The Honorable Laura Swett, Chairman
The Honorable David Rosner, Commissioner
The Honorable Lindsay S. See, Commissioner
The Honorable Judy W. Chang, Commissioner

Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Responding to the Advanced Notice of Proposed Rulemaking Regarding the Interconnection of Large Loads to Interstate Transmission Systems (Docket No. RM26-4-000)

Dear Chairman Swett,

These comments are submitted on behalf of the Alliance for Tribal Clean Energy (Alliance), along with the below-signed Tribal Nations and Tribal-serving entities, in response to the *Advanced Notice of Proposed Rulemaking's* (ANOPR) request for comments on the measures proposed in *Docket No. RM26-4-000*. Secretary Wright and the Department of Energy seek to clear a path for large loads to be folded into the broader grid. The Alliance calls on the Commission to ensure that this rulemaking upholds, and does not infringe upon, the inherent sovereignty and right to self-determination of Tribal Nations.

We are seeing rapid and unprecedented Tribal investment in energy infrastructure and transmission infrastructure. These developments demonstrate that Tribal Nations are active and innovative leaders in advancing a more reliable, affordable, and just energy future. These projects can increase the reliability and affordability of energy while also providing significant economic development capacity to the most neglected and underinvested communities across the country. As the market for large load facilities such as artificial intelligence data centers, Indian Gaming enterprises, and other industrial facilities continues to grow, Tribal Nations may be increasingly interested in participating in both the development and regulation of such facilities on Tribal lands.

As sovereign governments that are both market participants and governing entities with jurisdiction over siting and permitting on their lands, it is imperative that this rulemaking ensure nondiscrimination against Tribally owned or Tribally sponsored projects, while not infringing on Tribal sovereignty. The following comments underscore the importance of Tribal Consultation before any finalized rulemaking and address specific sections of the ANOPR that may affect Tribal Nations.

Tribal Consultation and the Trust Responsibility

The Alliance requests that the Commission engage in the Tribal Consultation process required under 18 C.F.R. § 2.1c prior to issuing any final rule in this proceeding. The Commission is obligated to ensure that "[t]ribal concerns and interests are considered whenever the Commission's actions or

decisions have the potential to adversely affect Indian Tribes, Indian trust resources, or treaty rights".[1] Moreover, the D.C. Circuit has made clear that the Commission's trust responsibility requires it to account for Tribal concerns as early as practicable in its decision-making, including in interconnection and transmission processes that may affect Tribal lands, resources, or jurisdiction.[2]

This obligation reflects both the Commission's trust responsibilities and the United States' unique Government-to-Government relationship with Tribal Nations. The proposed rule, which seeks to expedite the integration of large electrical loads such as data centers and industrial facilities into the broader grid, has the potential to directly affect Tribal lands, economies, and energy systems. Without early and meaningful consultation, it could inadvertently diminish Tribal sovereignty by advancing permitting and interconnection decisions that overlook Tribal jurisdiction and energy authority.

Accordingly, the Commission must therefore engage in consistent Government-to-Government Consultation before adopting such consequential reforms and ensure that this rulemaking fully upholds and respects the inherent sovereignty and right to self-determination of Tribal Nations.

The implementation of any new reforms adopted through this rulemaking must also be guided by the United States' Trust and Treaty obligations to Tribal Nations.[3] These obligations are not discretionary but legally binding commitments rooted in the Constitution, ratified treaties, federal statues, and judicial precedent.[4] As the Supreme Court has affirmed, the United States must adhere to the "highest fiduciary standards" when carrying out its trust responsibilities to Tribal Nations,[5] a principle that applies fully to the Commission whose regulatory decisions directly affect Tribal lands, economies, and access to energy infrastructure.

