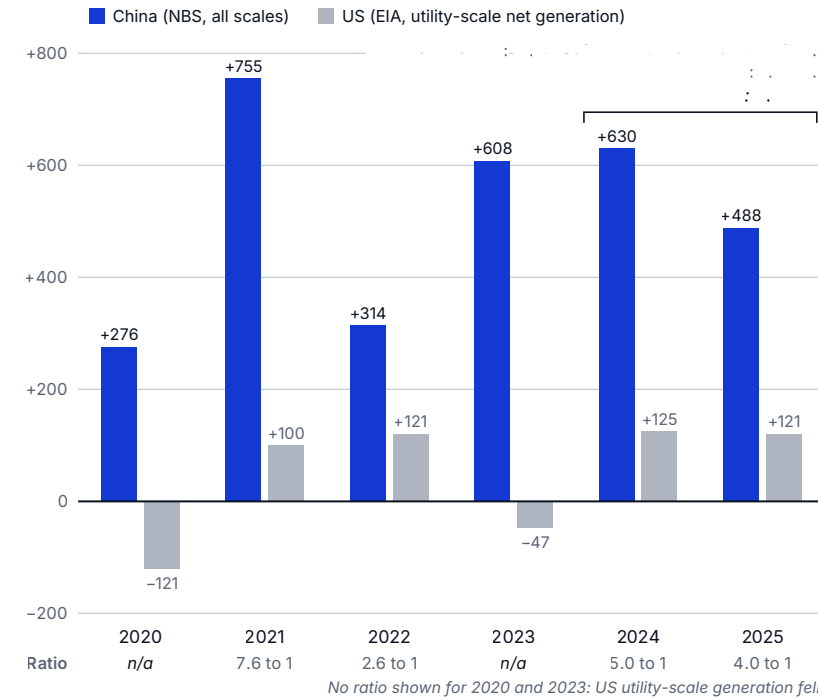
FIGURE 14

China added more generation than the US in each year from 2020 to 2025; the US makes far more AI chips

Two gaps, two measures, separate scales. Panel A: change in electricity output. Panel B: chip production.

A. Annual change in electricity generation

TWh, 2020 to 2025, linear scale.

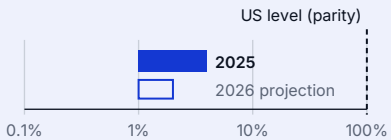


B. AI chip production

China as a share of US production:
2025 estimate and 2026 projection.
Log scale, percent of US level.

1 to 4%

of US AI chip production in 2025
Projection for 2026: 1 to 2%.



Carnegie, June 2026.

Sources: NBS, Statistical Communiques on National Economic and Social Development, 2019 to 2025 (first releases); EIA, Electric Power Monthly, Table 1.1 (annual totals 2019 to 2025); Carnegie, The Compute Coalition (June 2026). Notes 170, 172.

The two gaps run in opposite directions and measure different things: China's generation grew by more TWh than US utility-scale generation in every year from 2020 to 2025, while Carnegie puts China's 2025 AI chip production at 1 to 4 percent of the US level. As of September 27, 2026.

Rival: emergency authorities already secure what the state needs. At full strength, the security state needs no negotiated gets. Defense Production Act section 101 lets the President require priority performance of contracts, including for services. FPA section 202(c) lets DOE order generation to run in an emergency, as it did for data-center backup in January and May 2026 (Section 3.3). EO 14421 declares an emergency over bulk-power equipment, and Article II adds the commander-in-chief power.¹⁷⁷ Reply: no rated order for these facilities is public, and Title I of that Act terminates on December 11, 2026 unless Congress extends it. Section 717(c) keeps earlier contracts and obligations in force, so expiry ends new priority orders, not existing ones. Section

¹⁷⁷ Defense Production Act § 101(a), 50 U.S.C. § 4511(a); 15 C.F.R. pt. 700 (Defense Priorities and Allocations System); 50 U.S.C. § 4564(a) (termination of subchapter I on Dec. 11, 2026), (c) (preserving contracts, guarantees, commitments and other obligations entered into before termination), as amended by Pub. L. No. 119-103, div. B, § 2004 (Sept. 2, 2026), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title50-section4564&num=0&edition=prelim>; 16 U.S.C. § 824a(c); *Consumers Energy Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,158, at 17 (2025) (allocating the costs of keeping the Campbell Plant running under DOE's 202(c) order), order addressing arguments raised on reh'g (Dec. 22, 2025), accession 20251222-3061, petitions for review pending sub nom. *Michigan v. FERC*, No. 25-1285 (D.C. Cir. filed Dec. 15, 2025) (consolidated with No. 26-1040; held in abeyance), https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20250815-3095; Exec. Order No. 14421, 91 Fed. Reg. 55995 (Aug. 31, 2026), *supra* note 174; U.S. Const. art. II, § 2, cl. 1.

202(c) orders are temporary and public, and FERC still allocates their costs afterward. Emergency powers set priority in a crisis, not the standing terms of land, credit and cost. RT-9's criteria can reserve them.

Rival: security-first. At full strength, the state already treats private compute and generation as a strategic asset: EO 14299 directs DOE to begin designating DOE-sited AI data centers, and the declaration calls surge capacity "a matter of paramount national security".¹⁷⁸ *Reply:* no designation is public, and data centers typically fall under state and local siting jurisdiction, so this frame speaks for one forum while others decide.

Rival: speed-first. Holders make speed under a security mandate the frame, citing Carnegie's time-to-power finding. *Reply:* at Southaven, speed bought about a year of power, then litigation and a state retirement schedule.

Rival: flexibility as the frame. Flexible connection may be faster than dedicated coupling. *Reply:* it becomes an instrument, firm or non-firm service (RT-4), and does not answer who pays.

Further positions: reliability, an explicit exchange, and sovereignty as the frame.¹⁷⁹ NERC and reliability holders note that FPA 215 is the only mandatory regime aimed at computational load. The Institute for Progress proposes a "speed-for-security bargain" that prices security in time. Sovereignty-first holders cite Heering and Voeten's German experiment in which operator nationality moved support strongly and abstract priming barely did. *Reply:* each becomes an instrument, and none answers who pays: obligations by configuration (RT-5), an opt-in fast lane that reaches only grid-facing loads, and "public rule, non-public roster" (RT-9). The German result places sovereignty under who controls; the study tested no security frame.

¹⁷⁸ Stanley Decl. ¶¶ 8-9, *supra* note 157; Exec. Order No. 14299, *Deploying Advanced Nuclear Reactor Technologies for National Security*, § 4(a), 90 Fed. Reg. 22581 (May 29, 2025) (DOE to "initiate the process for designating" DOE-sited AI data centers), <https://www.govinfo.gov/content/pkg/FR-2025-05-29/pdf/2025-09796.pdf> (no designation public as of Sept. 27, 2026; designations under 16 U.S.C. 824o-1(c) need not be published); Cong. Rsch. Serv., *Data Center Energy Infrastructure: Federal Permit Requirements*, R48762 (Dec. 12, 2025), Summary, <https://www.congress.gov/crs-product/R48762>. Speed-first: Carnegie, *supra* note 170.

¹⁷⁹ Positions and holders. Reliability: FPA 215 and NERC, which has issued a non-mandatory alert, *Level 3 Essential Actions Alert: Computational Load* (May 4, 2026), pp. 1-2 ("does not create a mandatory obligation"), <https://www.nerc.com/globalassets/programs/bpsa/alerts/level-3-computational-load-alert.pdf>; registration proposal, *supra* note 174. Explicit exchange: Ben Schiffman, *A Speed-for-Security Bargain for AI Data Centers*, Inst. for Progress (June 4, 2026), <https://ifp.org/speed-for-security-bargain-for-ai-data-centers/>; PJM Interconnection, L.L.C., Order Instituting Proceeding Under Section 206 of the Federal Power Act, 195 FERC ¶ 61,211 (2026), FERC Docket No. EL26-67-000 (June 18, 2026), <https://www.ferc.gov/sites/default/files/2026-06/EL26-67-000.pdf> (carries no security conditions). Sovereignty-first: Carnegie, *supra* note 170; the American AI Exports Program, *supra* note 169; Richardson et al., *supra* note 168; Heering & Voeten, *How Sovereign Control, Decarbonization and Energy Costs Shape Public Support for Data Centers*, 17 *Nature Commc'ns* 9576 (2026) (Germany, n=2,523; the authors conclude that "sovereignty concerns loom large"; abstract sovereignty primes moved support only marginally, about 0.12 on a 7-point scale), <https://www.nature.com/articles/s41467-026-76500-9>.

Ratepayers and taxpayers carry the losses that contracts do not reach

Ratepayers and taxpayers become residual claimants in two cases. First, no term with the load reaches a cost (channels 1, 2 and 5 below). Second, a term's tenor, counterparty credit or collateral runs out and a commission allows recovery of the remainder. Regulatory method allocates that last layer: "The risks a utility faces are in large part defined by the rate methodology".¹⁸⁰ Order No. 888 let utilities seek recovery of stranded costs from departing wholesale customers after the fact; today's terms take security from arriving load before assets are built (Section 2).¹⁸¹ No retail cross-subsidy is claimed (Section 6.4).

9.1 Five exposure channels sit outside large-load tariffs

Consumer advocates and public-power interests accept that large-load tariffs largely hedge project-specific retail costs and place the residual elsewhere. FERC's PJM order places it at the federal-state seam, recording the Kansas Commission's view that its minimum-payment tariff "cannot protect against cost shifting associated with regional transmission buildout".¹⁸²

¹⁸⁰ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989), <https://www.law.cornell.edu/supremecourt/text/488/299>.

¹⁸¹ FERC, Order No. 888, *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 61 Fed. Reg. 21,540, 21,540 (Summary) & 21,633-34 (section IV.J.3, direct assignment to the departing wholesale generation customer through an exit fee or transmission surcharge) (May 10, 1996) (recovery of "legitimate, prudent and verifiable stranded costs"; obligations "the utility undertook on that customer's behalf"), <https://www.govinfo.gov/content/pkg/FR-1996-05-10/pdf/96-10694.pdf>. See Section 2, notes 7 and 8.

¹⁸² *PJM Interconnection, L.L.C.*, Order Instituting Proceeding Under Section 206 of the Federal Power Act, 195 FERC ¶ 61,211, Docket No. EL26-67-000 (June 18, 2026), PP 5 ("not intended to disrupt existing commercial arrangements, but rather to establish prospective reforms"), 57 (readiness requirements), 67-68 (pro forma cost recovery agreement; cost shifting among transmission customers), 78 & n.171 (Kansas Commission, as recorded from its comments in Docket No. RM26-4-000), <https://www.ferc.gov/sites/default/files/2026-06/EL26-67-000.pdf>; held in abeyance by letter order of Aug. 14, 2026, eLibrary accession 20260814-3059, with responses due Nov. 16, 2026 (see Section 5, note 77).

TABLE 9-1

Exposure channels outside large-load tariffs

Channel	Hedging term	Evidence	Tenor gap	Residual bearer; forum
1. PJM capacity and backstop	None in the auction; backstop cost to zones, then to load-serving entities (LSEs) as states assign	Market monitor counterfactual (auction prices without data-center load) ¹⁸³ ; PJM backstop filing, ER26-3380 ¹⁸⁴	Backstop commitments up to 15 years; load signs nothing	Load in PJM's capacity market (price); LSEs. FERC (pending); states
2. Regional transmission	None in retail tariffs; FERC's order proposes readiness and cost-recovery terms (in abeyance)	FERC show-cause order, EL26-67 ¹⁸² ; Maryland Office of People's Counsel complaint, EL26-63 (alleged) ¹⁸⁴	Decades-long assets; no load term	Transmission customers. FERC
3. Pre-tariff contracts	Virginia's minimums (85 percent delivery, 60 percent generation) cover loads first served on or after Jan. 1, 2016 (the generation minimum exempts some competitive-supply and interruptible customers); the Tennessee Valley Authority's (TVA) charge exempts existing loads (Board approval before June 1, 2026, or a power contract effective before Oct. 1, 2026)	Virginia State Corporation Commission (SCC) GS-5 order; 9,815 MW under Dominion electric service agreements (ESAs), end of July 2025; TVA rate resolution ¹⁸⁵	No GS-5 term or collateral for customers who signed an ESA or took service before 2027; no Capacity Commitment Charge on TVA's exempt loads	Dominion and TVA customers. SCC, FERC, TVA Board
4. Co-op, municipal and TVA load	No commission term where states do not regulate co-op or municipal rates; PJM's proposed narrow opt-out (pending); TVA's non-refundable charge on new data-center load; an above-100 MW approval (Aug. 2026) conditioned on a confidential memorandum	PJM backstop filing, ER26-3380 at 45 ¹⁸⁴ ; TVA Board resolutions ¹⁸⁶	Capacity charge narrows the gap for new TVA load; above-100 MW security terms not public	Member-owners, TVA customers. Co-op, municipal and TVA boards

¹⁸³ Monitoring Analytics, *Analysis of the 2027/2028 RPM Base Residual Auction, Part A* (Jan. 5, 2026), https://www.monitoringanalytics.com/reports/Reports/2026/IMM_Analysis_of_the_20272028_RPM_Base_Residual_Auction_Part_A_20260105.pdf; Monitoring Analytics, *Market Monitor Report to the Members Committee*, slides 3-4 (July 28, 2026), https://www.monitoringanalytics.com/reports/presentations/2026/IMM_MC_Market_Monitor_Report_20260728.pdf.

