THE HIDDEN LAYER SERIES | ARTICLE 5

By Joe Batista | October 2026 | 18-minute read. Find the series here at the IdeaVault

The Price of the Queue: Who Gets Energized First, and Who Pays

Why the rules of the grid, not just its physics, may decide where AI gets built

This is Article 5 of The Hidden Layer Series. Article 1, "The Map Nobody Has Drawn," laid out the AI Value Map. Article 2, "The Accidental Kingmaker," showed how bottleneck power migrates through the AI stack. Article 3, "Rationed, Not Priced," found that in CoWoS it shows up as control over who gets supply. Article 4, "The Transformer Bottleneck," followed the constraint to Layer 0 and found the scarce asset is the energized megawatt. Article 5 stays on Layer 0 and looks at the other side of the gate: the rules.

CORE INSIGHTS

1. **When a constraint can't be priced, it gets rationed by rules.** In 2026 those rules are being rewritten in grid after grid.
2. **First come, first served is no longer enough.** In Texas, ERCOT's first screen of large-load projects excluded 373 of 735, about 302 GW of requested demand.
3. **Access now carries four burdens: commitment, cost, flexibility and self-supply.** They are not equivalent prices, and they don't buy the same thing. Some establish eligibility, some may buy time, some set operating terms.
4. **No single rule-maker holds the key.** FERC accepted PJM's emergency capacity procurement but suspended it pending a hearing on cost allocation and other issues. Federal regulators, grid operators, states and utilities each control part of the answer.
5. **The new rules may favor balance sheets.** That is a hypothesis, not a finding, and we test it separately.

The Auction That Didn't Open

On September 30, 2026, PJM was due to open an emergency auction for about 6.8 GW of new generation. It was the grid operator's answer to two capacity auctions in a row that fell short of its reliability target.

The day before, FERC accepted PJM's plan but suspended it until February 28, 2027, and set a paper hearing on cost allocation and two other issues. It found PJM had "failed to adequately show" that its cost allocation was just and reasonable. Chairman Laura Swett wrote that the commission "will not be forced into accepting a deeply flawed, eleventh-hour procurement mechanism." PJM postponed the auction.

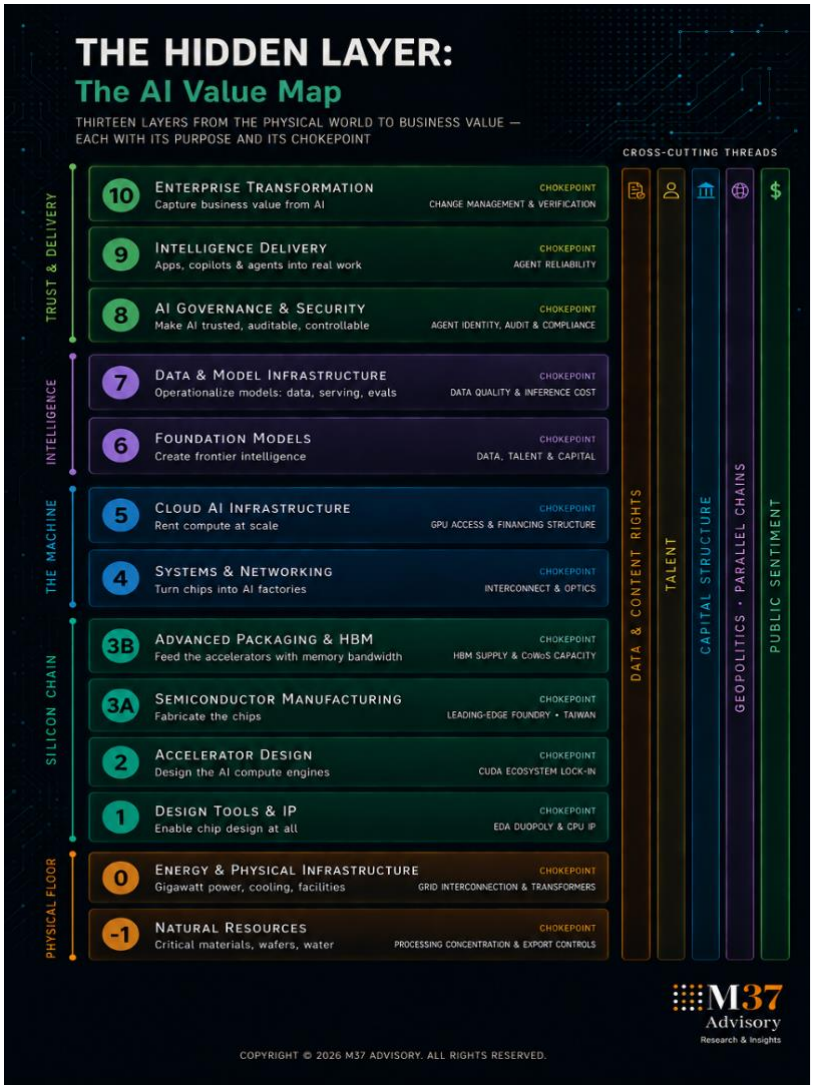
The physics did not change. The rules did.

