UNITED STATES OF AMERICA

BEFORE THE

UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c) Emergency Order: Craig Unit 1	))))	Order No. 202-26-31

The State Of Colorado's Request for Rehearing,
Motion to Intervene, and Stay Request

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I. Introduction

On June 26, 2026, the Department of Energy ("Department") issued Order No. 202-26-31 ("Renewed Order")[1] pursuant to its emergency authority under Section 202(c) of the Federal Power Act ("FPA")[2] ("Section 202(c)") to continue to prevent the scheduled retirement of a coal-fired generating unit at the Craig Power Station in Moffat County, Colorado. The Renewed Order requires the availability of one coal-fired unit ("Craig Unit 1") from June 29, 2026, through September 26, 2026, thereby extending for 90 days the effect of Order No. 202-26-21 ("Second Order"),[3] which was issued on March 30, 2026, and Order No. 202-25-14 ("Original Order'),[4] which was issued on December 30, 2025. After issuing both the Original Order and the Second Order, the Department denied all prior Requests for Rehearing. Two days before issuing the Renewed Order, the Department addressed the requests for rehearing on the Original Order. The Department has made no attempt to seek comment or advice as to whether a continued extension is necessary or whether there are alternative ways to address its perceived emergency.

There is still no emergency justifying the Department's Renewed Order, and even if there were, preventing the retirement of Craig Unit 1 is not the best (or even a reasonable) way to meet the alleged emergency, and does not serve the public interest. Therefore, this Renewed Order, like the Department's Original Order and Second Order to prevent the retirement of Craig Unit 1, is illegal. The FPA limits the

[1] Exhibit KKK (Department, Order No. 2026-26-31 (June 26, 2026)).
[2] 16 U.S.C. § 824a(c).
[3] Exhibit TT (Department, Order No. 202-26-21 (March 30, 2026)).
[4] Exhibit A (Department, Order No. 202-25-14 (Dec. 30, 2025)).

use of Section 202(c) to addressing specific, imminent capacity shortfalls resulting from unexpected outages, natural disasters, extreme weather, and similar circumstances. Here, the Department has declared an emergency due to "a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes" in the Western Electricity Coordinating Council ("WECC")-Rocky Mountain assessment area.[5] But, like the Original and Second Orders, the Renewed Order's emergency determination cannot stand against even the mildest scrutiny.

As Colorado demonstrated in its Request for Rehearing, Motion to Intervene, and Stay Request ("Original Request")[6] of the Original Order and its Request for Rehearing, Motion to Intervene, and Stay Request ("Second Request")[7] of the Second Order there is no energy "emergency" as defined by Section 202(c) in the WECC-Rocky Mountain assessment area or in Colorado. Rather, the Unit's owners and their respective state utility commissions have been planning for Craig Unit 1's retirement for the last decade.[8] These comprehensive planning processes have ensured that there are reliable and affordable resources available to meet the energy needs in the areas served by Craig Unit 1, such that its long-planned retirement does not create an emergency.

[5] Exhibit TT. This is a change from the Original Order, which declared an energy emergency in the WECC-Northwest assessment area. Exhibit A.
[6] Exhibit CCC (State of Colorado, The State of Colorado's Request for Rehearing, Motion to Intervene, and Stay Request (Jan. 28, 2026)).
[7] Exhibit LLL (State of Colorado, The State of Colorado's Request for Rehearing, Motion to Intervene, and Stay Request (April 28, 2026)).
[8] *See, e.g.,* Exhibit C (Declaration of Erin O'Neil (July 23, 2026)), ¶ 33.

The Department's illegal use of its Section 202(c) authority to require the continued availability of Craig Unit 1 for an additional 90 days, unsupported by any evidence of an imminent energy emergency, will result in unnecessary operational and maintenance costs that will be imposed on ratepayers in Colorado, including the State of Colorado as a utility customer, and potentially other states. Continued operation of Craig Unit 1 pursuant to the Renewed Order will also emit needless pollution into Colorado and its neighboring states, which the Department failed to meaningfully consider or address, as it was required to do. The Renewed Order, like the Original and Second Orders, illegally intrudes on the authority of the states to ensure the resource adequacy of their electric grids and to dictate energy policy within their borders, and improperly attempts to impose the administration's policy preferences on state ratepayers.