¹⁸⁴ PJM Interconnection, L.L.C., *Reliability Backstop Procurement*, Docket No. ER26-3380-000, transmittal letter (July 31, 2026), at 8 (PDF p. 15) (commitments "for a fixed term of up to 15 years"), 9 (PDF p. 16) (NEDC/PJM Governors' Principles, as quoted by PJM), 45 (PDF p. 52) (cooperatives' "overbuy" concern; proposed opt-out), 96-99 (PDF pp. 103-106) (allocation to zones by share of the Final RBP Target MW; state- or RERRA-determined "RBP Obligation"; at 98, "PJM's authority over wholesale markets does not extend to dictating the allocation of costs to retail load"; fallback under proposed Tariff Att. DD § 18.3(b)(iii) to each LSE's share of the Daily Unforced Capacity Obligation under RAA Schedule 8), eLibrary accession 20260731-5214, <https://www.pjm.com/pjmfiles/directory/etariff/FercDockets/9806/20260731-er26-3380-000.pdf> (pending as of Sept. 27, 2026); Complaint, *Md. Office of People's Counsel v. PJM Interconnection, L.L.C.*, FERC Docket No. EL26-63-000 (filed May 7, 2026), accession 20260507-5026, amended May 22, 2026, accession 20260522-5245 (pending) (original complaint: party allegation that PJM's hybrid method assigns Maryland customers \$2.0 billion of capital costs from three RTEP windows totaling more than \$22 billion), <https://www.pjm.com/-/media/DotCom/documents/ferc/filings/2026/20260507-el26-63-000.pdf>.

¹⁸⁵ Va. State Corp. Comm'n, *SCC Data Center Initiatives* fact sheet, Case No. PUR-2025-00058 (Feb. 24, 2026) (minimum charge applies "to new and existing large load customers", with customers who began service before Jan. 1, 2016 exempt; 14-year term and collateral from Jan. 1, 2027; collateral for customers "without sufficient credit"), <https://www.scc.virginia.gov/media/sccvirginiagov-home/about-the-scc/fact-sheets/scc-data-center-initiatives-02-2026.pdf>; Va. State Corp. Comm'n, Final Order, Case No. PUR-2025-00058, at 23-27 (Nov. 25, 2025) (Rate Schedule GS-5: minimum distribution and transmission charges of 85 percent and minimum generation charge of 60 percent of contracted demand; collateral of \$1.5 million per MW, reducible by up to 70 percent for credit), <https://www.scc.virginia.gov/docketsearch/DOCS/89g6011.PDF>; Va. Elec. & Power Co., *2025 Update to the 2024 Integrated Resource Plan*, fig. 2.1.15 (9,815 MW under ESAs, end of July 2025), *infra* note 187; Tenn. Valley Auth., Board Resolution, *Rate Change and Related Actions*, and Memorandum, Exhibit 08/20/2026L, Attachments II-III (adopted Aug. 20, 2026) (memorandum of the Executive Vice President and Chief Financial Officer dated Aug. 10, 2026) (Schedule DC; non-refundable Capacity Commitment Charge of \$1.521 million/MW for the first cohort up to 2,000 MW; loads with Board approval before June 1, 2026 or an effective power contract before Oct. 1, 2026 treated as "Existing" and exempt from the Capacity Commitment Charge; effective for bills rendered from wholesale meter readings scheduled to be taken on and after Oct. 2, 2026), [https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/about-tva/board-of-directors/august-20--2026/resolutions/board-resolution---rate-change-and-related-actions---stamped-\(1\).pdf?sfvrsn=fefcb72d_1](https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/about-tva/board-of-directors/august-20--2026/resolutions/board-resolution---rate-change-and-related-actions---stamped-(1).pdf?sfvrsn=fefcb72d_1).

Channel	Hedging term	Evidence	Tenor gap	Residual bearer; forum
5. Fore-cast-driven generation	Only plant tied to a large-load agreement: Wisconsin Very Large Customer (VLC) tariff, 15-year minimum term, security including the net book value of bespoke plant unless the customer is rated A-/A3 ¹⁸⁷	Dominion: 30,132 of 47,045 contract MW at Engineering Letter of Authorization stage; 8,510 MW of gas in Dominion's Company Preferred Plan ¹⁸⁷	Plant outlives 12- to 15-year contracts	Ratepayers via rate base. Integrated resource plan and certificate forums

Note: "Price" means exposure through market prices, not stranded cost; "pending" marks a filing with no FERC order as of September 27, 2026; "alleged" marks a party allegation.

The report adopts both the consumer-advocate and FERC readings. Channels 1 and 2 are FERC-jurisdictional, although PJM leaves backstop allocation to retail load to the states. Channel 3 spans both levels: FERC's order "is not intended to disrupt existing commercial arrangements".¹⁸²

Utilities and commissions see little residual. AEP cites up to \$16 billion of residential offsets "supported by fully executed take-or-pay electric service agreements".¹⁸⁸ But a hedge binds only for its term and to posted security. Virginia sets collateral at \$1.5 million per MW, cut by up to 70 percent for credit standing. AEP's agreements are confidential. The market monitor holds that exposure is already realized: forecast load sets today's capacity price.¹⁸³ The report accepts this for channel 1, as a price effect, not stranded cost. That price reaches all load in PJM's capacity market, whatever the funding mode.

9.2 Forecast error runs both ways

Adjusting the forecast moves loss between the two errors; terms that bind the load, security and firmness, can shrink both. Skeptics hold that forecasts count speculative, duplicate requests: Grid Strategies finds the data-center portion "likely overstated by roughly 25 GW". Reliability planners fear under-procurement more: NERC counts only committed projects, and PJM's last two auctions cleared 6,623 MW and 6,831 MW short.¹⁸⁹ Over-forecasting strands channel 5 and

¹⁸⁶ Tenn. Valley Auth., Board resolution and memorandum, *Greater than 100 MW firm power arrangement with CTC Property LLC (xAI)* (Nov. 7, 2024) ("TVA Board approval is required to authorize TVA to make available new amounts of firm power exceeding 100 megawatts"), <https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcm/docs/default-source/about-tva/board-of-directors/november--7-2024/resolutions/reading-room-11072024g-grtr-100mw-ctc-xai-reso-memo.pdf>; Tenn. Valley Auth., Board resolution, *Power Availability* (Aug. 20, 2026) (firm power for an unnamed customer "contingent upon the customer satisfying contractual, financial, and operational requirements as described in the Confidential Memorandum"), https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcm/docs/default-source/about-tva/board-of-directors/august-20--2026/resolutions/board-resolution---power-availability-august-2026-v2.pdf?sfvrsn=ed264403_1; TVA rate resolution, *supra* note 185.

¹⁸⁷ Va. Elec. & Power Co., *2025 Update to the 2024 Integrated Resource Plan*, Va. SCC Case No. PUR-2025-00184, fig. 2.1.15 (contracts by stage, end of July 2025) & tbl. 5.1.1.1 (Oct. 15, 2025), <https://www.dominionenergy.com/-/media/content/about/our-company/irp/pdfs/2025-integrated-resource-plan-update.pdf>; Pub. Serv. Comm'n of Wis., Press Release, *PSC Overhauls We Energies' Data Center Tariff*, Docket 6630-TE-113 (Apr. 24, 2026) (15-year minimum term), <https://content.govdelivery.com/accounts/WIPSC/bulletins/4147a70>; Pub. Serv. Comm'n of Wis., Final Decision, Docket 6630-TE-113 (May 21, 2026), petition for judicial review, *infra* note 191; Pet. for Judicial Review ¶¶ 27-28 (VLC Security includes "the aggregate net book value of all Bespoke Resources to which the customer is subscribed"), *infra* note 191. The Final Decision is Exhibit A to that petition (Doc. 2, 128 pp.), copy at <https://www.wpr.org/wp-content/uploads/2026/06/2026CV256.pdf>.

¹⁸⁸ AEP, Second-Quarter 2026 earnings release (July 30, 2026), <https://www.aep.com/news/stories/view/12135/>; SCC Final Order, Case No. PUR-2025-00058, *supra* note 185, at 23-27 (collateral of \$1.5 million per MW, reducible by up to 70 percent for credit); Pet. for Judicial Review ¶ 28, *infra* note 191 (Wisconsin analogue under the utility's original proposal: "Customers that satisfy the Financial Support Requirements are exempt from the requirement to provide the VLC Security altogether"). A state statute takes the same approach: Minn. Stat. § 216B.1622, subd. 2(3) (commission to seek protections so that "other customers of the public utility are not placed at risk for paying stranded costs"), enacted by 2025 Minn. Laws 1st Spec. Sess. ch. 12; clause (3) unchanged by Minn. Laws 2026, ch. 88, art. 1, sec. 91, <https://www.revisor.mn.gov/statutes/cite/216B.1622>.

produces the backstop "overbuy" cooperatives fear.¹⁸⁴ Under-forecasting shows in channel 1 as capped prices and shortfall. PJM's Board has narrowed the over-forecast path, excluding incremental large loads from future auction forecasts unless new supply covers them.

Flexibility advocates and Texas legislators tie exposure to firmness. Texas SB 6 lets ERCOT, near or during an energy emergency, have utilities require large loads with on-site backup "to either deploy the customer's on-site backup generating facilities or curtail load".¹⁹⁰ The report adopts firmness choice (RT-4). Section 6 covers flexibility headroom; curtailment onto backup generation shifts exposure to the airshed.

9.3 Funding mode, not ownership, picks the residual claimant

Default risk sits with the entity bound, the signing affiliate plus any enforceable guarantor, unless a tariff requires security from it (Section 6.1).¹⁹¹ At Hyperion that entity is Laidley LLC, "the sole signatory" to the Entergy agreement.¹⁹²

Rate-based generation under a service agreement leaves ratepayers exposed to the cost left when the contract ends, subject to the commission's recovery decision. Contribution-funded upgrades leave little: the Hyperion order keeps project-specific upgrades out of other customers' rates. Third-party generation leaves the financial loss with investors and the air-quality burden with host communities; a Blackstone-led group holds 49 percent of the Williams venture, signed July 13, 2026, that includes Socrates and Apollo. Stranded private plant stays off rate base only if entering it later requires a prudence finding (RT-2). Federal credit makes taxpayers contingent creditors: DOE lent Constellation \$1.0 billion for the Crane restart, naming no offtaker.¹⁹³

¹⁸⁹ Grid Strategies, *Power Demand Forecasts Revised Up for Third Year Running*, Led by Data Centers, Executive Summary (Nov. 2025), <https://gridstrategiesllc.com/wp-content/uploads/Grid-Strategies-National-Load-Growth-Report-2025.pdf>; NERC, *2025 Long-Term Reliability Assessment*, Demand Trends and Implications: Data Centers and Large Commercial and Industrial Loads, at 27 (Jan. 2026) (to be counted, data center projects "have advanced from speculative and exploratory stages into development commitments"), https://www.nerc.com/globalassets/our-work/assessments/nerc_ltra_2025.pdf; PJM, News Release (Dec. 17, 2025), <https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/2025-releases/20251217-pjm-auction-procures-134479-mw-of-generation-resources.pdf>; PJM Inside Lines (July 14, 2026), <https://insidelines.pjm.com/pjm-capacity-auction-procures-138318-mw-of-generation-resources-as-work-continues-to-address-growing-electricity-demand/>. PJM's Board has narrowed the over-forecast path: PJM, *CIFP Framework for Service During Periods of Insufficient Resource Adequacy: PJM Proposal*, at 5 (July 27, 2026), as quoted in PJM transmittal, Docket No. ER26-3380-000, *supra* note 184, at 5 n.9 (PDF p. 12) (July 31, 2026) (the PJM Board's announcement that "[i]ncremental new Large Loads relative to the forecast utilized for the 2028/2029 BRA will be excluded from the forecast used in future RPM auctions for the 2029/2030 Delivery Year and beyond unless and until there are new supply resources offered into an RPM auction in sufficient quantity to cover the new Large Load").

¹⁹⁰ Tex. S.B. 6, 89th Leg., R.S. (2025) (enrolled), § 2 (adding Tex. Util. Code § 37.0561(e): on-site backup generation defined as non-exporting and able to serve at least 50 percent of on-site demand; direction available "before or during an energy emergency alert" and after deployment of "all available market services, except for frequency responsive services"), § 4 (adding § 39.170, large load demand management service), <https://capitol.texas.gov/tlodocs/89R/billtext/html/SB00006F.htm>. On modeled flexible-load headroom, see Section 6, note 122.

¹⁹¹ For a tariff that requires security from the signing customer, see Pet. for Judicial Review ¶¶ 37, 51, *Oracle Am. Cloud Servs. LLC v. Pub. Serv. Comm'n of Wis.*, No. 2026CV000256 (Ozaukee Cnty. Cir. Ct. filed June 19, 2026) (voluntary dismissal moved Aug. 17, 2026; the Wisconsin Circuit Court Access record lists the case as closed, <https://wcca.wicourts.gov/>) (reciting and quoting the May 21, 2026 Final Decision approving the VLC Tariff and Bespoke Resources Tariff), <https://wisconsinwatch.org/wp-content/uploads/2026/06/2026CV256-1.pdf>.

¹⁹² Alliance for Affordable Energy & Union of Concerned Scientists, Motion for Investigation, LPSC Docket No. U-37425, at 6 ("Laidley remains the sole signatory to the energy services contract with ELL") (Jan. 14, 2026), <https://www.all4energy.org/wp-content/uploads/2026/01/2026-01-14-U-37425-AAE-UCS-Mtn-for-Investigation.pdf>; see also Ind. Util. Regulatory Comm'n, Order, Cause No. 46276, Ordering ¶ 4, at 13 (Apr. 29, 2026) (sealed list includes the counterparty's identity, "a special purpose entity"; see Section 6.1), https://www.in.gov/iurc/files/ord_46276_042926.pdf.

Financiers hold that first loss sits with investors: Blue Owl funds own 80 percent of the Hyperion venture, and Meta's residual value guarantee runs "for the first 16 years of operations".¹⁹⁴ That holds for buildings and private plant, but forecast-driven generation and upgrades not paid for by customer contributions stay in rate base whoever owns the campus. Private finance relocates ratepayer exposure more than it removes it.

The main source of that exposure is the tenor gap: contracts end before assets are paid off. Terms run 12 years in Ohio (including a ramp), 14 in Virginia, and 15 in Wisconsin and at Hyperion. At Hyperion, an intervenor witness testified the initial term "(15 years) is significantly shorter than the depreciable life of the Planned Generators (30 years)".¹⁹⁵ No commission has paired asset life with contract term in a finding. The exposure is smaller than the asset. A plant keeps salvage and re-contracting value, more so in capacity-short markets, and depreciation can be accelerated. Ratepayer exposure is the net book value left after those recoveries, exit fees and collateral. Exit fees and collateral sized to net book value close the gap only as far as the exiting party can pay (RT-2). Whether ratepayers pay that remainder is a recovery question for the commission.