No transformer slipped and no transmission line was cancelled. The question FERC sent back was who pays for new capacity, on what terms, and under whose authority. The same question is now being asked in grids from Texas to Ireland.

Article 4 identified the energized megawatt as the physical bottleneck. This article examines the rules governing access to it.

“In a regulated commons, the scarce thing isn't sold. It's allocated. And allocation has a price.”

Where the Rules Sit



The Hidden Layer: The AI Value Map. 13 layers, each with its purpose and its chokepoint.

ON THE MAP: Layer 0 — Energy & Physical Infrastructure | Chokepoint: Grid Interconnection & Transformers | This article: the rules of access

In Article 2, we said whether power delivery becomes an economic bottleneck "depends on who controls access to it, which differs sharply by region." Article 3 found that in CoWoS, the supplier controls access. For the grid, no supplier does. Access is governed by a layered system of rules, contracts and regulatory decisions, and it does differ sharply by region.

Two of the map's cross-cutting threads run straight through this layer. **Capital Structure** decides who can afford the new terms of access. **Public Sentiment** decides how hard regulators push those terms. In 2026, regulators are writing public pressure into tariffs.

The rulebook has four layers of authority, each on its own clock:

- **Federal (ordered, under review):** On June 18, 2026, FERC ordered all six grid operators it regulates to justify or reform how they connect large loads. Most resulting reforms are not yet in force.
- **Grid operator (mixed):** PJM, ERCOT and others decide who is studied and curtailed first, within limits set by FERC and the states.
- **State (in force or approved):** Ohio, Virginia and Texas have created data-center rate classes or statutes with minimum bills, long contracts and curtailment requirements.
- **Utility contract (in force):** Service agreements set collateral, exit fees and the final terms for each project.

A note on the word "price." The four burdens this article describes are not equivalent prices. Commitment is capital at risk, cost an assigned liability, flexibility an operating concession, self-supply an investment. Each is something a project gives up to get access. What, if anything, each buys depends on the jurisdiction.

Three Examples That Show the Rules

① First Come, First Served Is No Longer Enough

For most of the grid's history, a place in line cost little, so the line was easy to flood.

AEP Ohio's data center tariff, in effect since July 23, 2025, changed that. For the largest sites, new data centers must pay for 85% of their contracted capacity each month, used or not, for up to 12 years. AEP Ohio had reported more than 30 GW of data center requests before the tariff. By the September 8, 2025 deadline for formal study requests under the new rules, it had 13.0 GW across 36 sites. That comparison does not prove the tariff was the only cause, but AEP Ohio credited it with removing "the most speculative or uncertain" projects.

Texas wrote a version of the idea into law. Senate Bill 6, signed June 20, 2025, applies to loads of 75 MW or more. Each must pay at least $100,000 for an initial screening study, disclose whether it is pursuing a similar request elsewhere in the state, and, if connected after 2025, install equipment that lets ERCOT curtail it directly in emergencies.