Pursuant to Section 313*l* of the FPA,[9] the Colorado Attorney General, on behalf of the State of Colorado, timely submits this Request for Rehearing, Motion to Intervene, and Stay Request ("Request") seeking rehearing of the Renewed Order. The Department should grant rehearing and rescind the Renewed Order because it is an unlawful abuse of the Department's emergency authority, is unsupported by evidence showing a true emergency, and is arbitrary and capricious.

[9] 16 U.S.C. § 825*l*.

II. Motion To Intervene

The State of Colorado moves to intervene in the proceeding initiated by the Renewed Order and become a party for purposes of Section 313*l* of the FPA.[10] The State of Colorado is aggrieved by the Renewed Order in several ways.

First, households and businesses in Colorado have and will be required to pay higher electricity bills because of the Renewed Order.[11] Through a carefully planned process driven by economic considerations, the owners of Craig Unit 1 planned to retire the Unit and replace it with more cost-effective facilities.[12] By ordering the continued operation of Craig Unit 1, the Renewed Order guarantees that Tri-State Generation and Transmission Association, Inc. ("Tri-State"), PacifiCorp, Platte River Power Authority ("PRPA"), Salt River Project, and Public Service Company of Colorado ("Public Service") (together, "Craig Unit 1 Owners"), will incur higher costs to serve their members and customers, which they will then likely seek to pass on to their electricity consumers, including rural customers in Colorado.[13] Tri-State has already had to pass the cost of repairing Craig Unit 1 on to its customers,[14] which include the State.

[10] *Id.*

[11] Exhibit D (Declaration of Joseph Pereira (July 22, 2026)). Because the Order directs the Craig Unit 1 Owners to seek cost recovery the possibility of increased rates is a foreseeable harm for Colorado. Exhibit A, ¶ E. Tri-State and PRPA have confirmed that their "members and customers must pay" the costs of DOE's Original Order. However, Colorado reserves all rights to dispute that costs incurred based on the Order are appropriate.

[12] Tri-State, *Reliable, Lowest-Cost, Reduced Emissions Preferred Portfolio Focus of Tri-State Resource Plan Filing* (Apr. 11, 2025) (last visited Apr. 24, 2026).

[13] Exhibit D, ¶¶ 10, 16.

[14] Exhibit UU (Tri-State, *Request for Clarification and for Rehearing of Tri-State Generation and Transmission Association and Platte River Power Authority* (Jan. 29, 2026)); Exhibit MMM (Tri-State, *Request for Clarification and for Rehearing of Tri-State Generation and Transmission Association and Platte River Power Authority* (April 29, 2026)).

Second, the Craig Unit 1 Owners determined that it is prudent to retire Craig Unit 1 and replace it with more reliable and cost-effective resources. And the Colorado Public Utilities Commission ("CoPUC") determined that retiring Craig Unit 1 will not affect Tri-State's resource adequacy.[15] By continuing to delay the retirement of a 45-year-old coal-fired unit, the Department is causing Colorado's electric customers to be served by a more costly and less reliable and resilient electric grid. Instead of continuing to invest in and develop more reliable resources as planned, the Craig Unit 1 Owners will have to dedicate resources to repair and maintain a coal plant that is less reliable and more costly than other generation resources. For example, due to limited transmission capacity, Craig Unit 1's continued operation will prevent the use of solar electricity generated by its new solar farm in Moffat County.[16]

Third, Colorado will suffer environmental harms from Craig Unit 1's operation pursuant to the Renewed Order. Craig Unit 1 is a significant source of particulate matter ("PM"), nitrogen oxides ("NOx"), sulfur dioxide ("SOx"), carbon monoxide ("CO"), mercury, hazardous air pollutants ("HAPs"), and greenhouse gas ("GHG") emissions, and its scheduled retirement would have resulted in significant emissions reductions.[17] Operating Craig Unit 1 beyond its planned retirement date will increase the amount of pollution emitted in Colorado, harming the environment, public health, and welfare, as well as Colorado's ability to comply with other federal and State

[15] *See e.g.*, Exhibit E (CoPUC, Decision No. C25-0612, issued on August 26, 2025, in Proceeding No. 23A-0585E), at ¶ 116; CoPUC, Decision No. R22-0191, issued on March 28, 2022, in Proceeding No. 20A-0528E.
[16] Exhibit UU.
[17] Exhibit B (Declaration of Josh Korth (July 22, 2026)), ¶¶ 18-23.

environmental laws.[18] The Renewed Order does not make a meaningful attempt to minimize or mitigate the emissions impact of continued operation of Craig Unit 1 as required.