9.4 Hyperion's leases run four years; its service agreement runs 15

Meta's 10-Q discloses the lease term: "Each leased property has an initial four-year lease term and options to renew for a total lease period of up to 20 years". Residual value guarantees of about \$28 billion, decreasing over time, back the leases.¹⁹⁶ The 15-year agreement is sealed. Intervenors allege Meta "can walk away after only 4 years" and that Beignet, now Laidley's parent, "has not signed a parent guaranty". At the Commission's February 25, 2026 session, Entergy's witness said the four-year leases do not shorten Laidley's 15-year obligation. Its counsel said the guaranty then in hand "only covers the CIAC payments", the contributions in aid of construction, that

¹⁹³ La. Pub. Serv. Comm'n, Order No. U-37425, at 7 (decided Aug. 20, 2025; issued Aug. 29, 2025) (upgrades required "solely as a result of the Customer's Project" kept out of "the rates of customers other than the Customer"); see also *id.* Exh. A (Final Stipulated Settlement Term Sheet, July 11, 2025) § V.A (filed Aug. 7, 2025; approved Aug. 20, 2025), <https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileid=nDWN/juc2+A%3D>; Williams Cos., press release, *Williams Announces \$5.34 Billion Investment in Power Innovation Joint Venture from Blackstone* (July 13, 2026) (49 percent to "Blackstone Credit & Insurance ("Blackstone"), in partnership with Apollo and insurance vehicles and accounts managed by KKR"; Williams may buy out the interest "between years 7 and 14"), <https://www.williams.com/2026/07/13/williams-announces-5-34-billion-investment-in-power-innovation-joint-venture-from-blackstone/>; Williams Cos., second-quarter 2026 results release (Aug. 3, 2026) (venture signed July 13, 2026 described as "Finalized"; projects include Socrates and Apollo), <https://www.williams.com/2026/08/03/williams-delivers-strong-second-quarter-2026-results-announces-strategic-acquisition-of-momentum-midstream-connecting-haynesville-to-gulf-coast-lng-and-power-demand/>; U.S. Dep't of Energy, *Crane Restart* (Energy Dominance Financing loan of \$1.0 billion to Constellation Energy Generation, LLC, Nov. 2025), <https://www.energy.gov/edf/crane-restart>.

¹⁹⁴ Meta Platforms, Inc., press release, *Meta Announces Joint Venture with Funds Managed by Blue Owl Capital to Develop Hyperion Data Center* (Oct. 21, 2025) (Blue Owl funds' 80 percent interest; RVG is "a capped cash payment"), <https://www.prnewswire.com/news-releases/meta-announces-joint-venture-with-funds-managed-by-blue-owl-capital-to-develop-hyperion-data-center-302590584.html>. Hyperscaler backstops can also lapse: on third-party data-center obligations Alphabet may, "[u]nder specific conditions or following a predetermined period", "extinguish the backstop obligation by making a termination payment". Alphabet Inc., Quarterly Report (Form 10-Q) for the quarter ended June 30, 2026, Note 3 (credit-derivative backstops of third-party data-center payment obligations, "remaining terms of up to 15 years"; right to assume the underlying leases on default; termination-payment extinguishment), <https://www.sec.gov/Archives/edgar/data/1652044/000165204426000071/goog-20260630.htm>.

¹⁹⁵ AEP Ohio, news release (July 9, 2025) (summary of the PUCO-adopted stipulation, Case No. 24-508-EL-ATA: requirements "in place for 12 years, including a 4-year ramp-up period"), <https://www.aep.com/news/stories/view/10327/>; Pub. Utils. Comm'n of Ohio, Case No. 24-508-EL-ATA, Opinion and Order (July 9, 2025), reh'g denied (Sept. 3, 2025), appeal pending, *In re Application of Ohio Power Co.*, Sup. Ct. of Ohio No. 2025-1458; SCC fact sheet, *supra* note 185; Wis. PSC press release, *supra* note 187; AAE & UCS Motion, *supra* note 192, at 8 (2,262 MW of combined-cycle units), 9 (\$3.2 billion original projection, citing ELL's application; ESA of 15 years "with up to three 5-year extensions"), 10 (quoting Kunkel Direct Testimony at 14).

¹⁹⁶ Meta Platforms, Inc., Quarterly Report (Form 10-Q) for the quarter ended June 30, 2026, Note 5 (Louisiana venture; leases commence 2029) (filed July 30, 2026), accession 0001628280-26-050705, <https://www.sec.gov/Archives/edgar/data/1326801/000162828026050705/meta-20260630.htm>. Note 13 of the same filing discloses a planned El Paso venture with the same structure (RVG "maximum aggregate exposure of approximately \$ 13 billion").

"[t]he guaranty for the ESA will be coming ahead of the ESA", and that service does not begin without it. Counsel and staff said the ownership change does not impair Meta's existing guaranty. On staff's recommendation, the Commission declined to act on the motion.¹⁹⁷ The ESA guaranty's terms, and whether termination payments rank ahead of bondholders, are not public.

9.5 Pledges trail state terms and leave security unpledged

Pledges fix the price principle, leave security for performance and disclosure unpledged, and bind only when a forum writes them into a tariff, order or filed contract. The report adopts two readings. First, pledges trail state terms: Virginia's GS-5 collateral, minimums, exit fees and 14-year term predate the Pledge. Second, the utility's incentive shapes allocation. The SCC observed that "[t]o the extent that the Company has more of a financial incentive to avoid a CIAC", broader contributions "could drive more regional planning".¹⁹⁸ The incentive is structural: contributed upgrades earn no return. Where earnings favor socialized upgrades, the commission's allocation rule, not a pledge, settles incidence.

¹⁹⁷ AAE & UCS Motion, *supra* note 192, at 3, 17 (requests for an uncapped parent guaranty and a legal opinion on whether ESA termination payments are senior to investors), 5 (Beignet has not signed a parent guaranty), 10 (four-year exit allegation), 12 (seniority of termination payments), and attached Supplemental Testimony of Catherine Kunkel at 5-6; La. Pub. Serv. Comm'n, B&E Open Session Transcript (Feb. 25, 2026), at 39-41 (staff summary of Entergy's Feb. 13, 2026 memorandum in opposition; staff recommendation not to act under Rule 43), 52 (Entergy witness Hand: higher ESA guaranty due before the ESA takes effect; ESA not to be amended below 15 years; Laidley not released after four years), 54 (Entergy counsel: "This particular guaranty only covers the CIAC payments. The guaranty for the ESA will be coming ahead of the ESA"; existing guaranty does not require Meta to remain Laidley's direct parent), 55 (staff consultant Sisung: ownership change does not vitiate Meta's guaranty), <https://lpsc.louisiana.gov/docs/transcripts/February-25-2026-BE.pdf>; La. Pub. Serv. Comm'n, Minutes of February 25, 2026 B&E, Ex. 10, at 3 (the Commission "declined to take action on the Motion"), https://lpsc.louisiana.gov/docs/minutes/Feb_25_2026_Minutes_revised.pdf; Order No. U-37425, *supra* note 193, at 7 (parent guaranty condition).

¹⁹⁸ Va. State Corp. Comm'n, Final Order, Case No. PUR-2026-00056, at 10, 13 n.55 (July 31, 2026) (Dominion "did not favor direct assignment", preferring to let the new structure "mature"), <https://www.scc.virginia.gov/docketsearch/DOCS/8dt001!.PDF>; SCC fact sheet, *supra* note 185 (GS-5 terms predating the March 4, 2026 Pledge).

FIGURE 15

Ratepayers absorb loss last on Hyperion's utility side; Socrates South's generation has no utility layer

Loss layers at two Meta campuses in the order they absorb loss, first at top, with who can see each layer: investors, the commission record, and an adjudicator. Bars are ordered, not sized. Status as of September 27, 2026.

Visibility: **Disclosed or required** Partial or intervenor only Terms sealed Not public or open n/a

Layer or rank not public Disclosed layer Outlined: ratepayers, the last utility-side layer

HYPERION, LOUISIANA *Grid-tied: rate-based generation under a sealed 15-year service agreement*

	Loss layer and holder	Investors	Commission record	Adjudicated
LOSS FIRST ↓ LOSS LAST	Meta residual value guarantee Meta, as lessee, to the venture: capped cash payment, first 16 years of operations; backs four-year leases renewable up to 20 years; about \$28 billion, decreasing	Disclosed	Raised by intervenors only	Not adjudicated
	Vehicle equity Beignet Investor LLC: Blue Owl funds 80 percent, Meta 20 percent; Beignet now owns Laidley	Disclosed	Raised by intervenors only	Not adjudicated
	Debt Beignet debt held by bondholders; terms not public	Bondholders only	Raised by intervenors only	Not adjudicated
	Debt and utility claim: relative rank not public <i>Intervenor sought a legal opinion on whether termination payments rank ahead of the bonds; the Commission did not act</i>	Not public	Opinion requested; Commission did not act	Open
	Utility claim and collateral Laidley LLC, sole signatory to the sealed 15-year agreement; ESA parent guaranty due before service begins; not yet given in Feb. 2026	Not public	Conditions public; terms sealed	Guaranty required by order; effect of sale not adjudicated
	Utility shareholders, via disallowance Entergy Louisiana shareholders, if a later prudence review disallows recovery	Not public	Not public	Not adjudicated
	Ratepayers Entergy Louisiana retail customers: generation cost left after the term or beyond collectible security; project upgrades excluded	n/a	Tenor gap raised by intervenor witness; no Commission finding	Upgrades excluded; generation remainder open

Disclosed to investors:
Commission declined to act
on intervenors' motion

SOCRATES, OHIO *Third-party generation; Socrates South certificated not to connect to the grid*

	Loss layer and holder	Investors	Commission record	Adjudicated
LOSS FIRST ↓ LOSS LAST	Power purchase agreement Customer Sidecat LLC, a Meta affiliate; terms not public	Not public	Siting record only	n/a: no rate forum
	Vehicle equity Williams 51 percent; Blackstone-led group 49 percent; Williams buyout right in years 7 to 14	Disclosed	n/a	n/a
	Project debt: not public	Not public	n/a	n/a
	Utility claim, utility shareholders, ratepayers: none for this plant <i>Socrates South is certificated not to be physically connected to the grid; whether the data center it serves has a utility tie is not public. The air-quality burden falls on the host airshed, outside this stack.</i>			

Channels 1, 2 and 5 (PJM capacity and backstop; regional transmission; forecast-driven generation): no stack.
No term with the load reaches these costs (for channel 5, outside Wisconsin's Very Large Customer tariff), so there is no loss order to draw (Table 9-1).

Sources: Meta 10-Q (Q2 2026, Note 5) and release (Oct. 21, 2025); Louisiana Public Service Commission Order U-37425 at 7, and transcript and minutes (Feb. 25, 2026); Alliance for Affordable Energy and Union of Concerned Scientists motion (Jan. 14, 2026); Williams releases (July 13 and Aug. 3, 2026); Ohio Power Siting Board, Case 25-0185-EL-BLN. Notes 192 to 197, 66 and 78. Investors: disclosure to investors in filings or offerings.

Loss order at Hyperion and Socrates. At Hyperion, ratepayers absorb loss last on the utility side, after the utility's claim and collateral and any disallowance; whether Entergy's termination claim ranks ahead of the venture's bonds is not public. Socrates South's generation has no utility layer, and channels 1, 2 and 5 have no stack. Bars are ordered, not sized. As of September 27, 2026.

Signatories will "pay those rates, and for their infrastructure, whether they use the electricity or not", with no term on collateral, parent guaranties or credit support.¹⁹⁹ Oracle signed on March 4, 2026. Its subsidiary sought judicial review of Wisconsin's floor (Section 6.1), arguing no party showed the original terms "would harm non-participating customers".²⁰⁰ Oracle moved to dismiss after an S&P downgrade to BBB-. The Commission enforced the Pledge's substance without citing it. Pledges reach retail rates and delivery upgrades, local tax only through Microsoft's promise not to seek lower "local property tax rates", silent on abatements, and environmental burden not at all.²⁰¹

Four other readings get an answer. As inputs to public terms: Microsoft asks commissions "to set our rates high enough". Agreed, but a request binds only once adopted (RT-1, RT-2). SCC staff and consumer advocates read pledges as strategic positioning, and Amazon "disagreed with mandatory direct cost allocation proposals". The political-economy literature explains why: where political "entry" is costly for consumers, "firms can deter it through voluntary restraints".²⁰² Motive does not change incidence; the test is accepting the costly term once imposed, and Oracle's subsidiary litigated it. As a public executive instrument: FERC Commissioner LaCerte expects RTO proposals that "dovetail" with retail implementation, and TVA calls its capacity charge "one of TVA's mechanisms for carrying out the principles" of the Pledge.²⁰³ But the Proclamation binds no commission; TVA's route binds as a rate schedule (RT-2). As a conditional exchange: Amazon asked that contributors "receive top priority in Dominion's interconnection queue".²⁰⁴ That priority shifts delay to other queued customers and should be priced in a public order.

¹⁹⁹ Proclamation No. 11014, *Ratepayer Protection Pledge*, 91 Fed. Reg. 11,439, 11,439 (Mar. 9, 2026) (signed Mar. 4, 2026) (signatories "guarantee that data centers' energy needs will not increase household electricity costs"), <https://www.govinfo.gov/content/pkg/FR-2026-03-09/pdf/2026-04645.pdf>; also at <https://www.whitehouse.gov/presidential-actions/2026/03/ratepayer-protection-pledge-proclamation>.