ERCOT then applied its own screen. After Governor Abbott's August 3 directive, it paused energization of new data centers of 75 MW or more pending verification. On September 3 it issued provisional classifications for Batch Zero, its group study of new large loads. Of 735 projects evaluated, 362, about 190 GW, were conditionally included, subject to verification. The other 373, about 302 GW, were excluded. Exclusion removes a project from this study batch. It does not by itself cancel the project or bar it from a later study.

The line still exists. But a place in it now has to be earned with evidence, money and readiness.

> **THE RULE IN BRIEF**
>
> - **Rule:** Ohio and Texas now charge to hold a place in line: minimum bills, collateral, study fees and readiness checks.
> - **Mechanism:** making speculative requests costly, so they leave the line.
> - **Limit:** a study classification is not a connection guarantee, and removal from a batch is not cancellation. None of this, by itself, guarantees a viable project an earlier connection date.
> - **Implication:** know which stage you actually hold (a request, a conditional classification, a signed agreement or energized capacity) and what it costs to keep.

② Who Pays Decides Who Goes

For years, the answer to who pays was often "everyone." A Harvard Electricity Law Initiative review of nearly 50 proceedings argued that utilities were passing the cost of discounted data center rates to ordinary ratepayers, often through confidential contracts.

That answer is being challenged. In November 2025, Virginia regulators approved a new rate class, GS-5, for customers of 25 MW or more with high load factors. It takes effect January 1, 2027, for customers signing from that date, with 14-year contracts and minimum charges of 85% of contracted demand for transmission and for distribution and 60% for generation, plus collateral and an exit fee. In August 2026, the SCC ordered Dominion to develop a tariff assigning transmission upgrades directly to the large loads that trigger them. That tariff is not yet approved, and no customer's bill under it is set.

The pressure is political as well as legal. PJM's independent market monitor attributes $29.4 billion to data center load: 46% of capacity charges summed across the four base auctions for the 2025/26 through 2028/29 delivery years. That is a cumulative, modeled attribution across four years: not an annual figure, not a bill data centers paid, and not a saving a different tariff would automatically recover. In January 2026, the White House energy council and the governors of the PJM states signed a statement of principles calling for backstop costs to fall first on utilities whose new data centers bring no supply of their own. Two days earlier, Microsoft pledged to "pay our way to ensure our datacenters don't increase your electricity prices."

"The fight over Layer 0 has moved from engineering to allocation. Who pays is shaping who goes."

THE RULE IN BRIEF

- **Rule:** Virginia's GS-5 class, from January 1, 2027, and PJM's proposed backstop allocation push grid and capacity costs toward the new loads that cause them.
- **Mechanism:** protecting other customers, and with them the political license to keep connecting large loads.
- **Limit:** paying for an upgrade doesn't, by itself, make the upgrade arrive sooner, and PJM's backstop allocation is still under review.
- **Implication:** confirm your bill is known before you commit capital. In PJM, it isn't yet.

③ Flexibility Can Buy Time, Where Someone Is Allowed to Sell It

A Duke University study in February 2025 estimated that the largest U.S. grids could absorb 76 GW of new load if those loads accepted curtailment equal to 0.25% of their maximum potential annual energy use. That works out to about 85 hours a year with some curtailment, mostly partial: the study's lead author, Tyler Norris, has said at least half the new load would stay on in 73 of those 85 hours. At 1%, the estimate rises to 126 GW. These are modeled, aggregate estimates across 22 balancing areas, not proof of headroom at any particular substation.

Google has been making the case. In 2025 it agreed demand-response arrangements with Indiana Michigan Power and TVA to limit machine-learning load when the grid is stressed, and argued that such flexibility "allows large electricity loads like data centers to be interconnected more quickly." Michael Terrell, who leads Google's advanced energy work, has also said, "Some of our loads can't be curtailed."

FERC's June orders ask grid operators to develop services for flexible large loads. Until those services are approved and in operation, flexibility remains a promise rather than a product in most U.S. grids.