The Alliance calls on the Commission to ensure that the implementation of the final rule includes comprehensive, formal, and early Government-to-Government Consultation with all affected Tribal Nations. Consultation must occur before decisions are finalized, not after rules have been drafted that will affect Tribal Nations.[6] It must be substantive, two-way, and outcome-oriented, designed to meaningfully shape the policies, timelines and technical procedures that will govern large-load interconnections and related transmission planning. This duty is firmly established under Executive Order 13175,[7] the Department of Energy's 2023 Tribal Consultation Policy,[8] and FERC's 2021 update to its Tribal Policy

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[1] 18 C.F.R. § 2.1c(e)
[2] *United Keetoowah Band of Cherokee Indians in Oklahoma v. FERC*, 927 F.3d 543, 552 (D.C. Cir. 2019); see also FERC, Policy Statement on Consultation with Indian Tribes in Commission Proceedings, Docket No. PL21-1-000 (2021),
[3] *United States v. Mitchell*, 463 U.S. 206, 225 (1983).
[4] U.S. Const. art. VI, cl. 2; *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); 25 U.S.C. § 5301 et seq.
[5] *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).
[6] *Executive Order No. 13,175*, 65 Fed. Reg. 67,249 (Nov. 9, 2000).
[7] Ibid.
[8] U.S. Department of Energy, *Department of Energy Tribal Consultation Policy* (2023).

Statement,[9] which reaffirms the Commission's responsibility to engage in Consultation consistent with the federal Trust and Treaty responsibilities.

In implementing these reforms, the Commission must recognize that Tribal governments are sovereign regulators, not merely stakeholders or market participants**.** Their authority to make decisions regarding siting, permitting, and energy resource management on Tribal lands is inherent and protected by treaty and federal law.[10] Meaningful Consultation therefore requires that Tribes receive timely access to draft rule language, relevant data, and implementation plans, and that FERC provide adequate technical assistance and capacity support to enable full participation.

Further, the Commission's Trust responsibility extends to ensuring that the integration of large loads does not compromise Tribal access to reliable, affordable, and nondiscriminatory energy service, nor threaten the ecological or cultural resources protected by Treaty or reserved rights.[11] As FERC transitions to new interconnection standards, it must not allow utilities or transmission providers to prioritize large industrial customers at the expense of Tribal reliability, energy affordability, or environmental protection.

To operationalize these duties, the Alliance recommends that the Commission codify a formal implementation framework that includes: (1) a defined Government-to-Government Consultation schedule prior to final rule issuance; (2) a requirement that the Commission document how Tribal input shaped final decisions; and (3) the establishment of a standing Tribal-FERC Implementation Working Group to monitor ongoing implementation of these reforms and to ensure continuing compliance with Trust and Treaty obligations.[12]

Only by grounding implementation in the federal Trust doctrine and the Nation-to-Nation relationship can the Commission ensure that these reforms promote a just, fair, and sovereign-respecting energy future for all Tribal Nations.

Impact of This Rule on Load on Tribal Lands

The proposed rule could significantly affect Tribal lands by accelerating the siting of large-load facilities within or near Tribal jurisdictions. Without explicit enforceable safeguards, Tribal Nations may

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[9] FERC, *Policy Statement on Consultation with Indian Tribes in Commission Proceedings*, Docket No. AD03-12-000 (May 21, 2021).
[10] *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982); 25 U.S.C. § 5108.
[11] *Navajo Nation v. U.S. Department of the Interior*, 26 F.4th 794, 804 (9th Cir. 2022).
[12] *Executive. Order No. 13,175*, supra note 4; FERC, *Policy Statement*, supra note 7.
[22] Barth, Adam, Chhavi Arora, Gayatri Shenai, Jesse Noffsinger, and Pankaj Sachdeva. "The Data Center Balance: How US States Can Navigate the Opportunities and Challenges." McKinsey & Company, August 8, 2025. https://www.mckinsey.com/industries/public-sector/our-insights/the-data-center-balance-how-us-states-can-navigate-the-opportunities-and-challenges.
[23] U.S. Government Accountability Office, *Water Infrastructure Resilience: Agencies Could Better Assess Efforts to Assist Communities Vulnerable to Natural Disasters*, Report No. GAO-25-107013, (Washington D.C.: U.S. Government Accountability Office, 2024), 38, https://www.gao.gov/assets/gao-25-107013.pdf.

face increased strain on local energy infrastructure, higher service costs, and reduced reliability as utilities prioritize industrial interconnections. These impacts would undermine the Commission's federal Trust responsibilities and statutory obligations under the FPA to ensure just, reasonable, and non-discriminatory access to energy service for Tribal communities. The Commission must therefore ensure that large load integration on or adjacent to Tribal lands occurs only through meaningful, free, prior, and informed Tribal Consultation and engagement, consistent with Executive Order 13175 and the Department of Energy's Tribal Consultation policy.[13] Such Consultation must occur before any approval of large load interconnections, include data transparency and cost-allocation safeguards, and provide mechanisms for Tribal review and mitigation of infrastructure impacts. Embedding these protections will uphold Tribal energy sovereignty, prevent disproportionate burdens on Tribal communities, and align this rulemaking with the Commission's obligation to promote fair and non-discriminatory access to reliable energy service.