²⁰⁰ U.S. Env't Prot. Agency, News Release, *President Trump Expands Historic Ratepayer Protection Pledge* (July 23, 2026) (naming Oracle among the seven March 4 signatories), <https://www.epa.gov/newsreleases/president-trump-expands-historic-ratepayer-protection-pledge-protect-american>; Pet. for Judicial Review ¶¶ 30, 38, *supra* note 191; Rehearing petition of Wisconsin Electric Power Co. et al., Docket 6630-TE-113 (June 10, 2026), deemed denied July 10, 2026 (Wis. Stat. § 227.49(5)) (petition "deemed to have been denied" absent an order within 30 days), <https://docs.legis.wisconsin.gov/statutes/statutes/227/iii/49/5>. On the S&P action of July 9, 2026 and the voluntary dismissal motion of Aug. 17, 2026, see Wisconsin Watch (July 9 and Aug. 2026), <https://wisconsinwatch.org/2026/07/wisconsin-regulators-refuse-to-loosen-data-center-credit-rules-setting-up-oracle-court-fight/> and <https://wisconsinwatch.org/2026/08/oracle-drops-lawsuit-challenging-wisconsin-data-center-credit-rules/>.

²⁰¹ White House, release (July 23, 2026) (expansion to "more than 200 additional utilities, data center developers, cooperatives, and states"), <https://www.whitehouse.gov/releases/2026/07/president-trumps-ratepayer-protection-pledge-secures-american-ai-dominance-protects-consumers/>; Microsoft, *Building Community-First AI Infrastructure* (Jan. 13, 2026) (commitment on local property tax), <https://blogs.microsoft.com/on-the-issues/2026/01/13/community-first-ai-infrastructure/>. See Section 7 for the local-tax channel.

²⁰² Microsoft, *supra* note 201 (electricity commitment); SCC Final Order, *supra* note 198, at 9 (Amazon backed voluntary contributions "as a way to reduce ratepayer burden" but "disagreed with mandatory direct cost allocation proposals"); John W. Maxwell, Thomas P. Lyon & Steven C. Hackett, *Self-Regulation and Social Welfare: The Political Economy of Corporate Environmentalism*, 43 J.L. & Econ. 583 (2000), <https://econpapers.repec.org/RePEc:ucp:jlawec:v:43:y:2000:i:2:p:583-617>.

²⁰³ Proclamation No. 11014, *supra* note 199, 91 Fed. Reg. at 11,439 (commitments "effectuate the national policy of the United States"); FERC, *E-10: Commissioner LaCerte's Concurrence, Cal. Indep. Sys. Operator Corp.*, Docket No. EL26-71-000 (June 18, 2026) (expecting proposals that "dovetail with the efforts on the retail side to implement the Ratepayer Protection Pledge"), <https://www.ferc.gov/news-events/news/e-10-commissioner-lacertes-concurrence-california-independent-system-operator>; TVA Board Resolution, *Rate Change and Related Actions*, and Memorandum, Exhibit 08/20/2026L, *supra* note 185, Attachment II ("The Capacity Commitment Charge serves as one of TVA's mechanisms for carrying out the principles in the Ratepayer Protection Pledge Proclamation").

²⁰⁴ SCC Final Order, *supra* note 198, at 9.

FIGURE 16

Funding mode, not ownership, picks the residual claimant

Five funding modes against the project asset they finance, the five exposure channels of Table 9-1, and the airshed. Each cell names the residual bearer and forum; the word and fill give its status. Sources as of September 27, 2026; no totals.

Status: **Binding, public** **Binding, terms withheld** **Pending** **Alleged** **None** **n/a**

Outlined column: channel 1 reaches RPM load whatever the funding mode. None: no rule bars the outcome. n/a: the channel does not reach the mode, or its anchor case where the cell says so. A split cell carries two statuses.

Exposure channels outside large-load tariffs (Table 9-1)							
Funding mode <i>Anchor case in grey</i>	Project asset residual	1. PJM capacity and backstop <i>Where the load is in RPM. Backstop: pending</i>	2. Regional transmission	3. Pre-tariff contracts	4. Co-op, municipal and TVA load	5. Forecast-driven generation	Airshed <i>Texas SB 6 curtailment onto on-site backup adds to this burden</i>
Rate-based generation with electric service agreement (ESA) Entergy for Hyperion; Dominion; We Energies	None Ratepayers after the 15-year ESA (sealed), if the commission allows recovery; plant life 30 years. LPSC	Binding, public Dominion load: RPM load, through price. FERC. Entergy and We Energies: outside PJM	Pending Transmission customers. FERC	None Dominion customers; term and collateral apply only from 2027. SCC	None Member-owners of co-ops and municipal utilities; no commission term. Boards	None Ratepayers via rate base, if the commission allows recovery. IRP and certificate forums	None Host community. State air permit
Contribution-funded upgrades Hyperion upgrades; TVA capacity charge	Binding, public The load, for project upgrades. LPSC order; TVA rate schedule	n/a Anchors outside PJM (MISO; TVA)	Binding, public Project upgrades: the load. LPSC order Pending Regional share. FERC	None TVA customers; existing loads exempt from the charge. TVA Board	Binding, public New TVA load pays a non-refundable charge. TVA Board	n/a	n/a
Private generation: third-party under a power purchase agreement, or owned by the load Williams Socrates South, Ohio (islanded); MZX Tech turbines, DeSoto County, Miss. (xAI subsidiary)	Binding, terms withheld Socrates: investors, Williams 51, Blackstone-led group 49 percent Binding, public MZX Tech: xAI. No rate forum	n/a Socrates islanded †; MZX load outside PJM. Grid-tied plant in PJM: RPM load, through price	n/a Socrates islanded †. Grid-tied plant: transmission customers. FERC	n/a	n/a	None Investors, unless a utility later buys the plant into rate base; no prudence rule bars it (RT-2)	Binding, public Host community. Mississippi air permit issued Mar. 11, 2026
Special-purpose vehicle lease with residual value guarantee (RVG) Hyperion venture; Meta 20 percent, leases from 2029	Binding, public Meta via RVG (about \$28 billion, decreasing), then venture equity; four-year initial lease term. 10-Q Alleged Gap alleged; Entergy: ESA still 15 years	n/a Anchor in MISO	Pending Transmission customers. FERC	n/a	n/a	n/a	Alleged Host community. LDEQ permit; undercount alleged
Federal credit DOE \$1.0 billion loan, Crane restart	Binding, public Constellation's balance sheet, then taxpayers as creditor; no offtaker named. DOE	Binding, public All RPM load, through price. FERC	Pending Transmission customers. FERC	n/a	n/a	n/a	n/a

† Socrates South is islanded: the Ohio Power Siting Board records that it "will not be physically connected to the electric power grid." ESA: electric service agreement. RVG: residual value guarantee. LPSC: Louisiana Public Service Commission. SCC: Virginia State Corporation Commission. LDEQ: Louisiana Department of Environmental Quality. IRP: integrated resource plan. MISO: Midcontinent Independent System Operator. RPM: Reliability Pricing Model, PJM's capacity market.

Sources: LPSC Order U-37425 and intervenor motion; Meta 10-Q (Q2 2026), Note 5; Williams release (July 13, 2026); Ohio Power Siting Board release (June 9, 2025); DOE, Crane Restart; Monitoring Analytics (Jan. 5, 2026); PJM ER26-3380; FERC EL26-67; Virginia SCC; TVA Board resolutions (Aug. 20, 2026); Dominion IRP update; Mississippi Commission on Environmental Quality, Agreed Order No. 7739-26 (July 30, 2026); Louisiana Illuminator report of Sierra Club comments (Aug. 4, 2026). Notes 182 to 197, 34, 66, 99, 161, 166.

Funding mode, not ownership, sets who bears a project asset's residual. PJM capacity-price exposure reaches load in PJM's capacity market whatever the funding mode; islanded plant sits outside it. The 15-year Entergy agreement is sealed.

Nine terms for existing forums would make the settlement public

RT-2 to RT-8 assign cost, risk or duties; RT-1 makes them checkable; RT-9 assigns roles without new decision rights, though its equipment rules under EO 14421 would condition grid-connected generation. All use existing forums; RT-1, RT-2, RT-6 and RT-7 need a state statute for one leg. Disclosure reaches existing deals, whose economics it leaves unchanged; allocation terms apply to new or amended contracts. The terms condition connection, as Ireland and Texas SB 6 do; Singapore instead paused it until 2022.²⁰⁵ Pauses remain the strongest practical objection, so each card states its time-to-power effect.

10.1 Disclosure makes the other terms checkable

RT-1. Who knows: a public tier before approval.

State commissions should require a public tier of structural contract terms before approving any large-load contract of 100 MW or more, by generic order under state public-utility law.

- **Rule.** The tier covers special contracts, tariff deviations and co-location arrangements.²⁰⁶ It lists the contracting entity, parent, guaranty signatory and cap; MW, term, minimum take and firmness election and curtailment obligations; exit-fee and bill-credit formulas; collateral, credit standard and assignment terms; and bill impact by class. Staff, statutory advocates and intervenors see full text under protective order. A critical energy or electric infrastructure information (CEII), privileged-treatment or security label alone does not redact a commercial term; unit price may be lagged or aggregated.²⁰⁷
- **Teeth and exchange.** A filing without the public tier is suspended; undisputed redactions lapse on a fixed date. States may fund intervenors at the load's cost (Wisconsin assesses utilit-

²⁰⁵ Comm'n for Regulation of Utils. (Ireland), *Large Energy Users Connection Policy: Decision Paper*, CRU/2025/236, §§ 3.4, 3.8.3 (Dec. 12, 2025), https://cruie-live-96ca64acab2247eca8a850a7e54b-5b34f62.divio-media.com/documents/CRU2025236_Large_Energy_User_connection_policy_decision_paper.pdf; Tex. S.B. 6, 89th Leg., R.S. (2025) (enrolled), <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00006F.pdf>; Infocomm Media Dev. Auth. & Econ. Dev. Bd. (Singapore), *Four Data Centre Proposals Selected as Part of Pilot Data Centre Call for Application* (July 14, 2023) ("After the temporary pause in the growth of DCs was lifted in 2022, a pilot DC-CFA was launched"), <https://www.imda.gov.sg/resources/press-releases-factsheets-and-speeches/press-releases/2023/four-data-centre-proposals-selected-as-part-of-pilot-data-centre-call-for-application>; Singapore Econ. Dev. Bd. & Infocomm Media Dev. Auth., *Four Data Centre Proposals Selected as Part of Second Data Centre Call for Application (DC-CFA2)*, <https://www.edb.gov.sg/en/about-edb/media-releases-publications/four-data-centre-proposals-selected-as-part-of-second-data-centre.html>.

ies).²⁰⁸ The load gives up headline confidentiality and development aliases, bears filing and intervenor costs, and gets a standard path, fewer refilings and orders that survive records suits.²⁰⁹

- **With.** FERC, by rule under FPA 205(c) and 206 for co-location and large-load agreements filed with it, amending its privileged-treatment practice under 18 C.F.R. 388.112; legislatures where statute seals terms (Minnesota); DOE, by limiting its own CEII designations under FPA 215A(d) to engineering detail.²¹⁰
- **Next step.** A model bill for 2027 sessions, drafted by December 2026; IURC subdocket 46276 S1 as the test case; a transparency amendment to H.R. 9340. Success: no approvals with sealed public-tier fields.
- **Trigger (proposed).** Any approval of a 100 MW or larger contract with sealed public-tier fields after mid-2027 (state consumer advocates track); escalate to statute.
- **Cost and resources.** Commission staff time in existing dockets; no appropriation.
- **Politics and effects.** Champions are commissions (Wisconsin, Indiana), advocates and investment-grade pledgers. The Data Center Coalition, utilities and development agencies resist; protecting unit price meets I&M's objection that terms "could influence future discussions between I&M and other customers".²¹¹ Neutral to faster, since redaction fights lengthened Wisconsin's proceeding. Given the Wisconsin and Indiana records (Section 6.2), this is the most adoptable term.

²⁰⁷ 18 C.F.R. § 388.112 (requests for privileged treatment of documents submitted to the Commission), <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-X/part-388/subpart-C/section-388.112>; 18 C.F.R. § 388.113(c) (critical electric infrastructure information is information designated under FPA 215A(d); critical energy infrastructure information is specific engineering, vulnerability or detailed design information; a CEII label alone does not establish that a commercial term is protected), <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-X/part-388/subpart-D/section-388.113>; 16 U.S.C. § 824o-1(d), <https://www.law.cornell.edu/uscode/text/16/824o-1>.

²⁰⁶ Threshold crosswalk. The 100 MW floor matches H.R. 9340's coverage of data centers of "100 megawatts or more at a single site or campus" (engrossed text; passed House Sept. 16, 2026, Roll no. 312; placed on Senate calendar Sept. 23, 2026), <https://www.congress.gov/bills/119/congress/house-bill/9340/all-actions> (PURPA § 111(d) standard; consider-and-determine only; no transparency provisions). Other lines: FERC's preliminary large-load definition, 50 MW or more above 69 kV, *PJM Interconnection, L.L.C.*, Order Instituting Proceeding Under Section 206 of the Federal Power Act (show-cause order), 195 FERC ¶ 61,211, Docket No. EL26-67-000, P 58 & n.2 (June 18, 2026), <https://www.ferc.gov/sites/default/files/2026-06/EL26-67-000.pdf>; NERC's proposed registration of Computational Load Sites of 50 MW or more at 100 kV or above, NERC, Proposed Revisions to Rules of Procedure, App. 5B, § III.c.1 (Aug. 19, 2026 posting) (revises NERC's April 2026 proposal; proposed, subject to NERC Board and FERC approval), <https://www.nerc.com/globalassets/who-we-are/rules-of-procedure/proposed/appendix-5b-clean---august-2026-posting.pdf>; and SB 6's 75 MW default, Tex. Util. Code § 37.0561(c), *supra* note 205. The EU offers a model for facility-level reporting, not a mirror for contract disclosure: Commission Delegated Regulation (EU) 2024/1364 of 14 March 2024, art. 1, OJ L 2024/1364 (17.5.2024), adopted under art. 33(3) of Directive (EU) 2023/1791, applies to data centres with installed IT power demand of at least 500 kW, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401364.

²⁰⁸ Wis. Stat. § 196.31(1)(a) (participation "is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation"), (1)(b) (participation "has provided a significant contribution to the record and has caused a significant financial hardship to the participant"), (2) (compensation "assessed under s. 196.85 (1)"), <https://docs.legis.wisconsin.gov/statutes/statutes/196/31>.