Ireland made self-supply a condition of connection. Under the CRU's final decision, CRU2025236, published December 12, 2025, new data centers of 10 MVA or more must provide dispatchable generation or storage, on site or nearby, matching their maximum import capacity, separately connected and metered, and taking part in the wholesale market. Smaller sites, from 1 MVA up to 10 MVA, must provide an on-site generating unit that meets their full import capacity. A site can't operate at, or ramp up to, its full import capacity until that supply is delivered; once compliant, it faces no separate mandatory demand-curtailment requirement. Separately, every data center of 1 MVA or more must meet at least 80% of its annual demand with additional renewable electricity generated in

Ireland, within six years of energization. The policy is in force but under legal challenge: three environmental groups filed a High Court challenge in March 2026, and the court granted them leave to proceed in April. We found no report that the policy has been suspended.

The Netherlands rations by priority instead. The ACM's revised framework, in force since January 1, 2026, replaced one a court annulled in March 2025. In congested areas it moves three groups ahead: projects that relieve congestion, safety functions such as acute care and defense, and basic needs such as housing and education. Data centers are not a named priority category. That doesn't bar them from capacity, but they can't claim priority.

> ***"Firm power is becoming the premium product. Flexible power could become the fast lane, once someone is allowed to sell it."***

THE RULE IN BRIEF

- **Rule:** flexible service exists only where an operator offers it and the authority with jurisdiction allows it. Ireland makes self-supply a condition of connection. The Netherlands sets priority by societal function.
- **Mechanism:** connecting more load on existing capacity, or making new load bring its own.
- **Limit:** flexibility changes the connection date only where such a service exists and the load can really curtail. Aggregate headroom isn't local capacity.
- **Implication:** test how much curtailment your economics and customer commitments can absorb before treating flexibility as a shortcut.

Why This Pattern Keeps Repeating

History doesn't repeat, but it rhymes. In the 1880s, railroads were the shared path every industry needed, and they gave rebates to large shippers that smaller ones didn't get. The backlash produced the Interstate Commerce Act of 1887, which required rates to be "reasonable and just," banned special rates and rebates for individual shippers, and created the Interstate Commerce Commission.

The two cases are not the same. Railroad rebates were discriminatory commercial pricing. Grid cost allocation is a regulatory choice about who funds shared infrastructure and reliability. The common problem is narrower: when a shared physical system gates an industry, control can shift from physical capacity to the rules that govern access to it.

This round differs in three ways: demand is uncertain, so commitment has become a currency; customers can bring their own supply; and jurisdiction is split among regulators still settling the boundaries.

The Four Currencies of Access

Article 4 found that grid access can't be scored with the Bottleneck Power index: there is no supplier to score. In Article 2's model, rules now replace market structure, and Capital Capacity works less like an enabler and more like a ticket. Article 3 found CoWoS was rationed, not priced. Grid access is now rationed and priced, in currencies of its own.

THE M37 LENS: THE PRICE OF THE QUEUE

Where grid capacity is rationed, access carries up to four distinct burdens: **commitment**, **cost**, **flexibility** and **self-supply**. Each may affect one of three things: **eligibility** (can you enter or stay in the process?), **timing** (can you be connected sooner?) and **operating terms** (how firm is your service, and what do you owe once connected?). In some jurisdictions a burden buys nothing extra; it is simply a condition of access.

Outside the four sits a different mechanism, **priority by societal function**, where the rules decide who goes first regardless of what a project can bear.

Currency	What the project bears	What it may obtain	What it doesn't guarantee
Commitment	Fees, collateral, minimum bills, long-term obligations	Eligibility to enter or remain in the process	New capacity, or an earlier date. Collateral proves seriousness; it builds nothing.
Cost	Assigned infrastructure or capacity costs	A route to connection without shifting costs to other customers	Speed. Paying for an upgrade doesn't shorten its build.
Flexibility	Reduced firmness, or permission to curtail	A different service or an earlier connection, where one is offered	Anything, where no such service exists or the load can't really curtail
Self-supply	Investment in, and responsibility for, generation or storage	Compliance with connection conditions and, where specified, defined operating terms	A better queue position by itself. It brings its own permits, fuel and cost.