Finally, State authority over generation resources has been a bedrock principle of the FPA for nearly a century. Federal intrusion in this traditional sphere of state control is permitted only in a true emergency and only with specific procedures that the Department did not follow when issuing the Renewed Order. Colorado's sovereign interest in seeing its State laws followed in an area reserved to State sovereign authority further warrants the State's intervention.

III. Background

Like the Original and Second Orders, the Renewed Order makes several unfounded claims about Colorado's energy resource mix, expected increases in energy demand in the region, and the resulting need for continued availability of Craig Unit 1 to address an alleged energy emergency.

A. Craig Unit 1 is owned by several utilities with specific service areas.

Craig Unit 1, along with Craig Units 2 and 3, comprise Craig Station, a 1,285 megawatt ("MW"), generating facility in Moffat County, CO.[19] Craig Units 1 and 2, also known as the Yampa Project, are operated solely by Tri-State but are co-owned by Craig Unit 1 Owners. Craig Unit 1 has a 427 MW capacity and began operating in 1980,

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[18] *Id.*, ¶¶ 20-27.

[19] Tri-State, *Craig Station Unit 2 owners announce retirement date of Sept. 30, 2028* (July 8, 2020), (last visited Jan. 26, 2026); Exhibit F (CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Brad Nebergall, filed on December 1, 2020, in Proceeding No. 20A-0528E, Attachment BN-2, (Tri-State, 2020 IRP/ERP, Public (Dec. 1, 2020)), at 182.

making it over 45-years-old.[20] Craig Unit 1 was approved to retire on December 31, 2025. Craig Unit 2, which has a 410 MW capacity, has an approved retirement date of September 30, 2028, and Craig Unit 3, which is solely owned and operated by Tri-State and has a 448 MW capacity, will retire by 2030.[21]

Tri-State is a wholesale electric generation and transmission cooperative association with members located across Colorado, Nebraska, New Mexico, and Wyoming. Tri-State is a non-profit corporation and is owned and governed by its members through a Board of Directors.[22] Tri-State's board is responsible for approving rates, major capital investments, and resource planning decisions.[23] These resource planning decisions must then be approved by the CoPUC. Tri-State's ownership share of Craig Unit 1 is 24%, and Tri-State therefore is entitled to 102.5 MW out of Craig Unit 1's 427 MW capacity.[24] It is Colorado's understanding that within Tri-State's service territory, only Colorado and Wyoming receive energy from Craig Unit 1. PRPA and Public Service are the two other Colorado-based utilities with an ownership stake in Craig Unit 1. PRPA is a non-profit community-owned power generation and transmission utility that provides energy to Estes Park, Fort Collins, Longmont, and Loveland, Colorado.[25] PRPA has an 18% ownership share of Craig Unit 1 and is

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[20] Global Energy Monitor, a project of the Sierra Club, *Craig Station* (last updated Jan. 5, 2026) (last visited Jan. 26, 2026); Exhibit F, at 182.

[21] Tri-State, *Craig Station Unit 2 owners announce retirement date of Sept. 30, 2028* (July 8, 2020); Exhibit F, at 182; Exhibit G (CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Brad Nebergall, filed on December 1, 2020, in Proceeding No. 20A-0528E, Attachment BN-1 (Tri-State, Responsible Energy Plan ("Responsible Energy Plan") (Jan. 2020)), at 3.

[22] Exhibit JJ (CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Brad Nebergall, filed on December 1, 2020, in Proceeding No. 20A-0528E, Proceeding 20A-0528E), at 13:8-13.

[23] *Id.*, at 13:16-22.

[24] Exhibit J (CoPUC, 120 Day ERP Implementation Report, Public, filed on April 11, 2025, in Proceeding No. 23A-0585E).

[25] Exhibit EE (PRPA, *2024 Integrated Resource Plan* (Apr. 2023)).

therefore entitled to 77 MW of Craig Unit 1's capacity.[26] Public Service is a subsidiary of Xcel Energy, Inc., and is the largest gas and electric provider in Colorado. However, Public Service has the smallest ownership stake in Craig Unit 1, owning 9% (38.4 MW of Craig Unit 1's total capacity).[27]

The Salt River Project and PacifiCorp are the two non-Colorado owners of Craig Unit 1. The Salt River Project is a non-profit organization that provides power in central Arizona.[28] The Salt River Project owns 29% of Craig Unit 1 (124 MW of Craig Unit 1's total capacity).[29] However, the Salt River Project did not receive energy from Craig Unit 1 directly and instead traded for it through the Western Area Power Administration ("WAPA") until April 1, 2026 when that contract expired. PacifiCorp is based in Oregon but serves customers in Oregon, Washington, California, Utah, Idaho, and Wyoming. PacifiCorp has a 19% ownership of Craig Unit 1 (81 MW of Craig Unit 1's total capacity). Neither utility's service territory is in the WECC-Rocky Mountain assessment area.