²⁰⁹ Pub. Serv. Comm'n of Wis., Press Release, Docket 6680-TE-115, at 1 (May 7, 2026) (recording the ALJ's February 2026 direction to refile "with fewer redactions"), <https://psc.wi.gov/Documents/PressReleases/05.08.26PressRelease.PDF>; Dane County Circuit Court oral ruling ordering release of Meta load projections (Aug. 17, 2026), as reported in Midwest Envtl. Advocates, *Legal Victory!* (Aug. 18, 2026), <https://midwestadvocates.org/legal-victory-judge-orders-release-of-information-about-energy-use-at-metas-beaver-dam-data-center/>.

²¹⁰ Minn. Laws 2025, 1st Spec. Sess., ch. 12, sec. 16 (Minn. Stat. § 216B.72(c): fee data "must be treated as nonpublic data"), <https://www.revisor.mn.gov/laws/2025/1/Session+Law/Chapter/12/>; 16 U.S.C. § 824d(c) (every public utility shall file and "keep open in convenient form and place for public inspection" its rate schedules, "together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services"), <https://www.law.cornell.edu/uscode/text/16/824d>; 16 U.S.C. § 824e, <https://www.law.cornell.edu/uscode/text/16/824e>; 18 C.F.R. §§ 388.112, 388.113 and 16 U.S.C. § 824o-1(d), *supra* note 207.

10.2 Bargain 1: the load pays for what it causes

RT-2. Retail who pays: the floor plus increments.

State commissions should add four increments to the common large-load floor under state public-utility law, so that terms bind successors, bar utility-only credit waivers and size exit fees and collateral to net book value, and legislatures should enact two statutory increments that protect other classes.

- **Rule.** Credit the common floor, which existing tariffs set at different levels (Section 6.1). Add six increments as a burden-of-proof default:²¹²
- (a) successors and assignees bound; guaranties shown enforceable;
- (b) a published credit standard the utility cannot waive alone (Wisconsin's A-/A3 standard for exemption from collateral);
- (c) exit fee and collateral sized to net book value of customer-specific investment, net of demonstrated redeployment value;
- (d) a mandatory contribution in aid of construction for direct-connect transmission (Virginia's SCC directed Dominion on July 31, 2026 to file one within 90 days);
- (e) a statutory presumption against charging other classes the retail costs of contracts filed without the RT-1 tier (not FERC-approved wholesale charges);
- (f) no rate-base buyout of dedicated third-party generation without a public prudence finding.
- **Exchange.** Unrecovered cost falls on collateral, the parent guaranty, then the contracting entity's equity and creditors; under (e) and (f), utility shareholders pay before other classes. The load gets a standard tariff, not litigation.
- **With and next step.** FPA 201(b) reserves retail sales to the states; it grants no authority. Legislatures act for (e) and (f), on Minnesota's stranded-cost model; co-op, municipal and TVA boards by choice.²¹³ Intervenor's propose the increments in the states with pending large-load tariffs; success is adoption of (a) to (c) in two.

²¹¹ Ind. Mich. Power Co., Proposed Order ¶ 9 (reciting the rebuttal testimony of I&M witness Loveman), as reproduced in OUCC, Exceptions to I&M Proposed Order, IURC Cause No. 46276 (Dec. 17, 2025) (findings the Commission did not adopt), https://iurc.portal.in.gov/_entity/sharepointdocumentlocation/e2e5b537-85db-f011-8544-001dd803db57/bb9c6bba-fd52-45ad-8e64-a444aef13c39?file=46276+OUCC+Exceptions+to+Proposed+Order+12.17.2025.doc.pdf; Ind. Util. Regulatory Comm'n, Order, Cause No. 46276, Finding ¶ 9 and Ordering ¶¶ 4-5 (Apr. 29, 2026) (declining trade-secret treatment on the record and opening subdocket S1), https://www.in.gov/iurc/files/ord_46276_042926.pdf; Cause No. 46276 S1 (Order Initiating Subdocket Apr. 30, 2026; pending, with an attorney conference scheduled by docket entry of Aug. 28, 2026); Pub. Serv. Comm'n of Wis., Press Release, *supra* note 209.

²¹² Pub. Serv. Comm'n of Wis., Final Decision, Docket 6630-TE-113 (May 21, 2026), as recited in Pet. for Judicial Review ¶¶ 37, 51, *Oracle Am. Cloud Servs. LLC v. Pub. Serv. Comm'n of Wis.*, No. 2026CV000256 (Ozaukee Cnty. Cir. Ct. filed June 19, 2026), <https://wisconsinwatch.org/wp-content/uploads/2026/06/2026CV256-1.pdf> (reciting the A-/A3 floor; voluntary-dismissal motion filed Aug. 17, 2026; the Wisconsin Circuit Court Access record lists the case as closed, <https://wcca.wicourts.gov/>); Va. State Corp. Comm'n, Final Order, Case No. PUR-2026-00056, at 11-12, 14 (July 31, 2026) (directing Dominion to file, within 90 days in a new docket, an amended line-extension policy requiring a mandatory CIAC, net of a transmission-revenue credit, prospectively and only for "direct connect" transmission facilities), <https://www.scc.virginia.gov/docketsearch/DOCS/8dt001l.PDF>; *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988) (filed-rate limits on state disallowance of FERC-approved wholesale costs).

²¹³ 16 U.S.C. § 824(b) (reserving retail sales to the states), <https://www.law.cornell.edu/uscode/text/16/824>; Minn. Stat. § 216B.1622, subd. 2(3), enacted by 2025 Minn. Laws 1st Spec. Sess. ch. 12, *supra* note 210.

- **Trigger (proposed).** A large load exits or defaults leaving cost above posted collateral (commission staff track in rate cases); resize collateral.
- **Cost and resources.** Borne by the load through collateral and guaranties.
- **Politics and effects.** Investment-grade pledgers gain, since public credit terms raise rivals' costs; lower-rated developers resist (concession: phased credit tiers for cash posters). Mostly neutral; slower for lower-rated developers, which screens speculative requests (Section 6.1).

RT-3. Wholesale and transmission who pays.

FERC should keep posted large-load upgrade costs and a pro forma cost recovery agreement in its final orders in the six large-load proceedings, under FPA 206.

- **Rule.** Both reforms come from the June 18, 2026 show-cause orders in EL26-67 to EL26-72.²¹⁴ Study-identified upgrades go to the transmission customer of record, net of demonstrable system-wide benefit (the consumer-advocate position); allocation under PJM's Regional Transmission Expansion Plan (RTEP) is untouched.
- **Docket position.** In PJM's backstop procurement, cost falls on load-serving entities whose firm large-load forecasts trigger it, exempting curtailable load, extending DOE's causer-pays principle. Against the objection that this breaks a uniform clearing signal, only out-of-market procurement is reached, and firmness elections are public (RT-1) and binding (RT-4). PJM sought an ER26-3380 order by September 29, 2026; no order had issued as of September 27, 2026.²¹⁵
- **With and next step.** RTOs under FPA 205; commissions for flow-through. RTOs respond by November 16, 2026 (SPP: November 20), intervenors 30 days later; success is an order keeping both reforms.
- **Trigger (proposed).** Final orders drop posted upgrade costs or the pro forma agreement (consumer advocates track); seek rehearing.
- **Cost and resources.** FERC staff within existing proceedings.
- **Politics and effects.** DOE, advocates and PJM governors support; generators oppose reopening regional allocation. Neutral to faster.

RT-4. Who controls: firm or non-firm service.

²¹⁴ Show-cause order, *supra* note 206, PP 3, 35, 37 (PJM and the Transmission Owners respond within 60 days; "Interested entities may respond within 30 days of PJM's and the Transmission Owners' filings"), 67, 76-84 (preliminary findings that the Tariff "appears to be unjust and unreasonable" without upgrade-cost transparency and a pro forma cost recovery agreement), Ordering Paras. (B), (E); FERC abeyance orders (Aug. 14, 2026), eLibrary accessions 20260814-3059 (PJM), 20260814-3060 (SPP, to Nov. 20, 2026), 20260814-3068 (NYISO), 20260814-3058 (MISO), 20260814-3061 (CAISO), 20260814-3056 (ISO-NE); FPA §§ 206, 301, 304, 307(a), 16 U.S.C. §§ 824e, 825, 825c, 825f(a), <https://www.law.cornell.edu/uscode/text/16/chapter-12>; *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009); *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018) (cost allocation must track benefits).

²¹⁵ The report's docket position: backstop procurement cost falls on load-serving entities whose firm large-load forecasts trigger it, exempting curtailable load. This follows the causer-pays logic of DOE's principle that load and hybrid facilities pay all network upgrades assigned in interconnection studies, and the commitment of the governors of all 13 PJM states on "new data center loads that have not otherwise procured capacity or agreed to be curtailable". Letter from Sec'y of Energy Chris Wright to FERC under DOE Organization Act § 403, ¶ 25 (Eighth principle), at 13 (Oct. 23, 2025), <https://www.energy.gov/sites/default/files/2025-10/403%20Large%20Loads%20Letter.pdf>; *Statement of Principles Regarding PJM* (Jan. 16, 2026), <https://www.energy.gov/documents/statement-principles-regarding-pjm>; PJM, *Reliability Backstop Procurement to Address Resource Adequacy Concerns Stemming from Large Loads*, Docket No. ER26-3380-000, transmittal at 1-2 (PDF p. 9) (requesting an order "by no later than September 29, 2026") (July 31, 2026), accession 20260731-5214, <https://www.pjm.com/pjmfiles/directory/etariff/FercDockets/9806/20260731-er26-3380-000.pdf>.

RTOs should keep non-firm transmission service for large loads in their November 16, 2026 responses to FERC, under FPA 205, so that each load's firmness election sets its cost share and curtailment exposure.

- **Rule and exchange.** FERC's EL25-49 non-firm products bind the transmission customer; state interruptible tariffs bind the end user, curtailed ahead of firm retail load.²¹⁶ The load gives curtailment rights and equipment for earlier energization; mandatory curtailment is unpaid, since speed is the consideration.
- **Rival: state statute as the instrument.** Texas officials cite SB 6's approval and curtailment powers (Section 4.1).²¹⁷ *Reply*: adopted for ERCOT and retail curtailment; elsewhere a state statute cannot reach FPA 215 obligations or FERC-jurisdictional transmission (Section 5).
- **With and next step.** FERC under FPA 206; state commissions for interruptible retail tariffs. Success is a NARUC model interruptible tariff adopted in three states outside ERCOT.
- **Trigger (proposed).** Non-firm service under 10 percent of new PJM large-load MW by the end of 2027 (the market monitor tracks); revisit firm pricing.
- **Cost and resources.** RTO tariff design in pending filings; loads fund curtailment equipment.
- **Politics and effects.** Loads needing near-total firmness resist. Faster (the main speed term), though curtailing onto backup shifts exposure to the airshed.

RT-5. Reliability and security attach to configuration. *Bargains 1 and 3; the consideration is access.*

NERC should scope its planned 2027 standards request on co-located generation to cover Exclusion E2, CIP-002 categorization, low-impact controls and joint telemetry, under FPA 215, with a FERC directive under section 215(d)(5) as the fallback.

- **Rule.** The Computational Load Owner standards, whose initial ballots passed on September 18, 2026, are due at FERC by December 31 under RD26-7. The 2027 Standard Authorization Request (SAR) that NERC's Large Load Working Group recommended should rest on a finding that generation behind a registered Computational Load Site is needed to maintain transmission system reliability, since its trip shifts the full load onto the grid. Order No. 912 stays the supply-chain baseline.²¹⁸ By section 206 rulemaking, FERC revises Appendix D of the large

²¹⁶ *Co-Located Load Configurations in PJM*, 193 FERC ¶ 61,217, Docket Nos. EL25-49-000 et al. (Dec. 18, 2025), eLibrary accession 20251218-3081; *PJM Interconnection, L.L.C.*, Order on Rehearing, Clarification, Compliance Filing, and Paper Hearing, 195 FERC ¶ 61,209, Docket No. EL25-49-002 et al. (June 18, 2026) (Commission meeting item E-2) (rehearing deemed denied by operation of law Aug. 20, 2026, eLibrary accession 20260820-3008), listed at FERC, *Summaries, June 2026 Commission Meeting*, <https://www.ferc.gov/news-events/news/summaries-june-2026-commission-meeting>; Tex. Util. Code §§ 37.0561, 39.170 (retail curtailment), as added by S.B. 6, *supra* note 205; *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008) (state opt-out from retail aggregation of demand response).

²¹⁷ Tex. Util. Code § 39.169(d), as added by S.B. 6, *supra* note 205 (approval and curtailment powers); *id.* §§ 37.0561, 39.170 (large-load interconnection standards and curtailment or backup deployment in emergencies).

²¹⁸ *Reliability Standard(s) Pertaining to Computational Load Integration*, 196 FERC ¶ 61,031, Docket No. RD26-7-000 (July 16, 2026), <https://www.ferc.gov/sites/default/files/2026-07/RD26-7-000.pdf>; NERC, Project 2026-02 FAQ, at 3, 12 (Aug. 19, 2026) (initial ballots passed Sept. 18, 2026; NERC Board approval targeted Dec. 2026; filing due Dec. 31, 2026; "there may need to be additional NERC reliability standard development regarding co-located generation"; the Large Load Working Group "recommended a potential SAR in 2027"), <https://www.nerc.com/globalassets/standards/projects/2026-02/formal-posting-1/formal-posting-1/project-2026-02-faq---august-19-2026.pdf>; *Supply Chain Risk Management Reliability Standards Revisions*, Order No. 912, 90 Fed. Reg. 45,661 (Sept. 23, 2025) (directing NERC to submit new or modified supply chain risk management Reliability Standards within 18 months of issuance; declining to include low impact assets; CIP-013-4 is NERC's project under that directive), <https://www.govinfo.gov/content/pkg/FR-2025-09-23/html/2025-18394.htm>; 16 U.S.C. § 824o(d)(5), (f), <https://www.law.cornell.edu/uscode/text/16/824o>; NERC Glossary, "Bulk Electric System", Exclusion E2; CIP-002, Attachment 1, criterion 2.1; show-cause order, *supra* note 206, PP 91-93 (generator interconnection for proximate and co-located load).

generator interconnection agreement (LGIA) for new requests, surplus service and material modifications: grid-facing performance, protection, telemetry and CIP registration notice; cyber stays under FPA 215.