Rules currently in force or approved in four jurisdictions with specific large-load rules, as of October 14, 2026. ***In force:*** *binding today.* ***Approved:*** *adopted, with a later start date.* ***Ordered:*** *a regulator has directed it; terms not final.* ***Under review:*** *being studied.* ***None in force / Not assessed:*** *no binding rule exists, or we did not find enough evidence to describe one.*

Jurisdiction	Commitment	Cost	Flexibility and operating terms	Self-supply
Texas (ERCOT)	$100,000+ screening study; duplicate-request disclosure (**in force**, SB 6). Batch Zero verification (**in force**)	Transmission cost allocation review (**under review**, PUCT, per 2025 legal summary)	ERCOT-directed emergency curtailment for loads connected after 2025 (**in force**, SB 6)	Not assessed
Ohio (AEP Ohio, in PJM)	Up to 12-year contracts; collateral of 50% of total minimum charges without strong credit (**in force** since Jul 23, 2025)	Minimum demand charge up to 85% of contract capacity, used or not (**in force**)	None in force	None in force
Virginia (Dominion, in PJM)	14-year contracts; collateral of $1.5M/MW, reducible up to 70% for strong credit; exit fee (**approved**, from Jan 1, 2027)	Minimums: 85% transmission, 85% distribution, 60% generation (**approved**, from Jan 1, 2027). Direct assignment of transmission upgrades (**ordered**, Aug 2026)	None in force	None in force

Jurisdiction	Commitment	Cost	Flexibility and operating terms	Self-supply
Ireland	Credible plan for additional renewable supply required at application (**in force**, per legal summary)	Not assessed	No operation at full import capacity until required supply is delivered; no separate mandatory demand curtailment once compliant (**in force**; policy under legal challenge)	**10 MVA+:** dispatchable generation or storage matching import capacity. **1–10 MVA:** on-site generating unit meeting full import capacity. **1 MVA+:** 80% additional Irish renewables within six years (**in force**; under legal challenge)

These four jurisdictions illustrate different combinations of burdens, not a common minimum. In Ohio and Texas, a new large data center already carries at least two under rules in force. In Ireland, the self-supply and renewable conditions are in force, though under legal challenge. In Virginia, the GS-5 obligations apply to contracts signed from January 1, 2027. None offers firm, low-commitment access with the costs spread across all customers. The Netherlands takes a different route: it rations by societal priority, and data centers are not a named priority category.

"The price of the queue is real. It just isn't on the rate sheet."

WHAT WE MEAN BY "STRUCTURAL"

The rationing thesis: grid constraints are increasingly being managed through formal access rules that require commitment, allocate costs, condition service on flexibility or require additional supply. These mechanisms differ by jurisdiction and do not all buy earlier access. Once tariffs carry 12- to 14-year terms and regulators have publicly committed to protecting other customers, we expect these rules to outlast a normal tech cycle.

The balance-sheet hypothesis (unproven): the new rules may favor strong balance sheets through three channels. *Qualifying:* collateral and minimum bills cost less with strong credit; both AEP Ohio and Dominion reduce collateral for it. *Financing:* 12- to 14-year minimums and self-supply raise the capital committed before revenue. *Timing and firmness:* here a balance sheet helps least, because money doesn't shorten an upgrade.

Capital strength is one proposed mechanism, not a complete explanation. It may help a developer qualify, finance obligations before revenue and absorb delay. It does not guarantee a faster connection or firmer service. Site location, access to supply, technical flexibility, project maturity and partnerships may matter as much. Fewer speculative requests show that the rules are filtering the queue. Only project-level evidence can show whether they are concentrating energized capacity among stronger owners.

What would weaken both: federal and state regulators could quickly settle on standard, cheaper access. Generation and transmission could catch up, so rationing is no longer needed. Or AI demand could cool, and the line could clear itself.

The Queue-Risk Test: Four Questions You Should Be Asking

1. **Eligibility risk.** What must you prove or commit before the project can advance? Know whether you hold a request, a conditional study place, a signed agreement or energized capacity.

