

UNITED STATES DEPARTMENT OF ENERGY

Midcontinent Independent System Operator

Order No. 202-26-39

**MOTION TO INTERVENE AND PETITION FOR REHEARING
OF THE STATES OF MINNESOTA AND ILLINOIS**

Pursuant to section 202(c) of the Federal Power Act, 16 U.S.C. §§ 824a(c), 825l, the States of Minnesota, Illinois, and Wisconsin (“the States”) move to intervene and apply for rehearing of the Department of Energy’s (“DOE”) August 14, 2026, Order No. 202-26-39 (“Campbell VI Order,” Ex. A)¹ directing the Midcontinent Independent System Operator (“MISO”) and Consumers Energy Company (“Consumers Energy”) to take all measures necessary to ensure that the coal-burning J.H. Campbell Plant (“Campbell Plant”) in West Olive, Michigan “is available to operate” and “to take every step to employ economic dispatch of the Campbell Plant to minimize cost to ratepayers.” The Campbell VI Order is in effect from August 17, 2026, until November 14, 2026.² This is the sixth in a series of orders directing MISO to take the same actions for the same facility and based on the same alleged statutory authority and factual circumstances.

The States have an interest in and are aggrieved by Campbell VI Order. *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. 226, 232–36 (2025) (defining an “adversely affected or aggrieved” party within the APA as “anyone even ‘arguably within the zone of interests to be protected or

¹ All Exhibits are lettered and attached.

² This petition is being submitted to DOE’s AskCR <askcr@hq.doe.gov> account as DOE instructs.

regulated by the statute . . . in question.’” (quoting *Ass’n of Data Processing Svc. Orgs. v. Camp*, 397 U. S. 150, 153 (1970))).

The Campbell VI Order continues the pattern established by five prior DOE Orders numbered 202-25-3 (“Campbell I”), 202-25-7 (“Campbell II”), 202-25-9 (“Campbell III”), 202-26-16 (“Campbell IV”), and 202-26-22 (“Campbell V”), that also directed MISO and Consumers Energy to keep the Campbell Plant available to provide economic dispatch from its planned retirement date of June 1, 2025, through August 16, 2026. Multiple undersigned states requested rehearing of the Campbell I, II, III, IV, and V Orders and described the applicable facts, with record support, in those challenges. Exs. B–F (nested exhibits omitted). Campbell VI is almost identical to Campbell V, which extended Campbell Orders I–IV. Because the legal and factual issues here directly overlap and repeat the same matters previously raised, the States hereby incorporate by reference the petitions for rehearing of the Campbell I, II, III, IV, and V Orders, including all arguments, exhibits, and other referenced materials, and reassert them as grounds for rehearing of the Campbell VI Order.

The States will be adversely affected by the Campbell VI Order in the same ways they were harmed by the Campbell I, II, III, IV, and V Orders, but Campbell VI also compounds and increases those harms through ongoing, cumulative emissions and related impacts. The negative effects on the States were described in the prior challenges and are hereby incorporated by reference.³ The Campbell VI Order compounds the errors of the prior orders for all of the reasons set forth in the

³ The harms include economic harm to ratepayers in the States who are saddled with the increased costs associated with operating the inefficient, coal-burning Campbell Plant, the environmental harms of operating the coal plant, and the harm caused by usurping the States’ role in planning resource adequacy and generation.

Petitions for Rehearing filed by the States of Minnesota and Illinois on June 23, 2025 (Campbell I), September 19, 2025 (Campbell II), December 18, 2025 (Campbell III), March 19, 2026 (Campbell IV), and June 17, 2026 (Campbell V).

As with the Campbell I, II, III, IV, and V Orders, the Campbell VI Order should be rescinded because it lacked reasoned decisionmaking, exceeded DOE's authority, was not rationally tailored to meet the purported emergency, and demonstrated impermissible prejudgment of the relevant issues.

The Court of Appeals for the District of Columbia Circuit agrees. On September 11, 2026, the court held that DOE's actions in Campbell I were contrary to the plain text of section 202(c) because DOE was not responding to an emergency in issuing its order in Campbell I. *Michigan v. Wright*, No. 25-1159, 2026 WL 2671756 at *11–12 (D.C. Cir. Sept. 11, 2026). Instead, the court recognized that DOE was using section 202(c) to usurp the roles of Michigan, MISO, and utilities, which are the entities responsible for long-term resource planning. *Id.* at *5–7, *17. By ordering Campbell to continue operating long after its carefully planned and scheduled retirement, DOE contravened the statute and ignored its long history of established practice of limiting its use of 202(c) emergency authority to cases where an actual emergency exists. *Id.* at *8, *15. In sum, DOE has not identified an emergency consistent with the court's decision in Campbell I in any of the Campbell orders, including the Campbell VI Order at issue here. The Campbell VI order exceeds DOE's authority, is contrary to law, and must be rescinded.

DOE also exceeded its authority by failing to comply with the National Environmental Policy Act ("NEPA"). Congress recently revised NEPA as part of permitting reform in the Fiscal Responsibility Act of 2023. Pub. L. 118-5 (June 3, 2023). These revisions purported to streamline the environmental review process by minimizing timelines and setting page limits, among other

provisions. It also codified aspects of the Council on Environmental Quality (“CEQ”)’s implementing regulations and existing caselaw. The revisions did not change the fundamental statutory command to prepare environmental reviews for major federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C).