Paragraph 21: Study Deposits, Commercial Readiness, and Withdrawal Penalties

On August 9, 2024, the Alliance filed a petition for rulemaking in *Docket No. RM24-9-000* ("Petition") requesting the Commission amend the commercial readiness and withdrawal penalty rules to avoid disproportionately burdening Tribal Nations that cannot afford stringent financial requirements.[14] As explained in the Petition, Tribal Nations are sovereign entities, not similarly situated to other generation developers, and therefore should not be subject to the same commercial readiness and withdrawal penalty requirements of Order No. 2023, which were designed to deter speculative interconnection requests.[15] Accordingly, the Alliance urged the Commission to issue a notice of proposed rulemaking to adopt limited and narrowly tailored commercial readiness and withdrawal penalty rules for Tribal energy developers to eliminate barriers to Tribal energy development on Tribal-controlled lands.

As of the date of this filing, twenty-four Tribal Nations, organizations, and individuals have submitted comments in support of the Alliance's petition.[16] These comments both elaborated on the unique barriers Tribes face in raising sufficient capital to satisfy the commercial readiness deposit and withdrawal penalty requirements, and expressed fear that without reform, Tribes may continue to be excluded from utility-scale energy development on their own lands.

Those same unique circumstances are relevant here, and we call on the Commission to adopt the alternative indicia of commercial readiness and reduced withdrawal penalties suggested in the Petition. Doing so will ensure that Tribes are not forced to either endure costly waiver processes or advocate for

[13] DOE, *Tribal Consultation Policy* (2023); E.O. 13175.
[14] Alliance for Tribal Clean Energy, Petition for Rulemaking to Amend the Commercial Readiness and Withdrawal Penalty Requirements for Tribal Nations, Docket No. RM24-9-000 (filed Aug. 9, 2024).
[15] Improvements to Generator Interconnection Procedures and Agreements, Order No. 2023, 184 FERC 61,054, at P 11 (2023).
[16] Comments of Tribal Nations, Tribal Organizations, and Individuals Supporting the Alliance Petition, Docket No. RM24-9-000 (filed Aug.-Sept. 2024).

this final rulemaking to be amended, both of which are the current consequences of Order No. 2023 failing to adequately address Tribal Nations' status as infrastructure developers.[17]

Further, the Alliance emphasizes that financial prerequisites, such as deposits or readiness indicators that functionally privilege well-capitalized private developers, create the same type of undue discrimination that Order No. 2023 sought to eliminate. Order No. 2023 explicitly recognized the need for "open, transparent, and non-discriminatory" access to interconnection opportunities.[18] If left unmodified, the ANOPR's proposal to apply uniform study deposit and penalty requirements to large- load interconnections would perpetuate systemic inequities and further restrict Tribal participation in the energy transition.

Accordingly, we urge the Commission to clarify that these financial prerequisites will not be used to determine or influence queue position or expedited processing, as doing so would have a disparate impact on Tribally owned projects. Consistent with the Alliance's Petition for rulemaking on Order No. 2023, the Commission should adopt tailored commercial readiness criteria for sovereign entities that account for their distinct financing and permitting processes, while still ensuring fair opportunity to participate in the interconnection process.

Paragraph 22: Net Withdrawal/Injection Rights

While the incentivizing of co-locating large load and generation can aid in reducing transmission upgrade costs, the Alliance calls on the Commission to clarify that the change proposed in this section will not impact the interconnection study queue order. As stated above, Tribal Nations have a unique status as developers. Prioritizing large load interconnection applicants in the queue based on whether they are co-located with generation creates a market where hybrid facilities may be more competitive than non-hybrid facilities. The additional design and development costs associated with hybrid facilities are felt much more acutely by Tribally owned projects than those that are investor owned. Moreover, if those same Tribally owned projects are disadvantaged by the new queue rules, it will be solely because of their unique status as sovereign developers. Therefore, we call on the Commission to clarify that this proposed rule only allows the calculation of net withdrawal/injection rights and does not impact the order of prioritization in the interconnection queue.