2. **Capital at risk.** How much cash, collateral, minimum payment and exit liability is committed before the project earns revenue?
3. **Time-to-power risk.** What actually sets your connection date, and who decides in your region? Does flexibility change the schedule, or only the service you get once connected?
4. **Operating-terms risk.** What can the utility or grid operator require after connection, and how much curtailment can your economics and customer commitments absorb?

A project can be financially sound and still unable to get timely power, or connected on terms that break its business case. The test is meant to catch both.

The Prediction

Same rules as Articles 2 to 4: checkable by anyone, marked in public in October 2028, including where we were wrong. Two tests track selected mechanisms of the **rationing thesis**: the commitment screen in Texas and the arrival of flexible service. A separate test checks the **balance-sheet hypothesis**. Two supporting indicators track the direction of the rules.

Rationing thesis: indicators of selected mechanisms

Prediction (by Oct 2028)	Supports the thesis	Weakens it	Status
The Texas commitment screen keeps shrinking the line	**Cohort:** the 362 projects, about 190 GW, that ERCOT conditionally included in Batch Zero on September 3, 2026. **Supports:** 95 GW or less of the cohort is active (counting rules below). This measures how much of the screened cohort remains active; it does not by itself prove the rules caused the attrition	More than 95 GW of the cohort is active	Open
Flexible access becomes operational	**Three components, reported separately:** (a) a FERC-accepted tariff provision offering non-firm, interim or flexible service to large loads; (b) published procedures with requests being accepted; (c) at least one large load publicly reported energized, or holding a signed service agreement, under it. **Supports:** at least three of the six FERC-regulated grid operators meet (a) and (b), and at least one meets (c)	Fewer than three meet (a) and (b), or none meets (c)	Open

Balance-sheet hypothesis: separate test

Prediction (by Oct 2028)	Confirms the hypothesis	Falsifies it	Status
Capacity concentrates	**Universe:** new large loads energized in ERCOT (75 MW+) and PJM (50 MW+) between January 1, 2027 and June 30, 2028. **Qualifying owners:** Alphabet, Amazon, Meta, Microsoft and Oracle, plus any company whose ultimate parent holds an investment-grade issuer rating from S&P or Moody's on the energization date. **Confirms:** qualifying owners hold at least 60% of attributed MW, with at least 50% of the universe attributed (attribution rules below)	Qualifying owners hold less than 60% of attributed MW. Untestable if less than 50% of the universe can be attributed	Open

Supporting indicators (direction of the rules; they inform the reading but don't decide it)

Prediction (by Oct 2028)	What it would show	What would weaken it	Status
PJM's backstop costs land on new large loads	The cost allocation in effect when PJM's backstop procurement first runs, after FERC's paper hearing or a new PJM filing, assigns at least 50% of procurement costs to utilities or zones with new large-load growth	Costs are spread pro rata across all load, or the procurement has not run	Open
States take up curtailment rules	At least two PJM states adopt binding rules designating which large loads are curtailed first during grid emergencies	Fewer than two states adopt such rules	Open

Measurement rules, fixed now

- **Texas — active:** verified by ERCOT and still in study, holding a signed interconnection agreement, or energized, per ERCOT's published reports. Withdrawn or cancelled projects, and projects ERCOT removes from the cohort, count as inactive. Deferred projects count as active only if still in study. Reclassified projects stay in the cohort. Partially energized projects count at their energized MW plus any MW still in study. MW are ERCOT's latest reported size for each project, so a project that shrinks counts at its lower size. We report projects and MW at each stage.
- **Flexible access:** we report each of the three components for each grid operator, so a service that is approved but unused, or used but not yet proven in operation, is visible as such.
- **Concentration — attribution:** to the ultimate parent of the owner on the energization date. Where a named offtaker has contracted the capacity, it is attributed to the offtaker. Joint ventures are split by disclosed ownership share, or credited to the largest named partner if shares aren't disclosed. Sources: ERCOT or PJM records, utility filings and company disclosures. We will publish the share of the universe attributed and list any unresolved ownership or offtake cases.
- **States — adopted:** an enacted statute, a final commission order or an approved tariff that binds. Proposals, voluntary agreements and pending proceedings don't count.