DOE has claimed that 42 U.S.C. § 4336(a)(3) exempts it from NEPA compliance because the Federal Power Act (“FPA”) “clearly and fundamentally conflict[s]” with NEPA. These laws do not conflict. In fact, DOE has regularly complied with both statutes when issuing FPA § 202(c) emergency orders for over 20 years, a practice that it abruptly halted upon beginning its wave of 202(c) orders. *See, e.g.,* Ex. G, Special Environmental Analysis for Actions Taken Under U.S. Department of Energy Emergency Orders Regarding Operation of the Potomac River Generating Station in Alexandria, Virginia, DOE (Nov. 2006); Ex. H, Air Quality and Environmental Justice Analysis Memorandum, DOE (July 21, 2021) (report prepared pursuant to NEPA after DOE 202(c) emergency order). The 2023 NEPA revisions did not create a new exemption to its requirements; it codified existing case law addressing how NEPA applies when an agency cannot comply with both a mandatory statutory duty and NEPA. *Flint Ridge Dev. Co. V. Scenic Rivers Assoc. Of Oklahoma*, 426 U.S. 776 (1976). FPA § 202(c) does not include a mandatory statutory deadline by which DOE must take emergency action. To the contrary, it grants DOE the *discretionary* authority to respond to emergencies when necessary, as DOE has argued strenuously in litigation. *See* Resp. Br. at 23–31, *Michigan v. Wright*, No. 25-1159, Doc. No. 2164147 (“Section 202(c) affords broad discretion to the Secretary to identify and address a wide array of emergencies to ensure the Nation

has access to reliable electric power.”). NEPA does not exempt DOE from ensuring NEPA compliance when taking action under FPA § 202(c).⁴

DOE may believe that, under its NEPA Implementing Procedures, it satisfied all NEPA obligations by conferring with CEQ concerning the 202(c) orders. But this has no legal effect. As DOE rightfully acknowledges, those non-binding, sub-regulatory procedures cannot limit or alter DOE’s statutory duty to comply with NEPA. *See* Ex. I, U.S. Department of Energy NEPA Implementing Procedures, DOE at 3 (July 13, 2026) (“This document provides guidance on DOE’s NEPA implementation. This document is not a regulation. Nothing contained in these procedures is intended or should be construed to limit DOE’s other authorities or legal responsibilities.”); *see also* *Revision of National Environmental Policy Act Implementing Procedures*, 90 Fed. Reg. at 29,676, 29,677 (July 3, 2025) (clarifying that the implementing procedures “are intended to be non-binding guidance”). This guidance relies on 42 U.S.C. § 4336(a)(3) to exempt emergency orders from compliance. However, since there is no conflict between the FPA and NEPA, § 4336(a)(3) does not apply. DOE cannot alter its statutory obligation to comply with NEPA through adoption of an agency guidance document.

Putting aside the inaccurate guidance document, DOE’s revised NEPA regulations also provide for specific measures that must be taken in the wake of any emergency actions. *See* 90 Fed. Reg. at 29,683. Under those regulatory requirements, DOE must document its emergency actions within 30 days of taking those actions, and identify any resulting adverse environmental impacts, necessary mitigation measures, and any NEPA documents that may be required. 10 C.F.R.

⁴ As the D.C. Circuit Court of Appeals recognized in its *Campbell I* opinion, DOE’s exercise of emergency powers must still ensure that “adverse environmental impacts are minimized and the facility is ordered to operate only during hours necessary to meet the emergency and serve the public interest.” *Michigan v. Wright*, 2026 WL 2671756 at *8 (citation omitted).

§ 1021.103. Unlike other agency actions, DOE’s regulations allow for NEPA analysis to be delayed until after the emergency action is taken—precisely because immediate action is often necessary to address an emergency. By neglecting to provide this required documentation after issuing its 202(c) orders, DOE has violated its own NEPA regulations.⁵

DOE has also failed to comply with FPA § 202(c)(4)(B), which requires it to consult with the federal agencies with expertise in the environmental interests protected by various laws and regulations when an order is renewed or reissued:

In renewing or reissuing an order under subparagraph (A), the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public. The Commission may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.

16 U.S.C. § 824a(c)(4)(B) (emphasis added).

The order under rehearing is the fifth renewal of the original 90-day order. The environmental interests at issue include, at a minimum, clean air, clean water, and species and habitat impacts. The laws and regulations therefore include the Clean Air Act, Clean Water Act, and Endangered Species Act, among others. DOE has a mandatory duty under the FPA to consult

⁵ DOE’s NEPA Implementing Procedures also note that, “where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, DOE will consult with CEQ about alternative arrangements for compliance with NEPA. In other emergency circumstances, DOE will determine how best to comply with NEPA, including any necessary variance from these DOE NEPA implementing procedures, and notify CEQ about the emergency circumstances and DOE’s plan for NEPA compliance.” Ex. I at 20. DOE has not identified or followed a plan for NEPA compliance for the Campbell 202(c) orders.

with the primary federal agencies for those laws, the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service (and possibly others), and to include appropriate conditions to minimize environmental impacts in the orders. DOE must explain its determination whether to include or exclude conditions and make it publicly available. DOE also has an independent statutory obligation under the Endangered Species Act to consult with the U.S. Fish and Wildlife Service.⁶ DOE has not complied with any of these statutory requirements. DOE's action is therefore arbitrary, in excess of its authority, and should be rescinded.

DOE is already in possession of the exhibits Minnesota and Illinois submitted in support of their petitions for rehearing of the Campbell I, II, III, IV, and V Orders. The States are not resubmitting those same documents since they are incorporated by reference into the record for this petition. If DOE needs additional copies of any documents, please contact any of the signatories to this request.

⁶ The Fish and Wildlife Service also has emergency consultation regulations for Endangered Species Act compliance. 50 C.F.R. § 402.05. Even if an emergency existed for the Campbell plant—and none does—there are clearly defined emergency consultation procedures that DOE must follow.

Dated: September 11, 2026

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