- **With and next step.** FERC, by directive or rulemaking. Adopted positions: section 215 avoids a retail-jurisdiction fight, and FERC's restraint is sequencing. DOE's Office of Cybersecurity, Energy Security, and Emergency Response (CESER) comments on the 2027 standards request; success is a scoped 2027 SAR or a directive.
- **Trigger (proposed).** The 2027 request omits co-located generation, or a load-loss event of 1,000 MW or more involves it (NERC event analysis tracks); FERC directs under section 215(d) (5).
- **Cost and resources.** Compliance by registered owners as a cost of bulk-power supply; NERC standards staff.
- **Politics and effects.** Generator owners and hyperscalers resist the scope (concession: low-impact tier only). Slightly slower at commissioning; islanded plants stay outside.

10.3 Bargain 2: tax and siting inputs carry public terms

RT-6. Tax expenditures as priced public inputs.

State legislatures should attach a published but-for estimate, a sunset, recapture and pre-approval filing of host agreements to every new or renewed data-center tax preference, under state tax law, in 2027 sessions.

- **Rule.** The but-for estimate separates first siting from server refresh. Recapture covers missed commitments (as in Mount Pleasant's minimum assessed value); reporting meets Governmental Accounting Standards Board (GASB) Statement 77; filed host agreements show recipient shares. Minnesota should repeal its nonpublic designation of fee data. Local fiscal gains are conceded (Section 7).²¹⁹
- **Exchange.** Operators trade inframarginal rents (Section 7.1) for legislated schedules instead of executive pauses like Ohio's.²²⁰
- **With and next step.** State auditors. Washington (its legislative auditor's final report) and Virginia (its consumption-tax cap) come first; success is a published evaluation before each extension.
- **Trigger (proposed).** An exemption comes up for renewal without a published but-for estimate (state auditors track); withhold renewal.
- **Cost and resources.** Auditor staff for but-for evaluations.

²¹⁹ Racine County Econ. Dev. Corp., *Expansion of Microsoft Datacenter in Racine County* (Nov. 16, 2023), <https://rccdc.org/expansion-of-microsoft-datacenter-in-racine-county/>; Gov't Accounting Standards Bd., Statement No. 77, *Tax Abatement Disclosures* (Aug. 2015), <https://www.gasb.org/page/PageContent?pagelid=/standards-guidance/pronouncements/summary-statement-no-77.html>; Minn. Stat. § 216B.72(c), *supra* note 210; Wash. JLARC, *2026 Tax Preference Review: Data Centers in Urban Counties* (Preliminary Report, July 2026) (first siting versus refurbishment), <https://leg.wa.gov/jlarc/taxReports/2026/data/1/report.html>.

²²⁰ Office of the Governor of Ohio, *Governor DeWine Announces Pause of Data Center Tax Exemption* (May 27, 2026), <https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-pause-of-data-center-tax-exemption>.

- **Politics and effects.** Audit offices support; governors defending exemptions resist, as Georgia's did by vetoing a 2024 suspension (concession: sunset-and-review, not repeal).²²¹ Negligible national time-to-power effect; location may shift among states.

RT-7. Siting and environment on a public record.

State legislatures should require siting boards and air agencies to decide dedicated generation on a public record, with host governments as parties, under state siting statutes and Clean Air Act section 116.

- **Rule.** Air agencies aggregate all engines serving a campus as one source, and legislatures close the common-control gap where third-party ownership splits one. Public notice holds above a size threshold whatever EPA finalizes, since section 116 preserves stricter state rules. Large water withdrawals are reported to the state water agency and published by facility. Preemption states give townships party rights (a statutory change in Ohio); states without a certificate for self-supply generation, such as Texas, enact a prospective registration statute.²²²
- **Exchange.** Developers give notice time, bonds and data for single-decision certainty and fewer voided approvals.
- **Next step.** A Texas bill for January 2027 comes first; success is no plant above threshold on an unnoticed permit.
- **Trigger (proposed).** A plant above threshold runs on an unnoticed permit or exemption (air agencies and host counties track); reopen siting.
- **Cost and resources.** Siting-board and air-agency staff, funded by application fees and developer bonds.
- **Politics and effects.** Host communities support; permit-by-rule developers resist, as have governors facing statewide siting standards (Virginia's 2025 HB 1601 veto).²²³ Slower at the permit step.

10.4 Bargain 3: federal inputs and security claims need public rules

RT-8. Federal public inputs carry covenants.

²²¹ Georgia's governor vetoed a 2024 suspension of the exemption: Office of the Governor of Georgia, 2024 *Veto Messages*, Veto No. 7 (H.B. 1192) (the bill "would prevent the issuance of exemption certificates after an abrupt July 1, 2024 deadline for many customers of projects that are already in development"), PDF p. 3, <https://gov.georgia.gov/document/2024-vetoed-legislation/2024-veto-messages/download>.

²²² Source aggregation turns on common control, contiguous or adjacent property and the same industrial grouping; CAA section 116 preserves stricter state notice rules; the Texas Governor has directed the TWDB to enforce water-use reporting. 40 C.F.R. § 52.21(b)(5)-(6) (stationary source; building, structure, facility or installation defined by industrial grouping, contiguous or adjacent property and common control), <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-52/subpart-A/section-52.21>; 42 U.S.C. § 7416 (CAA § 116, retention of state authority), <https://www.law.cornell.edu/uscode/text/42/7416>; U.S. EPA, *Minor New Source Review Program Air Permitting Public Participation Requirements*, Proposed Rule, 91 Fed. Reg. 41591 (July 7, 2026), <https://www.federalregister.gov/documents/2026/07/07/2026-13667>; Office of the Texas Governor, *Governor Abbott Directs TWDB To Penalize Data Center Reporting Failures* (Sept. 14, 2026) (a directive to use enforcement authority over the statutory water use survey), <https://gov.texas.gov/news/post/governor-abbott-directs-twdb-to-penalize-data-center-reporting-failures>; Ohio Rev. Code §§ 4906.01(B)(1)(a), 4906.06(B) (service on "the chief executive officer of each municipal corporation and county"), 4906.08(A) (parties), 4906.13(B), <https://codes.ohio.gov/ohio-revised-code/section-4906.06>, <https://codes.ohio.gov/ohio-revised-code/section-4906.08>; Tex. Util. Code § 31.002(6)(J); *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983).

²²³ Governors facing statewide siting standards have resisted: Governor Glenn Youngkin, Veto of H.B. 1601 (May 2, 2025) ("This bill limits local discretion and creates unnecessary red tape"), <https://lis.virginia.gov/bill-details/2025/HB1601/text/HB1601VG>.

DOE, including NNSA, should publish lease term sheets with rent and lessee-funded decommissioning security before executing federal-site leases under 42 U.S.C. 7256 or 10 C.F.R. part 770.

- **Rule.** Federal leases publish rent against fair market value (any discount is the transfer), require lessee-funded decommissioning with security, route power agreements to the rate regulator of record, and hold ratepayers harmless on RT-2 terms. Federal credit, such as DOE's \$1.0 billion Crane loan, is disclosed as contingent exposure.²²⁴
- **With and next step.** Each lease's authority is not yet public. Commissions, or the TVA Board at Oak Ridge, approve power service. Success is a term sheet published before each of the Savannah River, Paducah, INL and Oak Ridge leases.
- **Trigger (proposed).** A federal-site lease executes without a published term sheet (appropriations committees track); condition appropriations.
- **Cost and resources.** Lessees fund decommissioning security; DOE counsel prepares term sheets; taxpayers bear only disclosed discounts and credit.
- **Politics and effects.** DOE already assigns decommissioning to applicants. Developers argue that term sheets reveal negotiating positions to rival sites. Rent and decommissioning security on public land are the public's side of the deal; other terms can stay redacted. Neutral, one added step.

RT-9. Public rule, non-public roster.

DOE, as Energy Sector Risk Management Agency, should publish criteria for federal security claims over couplings under 6 U.S.C. 665d, with the National Security Council coordinating their adoption across agencies by presidential directive.

- **Rule.** DOE names the coupling a cross-sector risk by configuration and publishes criteria, counts and gaps for CISA to carry forward.²²⁵ A claim under the criteria names the forum it displaces and leaves review in place absent a named statutory exemption. Criteria bind other agencies only by presidential directive or statute. The National Security Council (NSC) co-

²²⁴ 42 U.S.C. § 7256(a), (c)-(e) (subsection (e): EPA or state-official concurrence on environmental conditions before a subsection (c) lease, deemed given after 60 days without response; general authority for "contracts, leases, cooperative agreements, or other similar transactions"; subsection (c) leases of property "located at a facility of the Department of Energy to be closed or reconfigured", on terms "the Secretary considers appropriate to promote national security or the public interest", which may be below fair market rental value, for up to 10 years with renewal on a finding), <https://www.law.cornell.edu/uscode/text/42/7256>. The below-market rent and 10-year terms apply to subsection (c) leases of excess property at facilities to be closed or reconfigured; the authority DOE invokes for each AI site lease is not yet public. 10 C.F.R. § 770.1(a) (transfer "by sale or lease" of real property at closed or downsized defense nuclear facilities), <https://www.ecfr.gov/current/title-10/chapter-III/part-770>; DOE, *Energy Department Seeks Proposals for AI Data Centers, Energy Projects at Idaho National Laboratory* (Sept. 8, 2025), <https://www.energy.gov/ne/articles/energy-department-seeks-proposals-ai-data-centers-energy-projects-idaho-national>; DOE Office of Env'tl. Mgmt., *U.S. Energy Department Seeks Proposals for AI Data Centers, Energy Projects at Oak Ridge* (Sept. 30, 2025) (leases "solely funded by the applicants"), <https://www.energy.gov/em/articles/us-energy-department-seeks-proposals-ai-data-centers-energy-projects-oak-ridge>; DOE, Paducah release (July 29, 2026), <https://www.energy.gov/articles/energy-department-announces-partnership-expand-reliable-affordable-energy-access-and-power>; NNSA, *NNSA Selects Amentum for AI Data Center and Energy Project at Savannah River Site* (July 20, 2026), <https://www.energy.gov/nnsa/articles/nnsa-selects-amentum-ai-data-center-and-energy-project-savannah-river-site>; DOE, *Crane Restart*, <https://www.energy.gov/edf/crane-restart>. Commissions, or the TVA Board at Oak Ridge, approve power service under these leases; DOE already assigns decommissioning to applicants.

²²⁵ 6 U.S.C. §§ 650(23), 665d (Energy Sector Risk Management Agency), <https://www.law.cornell.edu/uscode/text/6/665d>; National Security Memorandum on Critical Infrastructure Security and Resilience (NSM-22) (Apr. 30, 2024), <https://www.govinfo.gov/content/pkg/DCPD-202400358/html/DCPD-202400358.htm>; Exec. Order No. 14239, § 3(b), 90 Fed. Reg. 13267, 13267-68 (Mar. 21, 2025); Pub. L. 114-94, § 61003(c); NERC, Proposed Revisions to Rules of Procedure, App. 2, "Computational Load Site" (Aug. 19, 2026 posting) (revises NERC's April 2026 proposal; proposed, subject to NERC Board and FERC approval), <https://www.nerc.com/who-we-are/rules-of-procedure/proposed-changes-to-rules-of-procedure>; 16 U.S.C. § 824o-1(a)(4), *supra* note 207; RD26-7 order, *supra* note 218 (no cyber, CIP or supply-chain requirements).

ordinates with DOE which agencies may assert such claims and drafts that directive; Congress is the backstop, on the Clean Air Act model: "The President shall report to Congress with respect to each exemption".²²⁶ DOE's EO 14421 rules should cover generation serving computational load within the section 5(a) bulk-power system, limited to what Order No. 912 does not reach.²²⁷ No new sector is sought.

- **Exchange and rivals.** The security state trades ad hoc displacement for a defined, durable status. This answers the anti-securitization rival (Section 8.5); RT-5, RT-8 and the cost line answer the view that security belongs in each bargain.
- **Next step.** EO 14421 rules, due December 24, 2026; a National Defense Authorization Act (NDAA) draft after the November 3 midterms. Success: published criteria and an unclassified risk entry in DOE's next sector risk assessment.
- **Trigger (proposed).** An agency asserts a security claim over a coupling without published criteria (the NSC and DOE track); Congress legislates.
- **Cost and resources.** DOE CESER and NSC staff time; security costs beyond RT-5 compliance that follow federal choices are appropriated, not put in rates.
- **Politics and effects.** DOE CESER supports; DOJ, DoD and congressional committees resist. Their strongest argument is that published criteria constrain executive flexibility in a crisis. The criteria govern standing claims; emergency powers keep their own procedures (Section 8.5). NSM-22 review may change the baseline. Neutral on construction.

10.5 Host process rights, binding floors and conditionality are already written into the terms

The report adopts rivals where a forum holds the instrument (Section 2).

Host-community process rights (Section 7.4) are met by RT-7's party rights and published water data, RT-9's review guarantee and RT-1 and RT-6's pre-approval filing; the report adds no local veto, since counties already decide the load side.

Binding floors (Sections 7.5 and 9.4) become RT-2's successor-binding terms, with load-triggered costs on the load (RT-3, RT-4) and federal security costs appropriated (RT-9).

Conditionality (Section 7.5) is adopted where the inputs sit, in state tax codes and federal leases (RT-6, RT-8).

²²⁶ United States' Memorandum, *NAACP v. X.AI Corp.*, No. 3:26-cv-00074 (N.D. Miss.), ECF No. 86 (July 7, 2026) (moving to intervene and dismiss), <https://www.courtlistener.com/docket/73188848/86/national-association-for-the-advancement-of-colored-people-v-xai-corp/>; 42 U.S.C. § 7412(i)(4), <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/html/USCODE-2023-title42-chap85-subchapl-partA-sec7412.htm> (the exemption itself reaches only section 112 standards and requires a finding that control technology is unavailable; the reporting duty is the model); on the appeal and stay motion, ECF Nos. 123-126, <https://www.courtlistener.com/docket/73188848/national-association-for-the-advancement-of-colored-people-v-xai-corp/>. As of Sept. 27, 2026, the United States' Fifth Circuit appeal and its stay motion, ECF No. 124, are pending; xAI filed in support, ECF No. 126.