How we'll read the result: the two rationing tests measure whether selected access mechanisms develop as predicted. We will report each result separately. Together, they will strengthen or weaken the rationing thesis, but they will not substitute for the wider evidence on cost allocation, commitment and self-supply. The balance-sheet hypothesis stands or falls on its separate concentration test. We will publish the results, including any findings that challenge our original view.

> **THE BOTTOM LINE**
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> Article 2 asked who would control access to power. Article 4 showed that power is the gate. This article finds the key is not held by one hand. Federal regulators, grid operators, states and utilities each hold part of it, and in 2026 they are still deciding which part.
>
> In the most constrained grids, access isn't bought at a single price. Eligibility is earned with commitment. Costs are assigned rather than shared. Time can sometimes be bought with flexibility, where that is allowed. And in some places, connection depends on bringing your own supply. Whether these burdens concentrate capacity in the strongest hands is the test ahead.
>
> **So, ask yourself: Which burden are you carrying, what is it buying you, and who decides?**

What rule am I missing? What does your utility charge for a place in line? Show me your queue. The map improves when you do.

How This Article Was Tested

Claims were checked against the sources identified; where reliance was on reporting or legal summaries rather than a full review of the controlling document, that is disclosed. Where an original document was available to us, we used it: FERC's June 18, 2026 announcement and September 29 order; PJM's July 2026 auction results and board letter; the market monitor's July 27, 2026 presentation; ERCOT's September 2026 Batch Zero update; AEP Ohio's tariff page and load-study letter; the Virginia SCC's November 25, 2025 final order; the CRU's December 2025 final decision paper; the ACM's December 2025 framework decision; and Google's August 2025 announcement.

One source we could not read in full: the Duke study, whose figures come from Utility Dive and from the lead author's own explanation. Ireland's legal challenge comes from RTÉ and The Irish Times, and one Irish application requirement from a DLA Piper summary. The FERC chairman's statement and the provisions of Texas SB 6 also come from reporting or legal summaries. The source list names the claims that depend on each.

The article went through five rounds of editorial and fact-check review, and each changed it. Among the changes: we replaced an opening quotation we could not trace to FERC's order; corrected ERCOT's figures to its own published numbers; stopped presenting AEP Ohio's before-and-after comparison as proof of a single cause; separated rules in force from approved and pending rules; corrected Ireland's thresholds against the CRU's final decision; clarified what the Duke curtailment figures measure; separated the rationing thesis from the balance-sheet hypothesis; and fixed every prediction's cohort, definitions and counting rules in advance.

Practitioners in utility regulation, rate design and grid planning: if you see where the evidence is thin, say so in the comments. Challenges that change the analysis will be credited by name in the next update.

About the Author

Joe Batista advises boards, C-suite executives, and go-to-market teams on technology value creation, growth strategies, and the opportunities hidden beneath major technology shifts. He has spent more than 40 years in the technology industry, guiding companies on growth and technology decisions, spanning the minicomputer era at Digital Equipment Corporation (DEC) through client-server, cloud, virtualization, and now AI, with executive experience at Dell Technologies and Hewlett Packard Enterprise.

Through M37 Advisory, Joe helps leadership teams recognize recurring patterns, uncover second-order effects, find the opportunities others overlook, and identify the strategy worth betting on. His work is grounded in a simple belief: **What if the biggest obstacle to your growth isn't the competition, but the way you think?**

> *"Most executives have been bombarded with 'theories' about what might work. Based on our research, Joe's extensive playbook is rooted in creating alignment of interest and business outcomes that leaders should take notice of."*
>
> — Jim Dickie, Research Fellow & Sales Mastery Founder, CSO Insights

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NEXT IN THE SERIES

Article 6: The Rent Layer: Who Can Afford to Sell Compute — We move up the map to Layer 5, Cloud AI Infrastructure, where neoclouds rent out GPUs bought with debt secured on those same GPUs. In capital-heavy layers, the cost of money may be the moat.

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Keywords: AI infrastructure, Layer 0, grid interconnection, large load tariffs, cost allocation, PJM, ERCOT, FERC, flexible load, AI Value Map, M37 Advisory