Paragraph 24: Expediting the Study of Curtailable Facilities

The ability for a large load or hybrid facility to be curtailed is important for ensuring grid reliability.[19] Many Tribal Nations are located in rural areas where the grid infrastructure experiences

[17] Order No. 2023, supra note 2, at PP 10-12.
[18] Order No. 2023, supra note 2, at P 11.
[19] Federal Power Act § 215, 16 U.S.C. § 824o(a)(1)-(b)(1).

blackouts at a much higher rate than the average community.[20] While the Alliance supports any effort to protect Indian Country against further blackouts and recognizes the reliability benefits of curtailment, the Commission must ensure that any expedited study process for curtailable or dispatchable facilities does not create a system of preferential access or financial advantage for entities that can more easily design or pay for such flexibility. We also recognize that Tribally owned projects may be more constrained than privately-owned projects in how easily they can design or redesign a project to incorporate curtailment. Because of this, expediting interconnection applications for curtailable projects has the potential to inadvertently tip the scales in favor of privately-owned or better-capitalized projects.[21]

Tribally owned projects may face structural and financing constraints that limit their ability to incorporate curtailment or redesign project configurations within the tight timelines required for expedited review. As a result, policies that accelerate interconnection for curtailable projects could inadvertently disadvantage sovereign Tribal developers. Such an outcome would run counter to *Order No. 2023's* core requirement that interconnection procedures be "open, transparent, and not unduly discriminatory or preferential."[22]

The Alliance therefore calls on the Commission to clarify that expediting interconnection studies for curtailable or dispatchable facilities will not alter the established queue order or delay non-curtailable Tribal projects, and to design any expedited pathways in a manner consistent with the principles of equity, nondiscrimination, and respect for Tribal sovereignty.[23] These concerns highlight the need for the Commission to avoid rules that create undue discrimination. Tribal Nations, as sovereign governments, already face unique structural and financing barriers. Accordingly, any policy intended to accelerate interconnection for curtailable or dispatchable facilities must uphold federal trust and treaty responsibilities and ensure that Tribal Nations, and the Tribal developers working on their behalf, are not disadvantaged, particularly given the difficulty of incorporating curtailment into early project design. Providing preferential treatment to large loads or well capitalized private entities in a manner that harms Tribal projects would constitute undue discrimination and would not align with the Commission's duty to ensure fair access to interconnection opportunities.

Paragraph 28: Utilities Responsibilities for Transmission Service

Transmission providers serving large loads should be responsible for transmission service consistent with their withdrawal rights, to accurately reflect the quantity of capacity and energy transmitted across the system to serve the load. This obligation must extend beyond cost responsibility to

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[20] North American Electric Reliability Corp. (*NERC*), *2024 Long-Term Reliability Assessment* (Dec. 2024, updated July (2025), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf.

[21] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC 61,068, at PP 1625-48 (2024).

[22] *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC 61,054, at P 11 (2023).

[23] *Executive Order No. 13,175*, 65 Fed. Reg. 67,249 (Nov. 9, 2000); FERC, *Policy Statement on Consultation with Indian Tribes in Commission Proceedings*, Docket No. AD03-12-000 (May 21, 2021).

encompass accountability for maintaining reliability, service quality, and fair access to transmission capacity. The Alliance is concerned that the rapid integration of large loads, such as data centers, Indian gaming enterprises, and industrial facilities, could lead transmission providers to reallocate transmission capacity or defer maintenance and upgrades in ways that reduce service quality for existing customers, including Tribal communities. Tribal Nations and Tribal ratepayers are often located on the periphery of utility service territories and are among the most vulnerable to service interruptions, voltage instability, and curtailment practices that prioritize high demand customers.