²²⁷ Exec. Order No. 14421, *Declaring a National Emergency to Secure the United States Bulk-Power System* (Aug. 26, 2026), §§ 2(a)-(b), 3(b), 5(a), 91 Fed. Reg. 55995, 55995-97 (Aug. 31, 2026), <https://www.whitehouse.gov/presidential-actions/2026/08/declaring-a-national-emergency-to-secure-the-united-states-bulk-power-system/> (IEEPA-based; reaches foreign-produced bulk-power-system equipment tied to covered foreign entities; rules due within 120 days under § 3(b), on Dec. 24, 2026; DOE RFI Sept. 9, 2026, 91 Fed. Reg. 57322, responses due Oct. 9, 2026; plants not connected to the bulk-power system fall outside the § 5(a) definition).

The fiscal evaluations of Section 7.1 ground RT-6's sunset-and-review, and FERC's six proceedings ground RT-3, though FERC cannot reach retail rates, tax expenditures or land use.²²⁸

Further positions: separation, priority compute and no new terms.²²⁹ Antimonopoly advocates would bar Big Tech from owning energy companies; FERC chose priced participation, and RT-2 and RT-4 price control. For DoD priority access to computing, Defense Production Act rated orders already reach services, though Title I, including section 101, terminates on December 11, 2026 unless Congress extends it, leaving earlier contracts and obligations in force (Section 8.5). Industry-sponsored studies finding no historical subsidy look backward; RT-2 is a default, and RT-1 protects unit price.

10.6 Federal windows close first; state sessions follow

Nine single-forum terms are not yet a settlement. Dated federal windows close first (Figure 17); 2027 state sessions and lease execution follow. The FERC-NARUC Collaborative exists to "provide a venue for federal and state regulators to share perspectives";²³⁰ if it stalls, DOE may propose rules to FERC under section 403.

Coalitions set the order. State commissions, including RT-1's champions in Wisconsin and Indiana, urge FERC to preserve their retail authority;²³¹ RT-5 avoids that fight through section 215. The available trade is state acceptance of standard grid-facing terms for mandatory public filing and full upgrade assignment.

²²⁸ FERC, News Release, *FERC Launches Aggressive Targeted Action to Speed Large Load Integration* (June 18, 2026) (listing among reform categories "Preventing cost shifting and requiring transparency into transmission costs"), <https://www.ferc.gov/news-events/news/ferc-launches-aggressive-targeted-action-speed-large-load-integration>.

²²⁹ Positions and holders. Separation: antimonopoly advocates, including AI Now Inst., *North Star Data Center Policy Toolkit: Policy Interventions* (updated Jan. 2026), PDF p. 94 (preventing "Big Tech companies from owning energy companies and data centers"), <https://datacenters.ainowinstitute.org/wp-content/uploads/2026/03/North-Star-Data-Center-Policy-Toolkit-Policy-Interventions.pdf>; FERC's choice of priced participation, FERC, *Fact Sheet: FERC Directs Nation's Largest Grid Operator to Create New Rules to Embrace Innovation and Protect Consumers* (Dec. 18, 2025), <https://www.ferc.gov/news-events/news/fact-sheet-ferc-directs-nations-largest-grid-operator-create-new-rules-embrace>; EL25-49 orders, *supra* note 216. Priced priority compute: national-security planners, citing The White House, *America's AI Action Plan* (July 2025), PDF p. 15 (Pillar I, Government and Military Use) (DoD to "codify priority access to computing resources in the event of a national emergency"), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>; reply resting on 50 U.S.C. § 4511(a) and 15 C.F.R. pt. 700; 50 U.S.C. § 4564(a) (termination of subchapter I on Dec. 11, 2026), as amended by Pub. L. No. 119-103, div. B, § 2004 (Sept. 2, 2026), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title50-section4564&num=0&edition=prelim>. No new terms: hyperscaler regulatory counsel (Data Center Coalition-aligned) and the Administration's permitting officials, citing E3 for Amazon, *Ratepayer Study* (Dec. 2025), <https://www.ethree.com/ratepayer-study/>; E3 for the Data Center Coalition, *Are Data Centers Driving Up Electricity Rates?* (May 2026) ("The quantitative studies reviewed do not show evidence of historical subsidization"), <https://www.ethree.com/electricity-rate-drivers-data-center-role-2026/>; and Exec. Order No. 14318, *Accelerating Federal Permitting of Data Center Infrastructure*, § 1, 90 Fed. Reg. 35385, 35385-87 (July 28, 2025) ("easing Federal regulatory burdens"), https://www.federalregister.gov/documents/full_text/text/2025/07/28/2025-14212.txt.

²³⁰ FERC, Federal and State Current Issues Collaborative, Docket No. AD24-7-000 (purpose statement), <https://www.ferc.gov/federal-state-current-issues-collaborative>; *Fed. and State Current Issues Collaborative*, 186 FERC ¶ 61,189 (2024) (establishing order); 42 U.S.C. § 7173 (DOE proposals to FERC), <https://www.law.cornell.edu/uscode/text/42/7173>.

²³¹ NARUC, *Resolution Urging the Federal Energy Regulatory Commission to Preserve and Affirm State Retail Regulatory Jurisdiction in its Large Load Interconnection Proceeding*, Res. EL-1 (passed by Comm. on Electricity Nov. 10, 2025; adopted by Bd. of Dirs. Nov. 11, 2025), <https://pubs.naruc.org/pub/2C526A94-D533-BE0A-336A-178A366C7A91>.

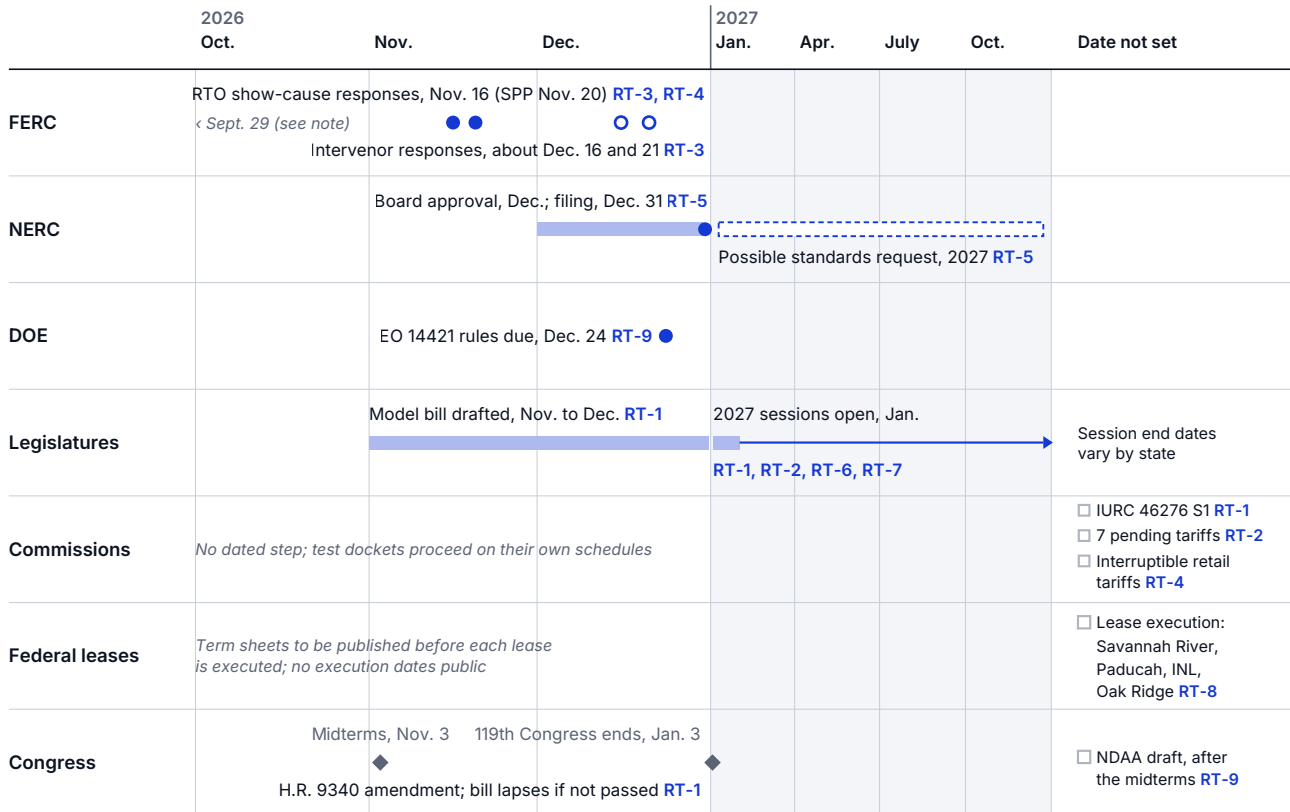
FIGURE 17

Federal windows close first; durable terms need state sessions

Next decision step for each term RT-1 to RT-9, by forum, October 2026 to December 2027.

As of September 27, 2026. Scale: October to December 2026 is drawn at six times the 2027 scale.

Key: ● Set date ○ Approximate date ■ Month only □ Year only □ Date not set ◆ Reference date, not a term RT-n = term card



Before the window: PJM asked FERC for an order in ER26-3380 by Sept. 29, 2026 (RT-3); none had issued as of Sept. 27, 2026.

Intervenor responses are due 30 days after the RTO filings. NERC's Dec. 31 filing is ordered under RD26-7. Month-only and year-only steps span the period.

Source: Section 10 term cards RT-1 to RT-9, notes 206, 214, 215, 218 and 227, and U.S. Const. amend. XX, as of September 27, 2026.

Dated federal steps fall in the three months to Dec. 31, 2026. State sessions open in January 2027, while bills, commission test dockets and lease execution, which carry the durable terms, have no fixed dates.

The settlement is unfinished and testable

11.1 Terms are set contract by contract

Minimum-take, exit, collateral and walk-away terms allocate who bears the risk that forecast load does not arrive, or leaves, and in the principal-state dockets they are most often sealed from those who bear it (Sections 5, 6, 9). Federal security claims seek to displace state forums without published criteria, so far without success (Section 8). Wisconsin meets most completion tests; most load states do not.

11.2 Five pending decisions, most due by December 31, 2026, could change the findings

As of September 27, 2026:

- **Southaven.** The United States appealed what it calls an August 24 "constructive Order denying" its motion. It seeks a stay, which xAI supports; no ruling yet. Section 8 holds either way.²³²
- **PJM backstop.** PJM asked FERC to act on ER26-3380 by September 29; FERC had not ruled. An order would move Section 9's first exposure channel and RT-3's docket position.²³³
- **Show-cause proceedings** (EL26-67 to EL26-72) are in abeyance; responses due November 16 (SPP, November 20).²³⁴
- **NERC** must file computational-load standards by December 31 (effective only on FERC approval); CIP or co-located-generation terms would weaken Section 5's finding that none apply.²³⁵
- **Rules and bills.** EO 14421 rules are due about December 24; RT-1 depends on 2027 sessions, IURC subdocket 46276 S1 and H.R. 9340 in the Senate.²³⁶

²³² Notice of Appeal at 1, ECF No. 123, PageID 3209 (Sept. 18, 2026) (appealing "from this Court's August 24, 2026, constructive Order denying the United States' amended motion for intervention and dismissal"); United States' Mot. to Stay and Mem., ECF Nos. 124-125, at 3 (Sept. 21, 2026) (describing the Aug. 24, 2026 conference); Defs.' Resp. and Mem. in Supp. of Stay, ECF Nos. 126-127 (Sept. 22, 2026), *NAACP v. X.AI Corp.*, No. 3:26-cv-00074-DMB-JMV (N.D. Miss.), <https://www.courtlistener.com/docket/73188848/national-association-for-the-advancement-of-colored-people-v-xai-corp/>. As of Sept. 27, 2026, the docket showed no stay ruling or Fifth Circuit docket number.

²³³ PJM Interconnection, L.L.C., *Reliability Backstop Procurement to Address Resource Adequacy Concerns Stemming from Large Loads*, Docket No. ER26-3380-000, transmittal letter at 2-3 & n.5 (PDF pp. 9-10) (July 31, 2026) (requesting an order "by no later than September 29, 2026"; PJM "intends to open the procurement window on September 30, 2026" if the framework is accepted by then), eLibrary accession 20260731-5214, <https://www.pjm.com/pjmfiles/directory/etariff/FercDockets/9806/20260731-er26-3380-000.pdf>. No FERC order had issued as of Sept. 27, 2026.

²³⁴ *PJM Interconnection, L.L.C.*, Order Instituting Proceeding Under Section 206 of the Federal Power Act, 195 FERC ¶ 61,211, Docket No. EL26-67-000 (June 18, 2026), <https://www.ferc.gov/sites/default/files/2026-06/EL26-67-000.pdf> (one of six parallel orders, EL26-67 to EL26-72); FERC abeyance orders (Aug. 14, 2026), eLibrary accessions 20260814-3059 (PJM, 196 FERC ¶ 61,129, responses due Nov. 16, 2026), 20260814-3060 (SPP, to Nov. 20, 2026), 20260814-3068 (NYISO), 20260814-3058 (MISO), 20260814-3061 (CAISO, Order Granting Rescission and Abeyance Requests) and 20260814-3056 (ISO-NE, 196 FERC ¶ 61,132, responses due Nov. 16, 2026); see Section 5, note 77.

²³⁵ *Reliability Standard(s) Pertaining to Computational Load Integration*, 196 FERC ¶ 61,031, Docket No. RD26-7-000, at 1 & Ordering Paras. (A)-(B) (July 16, 2026), <https://www.ferc.gov/sites/default/files/2026-07/RD26-7-000.pdf>; FPA § 215(d)(2), 16 U.S.C. § 824o(d)(2) (a proposed standard takes effect only on Commission approval), <https://www.law.cornell.edu/uscode/text/16/824o>.

A DOE proposal under section 403 obliges FERC only to consider and take final action, and only on FERC-jurisdictional terms; RM26-4-000, opened after DOE's 2025 letter, has no proposed rule. State-side terms have no federal backstop (Section 10.6).²³⁷

11.3 Each claim names what would defeat it

Thesis. It fails if large loads in the principal states mostly take public, generally applicable tariffs with cost-allocation, exit and collateral terms, or if public terms prove lopsided (capture). No one publishes the share of large load under public tariffs. The strongest competing explanations:²³⁸

- **Exit and re-entry.** The IEA estimates 15 to 27 GW of onsite gas at data centers by 2030, "[t]hough uncertainties are high"; if onsite supply dominates, the price of exit governs.²³⁹
Reply: the IEA calls onsite gas "an emerging solution", and standby and re-entry are contract terms.
- **Decision rights migrating up** (DOJ at Southaven; Ohio's siting preemption) and down (county zoning; coordinated opposition Microsoft reports).²⁴⁰ *Reply:* the winning level must still set terms, and nonpublic data move with the decision (Section 7).
- **An actor-and-bargain map**, which asserts nothing about secrecy. Alphabet's 10-Q reports take-or-pay minimums and termination fees in energy agreements.²⁴¹ *Reply:* the map structures Sections 6 to 8 but cannot explain why one term class is withheld across bargains; the filing shows that the terms exist, not their size. The map wins only if bargains share no common term class.

²³⁶ Exec. Order No. 14421, *Declaring a National Emergency to Secure the United States Bulk-Power System* § 3(b), 91 Fed. Reg. 55995, 55997 (Aug. 31, 2026) (signed Aug. 26, 2026) (rules due within 120 days, about Dec. 24, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-08-31/html/2026-17843.htm>; U.S. Dep't of Energy, Request for Information, *Securing the United States Bulk-Power System*, 91 Fed. Reg. 57322 (Sept. 9, 2026) (Docket No. DOE-HQ-2026-1123; responses due Oct. 9, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-09-09/html/2026-18370.htm>; Ind. Util. Regulatory Comm'n, Order, Cause No. 46276, Finding ¶ 9 and Ordering ¶¶ 4-5 (Apr. 29, 2026) (creating subdocket 46276 S1; Order Initiating Subdocket, Apr. 30, 2026), https://www.in.gov/iurc/files/ord_46276_042926.pdf (Cause No. 46276 S1 pending; attorney conference scheduled by docket entry of Aug. 28, 2026, <https://www.in.gov/iurc/files/Weekly%20Filings%20List%208.24.26-8.28.26.pdf>); Ratepayer Protection Act, H.R. 9340, 119th Cong. (placed on Senate calendar Sept. 23, 2026), <https://www.congress.gov/bill/119th-congress/house-bill/9340/all-actions>.

²³⁷ The FERC-NARUC Collaborative is a venue, not an authority. FERC, Federal and State Current Issues Collaborative, Docket No. AD24-7-000, <https://www.ferc.gov/federal-state-current-issues-collaborative>; 42 U.S.C. § 7173(a)-(b) (the Secretary may "propose rules"; the Commission "shall consider and take final action"), <https://www.law.cornell.edu/uscode/text/42/7173>; Letter from Sec'y of Energy Chris Wright to FERC (Oct. 23, 2025), <https://www.energy.gov/sites/default/files/2025-10/403%20Large%20Loads%20Letter.pdf>; FERC, Notice Inviting Comments, Docket No. RM26-4-000 (Oct. 27, 2025), eLibrary accession 20251027-3056 (no proposed rule issued; Order Regarding Intent to Act, Apr. 16, 2026, accession 20260416-3003).

²³⁸ Further frames are answered here or in Section 2. The questions-as-thesis frame holds that different institutions answer who pays, controls and decides on different timetables; differing timetables do not explain why demand-risk terms are the ones withheld, so the report keeps the questions as its audit (Section 2). "Who pays is settled; who knows is not" wins if commissions adopt full-incremental-cost standards while terms stay sealed; that would narrow the thesis toward RT-1, not refute it. Its evidence (the Pledge's coverage figure; H.R. 9340, passed by the House 417-3) and the reply that the Pledge is voluntary and H.R. 9340's PURPA § 111(d) standard obliges commissions only to consider and determine whether to adopt it, without reporting, are in Section 2 and note 10. Compact renegotiation is answered in Section 2. The capture reading is tested with the thesis. Flexibility, including Duke's curtailment-headroom estimate, is answered in Section 6.3 and RT-4.

²³⁹ IEA, *Key Questions on Energy and AI*, Executive Summary, at 11 (PDF p. 11) (Apr. 16, 2026); see also ch. 6, <https://iea.blob.core.windows.net/assets/3179f7f8-01f6-4dd6-bffa-c9f7b73f1dc9/KeyQuestiononEnergyandAI.pdf>. The same page notes that "in the context of a supply crunch for gas turbines, it is not clear that onsite generation necessarily promises a faster route to market for data centres at scale."

²⁴⁰ United States' Mem. in Supp. of Am. Mot. for Intervention and Dismissal at 1, ECF No. 86, PageID 2232 (July 7, 2026), *NAACP v. X.AI Corp.*, <https://www.courtlistener.com/docket/73188848/86/national-association-for-the-advancement-of-colored-people-v-xai-corp/> (see Section 8); Ohio Rev. Code § 4906.13(B), <https://codes.ohio.gov/ohio-revised-code/section-4906.13>; Microsoft Corp., Annual Report (Form 10-K) for fiscal year ended June 30, 2026, Item 1A (filed July 29, 2026) ("increasingly coordinated opposition to infrastructure development across jurisdictions"), <https://www.sec.gov/Archives/edgar/data/789019/000119312526323660/msft-20260630.htm>.

Mechanism. It fails if contested dockets turn mainly on price level, not demand-risk terms, or if those terms become routinely public. Turbine scarcity would shift which risk is priced, not end the dispute. Of 30,000 MW requested before AEP Ohio's tariff, 13,023 MW paid for a study and 5,642 MW signed binding contracts with collateral (Section 6).²⁴² Re-inflated requests would count against the mechanism.

Terms. The strongest objection: public terms slow time to power. Singapore paused data-center growth in 2019 and reopened through a 2022 pilot call. *Reply:* the terms condition connection without pausing it, as in Texas SB 6 and Ireland's 2021 decision, which found a moratorium "would have been disproportionate", since superseded for new applications by CRU/2025/236.²⁴³ They fail if the new Texas or Irish rules produce pause-like connection delays, measured against each card's time-to-power effect; RT-1 suspends filings, not connections.

11.4 The findings cover the United States as of September 27, 2026

The report covers the United States; Ireland and Singapore appear as comparators. Facts and the status of pending matters are stated as of September 27, 2026.

²⁴¹ Alphabet Inc., Quarterly Report (Form 10-Q) for the quarter ended June 30, 2026, Note 10 (Commitments) (energy service agreements "generally include take-or-pay provisions for minimum quantities of energy supply and substantive termination fees"), <https://www.sec.gov/Archives/edgar/data/1652044/000165204426000071/goog-20260630.htm>. Third-quarter Forms 10-Q from large accelerated filers are due 40 days after quarter end, Nov. 9, 2026. SEC, Form 10-Q, General Instruction A.1, <https://www.sec.gov/files/form10-q.pdf>.

²⁴² AEP Ohio, Press Release, *AEP Ohio Updates PUCO on Data Center Load: Figures Show Tariff is Working* (Feb. 13, 2026) ("13,022.7 MW asked and paid for a study"; the 5,642 MW is "in addition to 12,219 MW of data center contracts signed before the tariff went into effect"), <https://www.aepohio.com/company/news/view?releaseID=10753> (linking the PUCO filing, <https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A26B12B61453D00940>). See also Section 6, note 103.

²⁴³ See Section 10, note 205; Singapore Econ. Dev. Bd. & Infocomm Media Dev. Auth., *EDB and IMDA launch pilot data centre - Call for Application (DC-CFA) to support sustainable growth of DCs* (July 20, 2022) ("The Government informed the industry of a temporary pause in the growth of DCs in 2019 and embarked on a review."), <https://www.edb.gov.sg/en/about-edb/media-releases-publications/edb-and-imda-launch-pilot-data-centre-call-for-application-to-support-sustainable-growth-of-data-centres.html>. Comm'n for Regulation of Utils. (Ireland), *Large Energy Users Connection Policy: Decision Paper*, CRU/2025/236, § 3, at 27 (PDF p. 28) (recounting the November 2021 decision CRU/21/124: "The CRU was of the view that imposing a moratorium on data centre connections would have been disproportionate.") and § 6.2 (Dec. 12, 2025) (CRU/21/124 superseded for new applications by CRU/2025/236 (Dec. 12, 2025); still applies to applications pending at that date), https://cruie-live-96ca64acab2247eca8a850a7e54b-5b34f62.divio-media.com/documents/CRU2025236_Large_Energy_User_connection_policy_decision_paper.pdf; Tex. S.B. 6, 89th Leg., R.S. (2025) (enrolled; signed June 20, 2025), adding Tex. Util. Code §§ 37.0561, 39.169, 39.170, <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00006F.pdf>.

FIGURE 18

No falsifier is triggered; the public-tariff share is not published

Seven falsifiers from Section 11.3, in order of next related decision, as of September 27, 2026.

Reading: Holds means the report's claim survives the falsifier.

Next related decision: the nearest scheduled event in the row's sources.

Outlined row: the first thesis test (public-tariff share), which no published series measures.

Reading: **Holds** **Weakening** **Triggered** *Not published* *No row reads weakening or triggered.*

Falsifier	Defeated if	Indicator and data source	Next related decision	Reading
Mechanism	Contested dockets turn mainly on price level, not demand-risk terms; those terms become routinely public; or requests re-inflate after tariffs.	What contested large-load dockets decide, and whether the terms are filed publicly. AEP Ohio: of 30,000 MW requested before its tariff, 13,023 MW paid for a study and 5,642 MW signed with collateral. <i>ER26-3380 order; EL26-67 to EL26-72 filings; state tariff dockets</i>	Sept. 29, 2026 <i>date PJM requested</i> FERC order on the PJM reliability backstop (ER26-3380)	Holds Contested term is security, not price (Section 6)
Actor-and-bargain map Rival position	Bargains share no common term class, so a map of actors and bargains explains the evidence without a secrecy mechanism.	Whether hyperscaler filings report the same demand-risk term class (take-or-pay minimums, termination fees) across bargains, and their size. <i>Forms 10-Q and 10-K (Alphabet, Amazon, Meta, Microsoft)</i>	Nov. 9, 2026 <i>latest filing date</i> Third-quarter Forms 10-Q due (40 days after quarter end)	Holds Alphabet's 10-Q shows the terms exist, not their size
Exit and re-entry Rival position	Onsite supply dominates, so the price of exit, not grid-facing terms, governs.	Onsite generation at data centers against grid supply; how RTO rules price co-located and behind-the-meter load. <i>IEA onsite-generation estimates; EL26-67 to EL26-72 filings</i>	Nov. 16, 2026 <i>due date</i> RTO responses to FERC show-cause orders due (SPP: Nov. 20)	Holds IEA: 15 to 27 GW onsite gas by 2030, "an emerging solution"
Capture Thesis test 2: lopsided terms	Approved public tariffs systematically favor the large load or the utility over other payers.	Cost allocation in approved public large-load tariffs and in RTO rules on cost shifting. <i>State tariff dockets; EL26-67 to EL26-72 filings (cost shifting)</i>	Nov. 16, 2026 <i>due date</i> RTO responses to FERC show-cause orders due (SPP: Nov. 20)	Holds No triggering event
Decision-rights migration Rival position	Decision rights move up (DOJ at Southaven, Ohio siting preemption, federal security rules) or down (county zoning) to a level that decides without setting public terms.	Whether federal security claims displace state or local forums, and whether the winning level sets terms. <i>EO 14421 rules; Southaven docket (N.D. Miss., on appeal); Microsoft Form 10-K</i>	Dec. 24, 2026 <i>120 days from Aug. 26</i> EO 14421 rules due; Southaven stay ruling not yet scheduled	Holds Security claims have not yet displaced a forum
Terms	Public terms produce pause-like connection delays under the new Texas or Irish rules.	Connection delays under Texas SB 6 and Ireland's CRU/2025/236 against the time-to-power effect of each Section 10 term; grid-interface standards for computational load. <i>Section 10 time-to-power fields; NERC RD26-7 filing</i>	Dec. 31, 2026 <i>filing deadline</i> NERC files computational-load standards (effective only on FERC approval)	Holds No pause
Thesis Thesis test 1: public tariffs	Large loads in the principal states mostly take public, generally applicable tariffs with cost-allocation, exit and collateral terms.	Share of large load (MW) in the principal states served under public, generally applicable tariffs. <i>State tariff dockets; EEI, Large Load Projects and Tariffs</i>	<i>Undated</i> 2027 state sessions; next EEI tariff list update (neither dated)	<i>Not published</i> No series reports large-load MW by tariff type. EEI counts 25 states with an approved tariff: states, not load share

Sources: PJM, ER26-3380 transmittal (July 31, 2026); FERC show-cause orders EL26-67 to EL26-72 (June 18, 2026) and abeyance orders (Aug. 14, 2026); FERC RD26-7 order (July 16, 2026); EO 14421 sec. 3(b); IEA, Key Questions on Energy and AI (2026); EEI, Large Load Projects and Tariffs (Sept. 2026); AEP Ohio (Feb. 13, 2026); Forms 10-Q and 10-K; Southaven docket (N.D. Miss.); Section 10 (RT-1 to RT-9). Nov. 9 is the Form 10-Q deadline for large accelerated filers (40 days after quarter end); Dec. 24 is 120 days after EO 14421 was signed.

ER26-3380, EL26-67 to EL26-72 and RD26-7 are FERC docket numbers. DOJ: U.S. Department of Justice; EEI: Edison Electric Institute; EO: Executive Order; IEA: International Energy Agency; NERC: North American Electric Reliability Corporation; RTO: regional transmission organization; CRU: Commission for Regulation of Utilities (Ireland); SB: Senate Bill; N.D. Miss.: U.S. District Court for the Northern District of Mississippi.

Six of seven falsifiers have a scheduled related decision and none is triggered; no one publishes the share of large load under public tariffs.