The Commission should make clear that transmission providers may not shift operational risks, reliability degradation, or the costs of new load integration onto existing customers - particularly those in Tribal and disadvantaged communities. FERC has long recognized that open access requires reliability, service quality, and transmission access to be provided without unreasonable discrimination.[24] This principle supports the adoption of Tribal specific interconnection reforms, including reduced financial penalties, alternative indicators of commercial readiness, or re-entry pathways, because these measures are reasonable responses to the structural barriers faced by Tribal governments. By contrast, new rules that create preferential access or accelerated processing for large load applicants in ways that disadvantage Tribal Nations would constitute unreasonable discrimination. Where transmission providers undertake major system modifications to accommodate large-load interconnections, they must demonstrate through, transparent reporting and stakeholder engagement, that these actions will not result in degraded reliability or increased outage exposure for Tribal or rural customers.

To ensure accountability, the Alliance urges the Commission to require transmission providers to include an analysis of potential reliability, resilience, and service quality impacts on Tribal communities as part of their transmission service planning for large loads. The Commission should also clarify that those entities may not use withdrawal rights or transmission scheduling practices to obscure their service responsibilities to existing customers. Finally, the Alliance calls on the Commission to direct transmission providers to coordinate with affected Tribal governments through a delegated Consultation process where large-load integration may affect service reliability on or near Tribal lands. As frontline communities, Tribal Nations must not bear the burden of degraded services resulting from system changes made to accommodate new large-load interconnections. This responsibility is consistent with the Commission's core principles under Order No. 2023; that transmission access, service and reliability must be provided on terms that are just, reasonable, and not unduly discriminatory or preferential, including for sovereign Tribal Nations and their communities.

[24] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities (Order No. 888), 75 FERC 61,080, 61,878–79 (1996), order on reh'g, Order No. 888-A, 78 FERC 61,220 (1997), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002); Preventing Undue Discrimination and Preference in Transmission Service (Order No. 890), 118 FERC 61,119, P 1 (2007).

Conclusion

The Alliance calls on the Commission to carefully consider how Tribal Nations will be impacted by accelerating development and interconnection of large electrical loads, including data centers and other industrial facilities. The vast majority of Tribal communities and their historically significant cultural resources are situated in rural areas, the same areas projected to receive increasing interest from data center developers.[22] The associated water use, pollution, and energy demand impacts are of particular concern, as many Tribal communities rely on, and in some cases hold treaty-protected rights to, the unencumbered use of their lands, waters, and cultural resources. Incorporating the provisions outlined above would help mitigate the risk posed to Tribal Nations while also preserving the rulemaking's intent.

As the policies governing utility infrastructure in the United States attempt to keep pace with market demands, the Alliance calls on the Commission to proactively consider who will become the frontline communities of tomorrow. Tribal Nations have disproportionately borne the negative impacts of an increasingly extreme climate.[23] During periods of economic downturn or public health emergencies, Tribal communities often suffer negative outcomes at higher rates than other populations. To reverse the trend of Tribal Nations bearing the brunt of a shifting development landscape, this rulemaking must provide ample opportunities for Tribal participation in the permitting and development of large-load infrastructure. Only through engaging directly with Tribal Nations can the Commission adequately incorporate the Tribal perspectives necessary to ensure these rules are just, reasonable, and not unduly discriminatory. Therefore, the Alliance calls on the Commission to hold formal Government-to-Government consultation with Tribal Nations prior to the enactment of this rulemaking.

In addition, while Tribal Nations may choose to pursue joint ventures or host private data center projects as an exercise of their sovereign authority, the Commission must acknowledge and evaluate the potential unintended consequences of these developments. This includes assessing impacts on local water systems, natural resources, and cultural sites, and identifying mitigation measures to protect those resources. Incorporating these considerations into the rulemaking process will help ensure that private and public projects alike advance in a manner consistent with the Commission's Trust and statutory responsibilities to ensure just, reasonable, and non-discriminatory energy outcomes.

Sincerely,

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ALLIANCE FOR TRIBAL CLEAN ENERGY

Organizations in Support

Tribal Nations	Tribal Organizations
Curtis V. La Chusa, Chairman Mesa Grande Band of Mission Indians Wena Supernaw, Business Committee Chair Quapaw Nation	Daniel Wiggins Jr., Executive Director Midwest Tribal Energy Resources Association Catherine Zingg, Tribal Policy Director Tribal Energy Alternatives