B. The Craig Unit 1 Owners decided to retire Craig Unit 1 ten years ago and included the retirement in their resource plans.

In 2016, the Craig Unit 1 Owners voluntarily decided to retire Craig Unit 1 by December 31, 2025, based on "the [S]tate and federal regulatory environment for coal-based generation, current and forecasted market conditions, the significant costs to install additional emissions controls, and the best interests of electric

[26] Exhibit FF (PRPA, *Craig Units 1&2 (Yampa Project)* (2026)).
[27] Global Energy Monitor, *Craig Station*.
[28] Exhibit H (Salt River Project, *2023 Integrated Systems Plan*), at 6.
[29] *Id.*, at 27.

consumers."[30] The Craig Unit 1 Owners agreed to proposed revisions to Air Quality Control Commission ("Air Commission") Regulation No. 23 and Colorado's Regional Haze State Implementation Plan ("SIP") to include the December 31, 2025 retirement date.[31] The U.S. Environmental Protection Agency ("EPA") approved Craig Unit 1's retirement date on July 5, 2018.[32] Since 2016, the Craig Unit 1 Owners have incorporated the planned closure of the unit as an assumption in all electric resource planning proceedings, reports, decisions and modeling.[33] None of these processes or reports conclude that resource adequacy or reliability would be threatened by the unit's retirement.

Tri-State's resource plans are overseen by the CoPUC. The CoPUC reviewed Tri-State's load forecasts, resource needs, and planned resource acquisitions, all of which included the retirement of Craig Unit 1 by December 31, 2025 as an underlying assumption, as part of Tri-State's 2020 ERP and most recently its 2023 ERP for planning years 2026-2031.[34] As recently as August 2025, the CoPUC found that "Craig Unit 1 is not required for reliability or resource adequacy purposes based on the record in this ERP. Every portfolio that Tri-State modeled for its most recent ERP

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[30] Tri-State, *Craig Station Owners, Regulators and Environmental Groups Reach Agreement on Proposed Revisions to Colorado Regional Haze Plan* (Sep. 1, 2016).
[31] *See id.*; 5 Colo. Code Reg. § 1001-27, Part A, Section IV.D.1 (2025).
[32] Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 83 Fed. Reg. 31332 (July 5, 2018).
[33] Tri-State, *Craig Station Owners Agreement* (Sep. 1, 2016); *e.g.*, CoPUC, *Tri-State, ERP Annual Progress Report, Revised*, filed on June 2, 2017, in Proceeding No. 15M-0852E, at 16; CoPUC, ERP for Annual Progress Report, filed on October 31, 2018, in Proceeding No. 15M-0852E, at 17; CoPUC, ERP Annual Progress Report, filed on December 10, 2019, in Proceeding No. 15M-0852E, at 22.
[34] Exhibit F, at 31; CoPUC, 150-Day Report, Public, filed on February 13, 2023, in Proceeding No. 20A-0528E, at 28; Exhibit X (CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Lisa K. Tiffin, Rev. 1, filed on May 15, 2024, in Proceeding No. 23A-0585E, Attachment LKT-1 (Tri-State, 2023 ERP Phase I, Rev. 2 (Apr. 22, 2024)), at 19, 21, 32, 44, 55, 66; Exhibit J, at 21, 32, 43, 54, 64, 75.

assumes that Craig Unit 1 retires at the end of 2025 . . . every portfolio meets all reliability metrics and is reliable."[35] The CoPUC further found that Tri-State's resource plan—including the retirement of Craig Unit 1—is resource diverse and cost effective, ensuring energy security, economic prosperity, and environmental protection. Tri-State reaffirmed on January 23, 2026, that the Craig Unit 1 retirement "has informed operational and maintenance decisions, and Tri-State has planned for adequate resources to maintain reliability on its system following the unit's retirement."[36] And the Resource Adequacy Report filed by Tri-State on March 17, 2026, did not present any resource adequacy or reliability issues, and continues to project no capacity shortfalls through 2035.[37] PRPA, which conducts its own integrated resource planning process, also has sufficient resources without Craig Unit 1. In fact, both PRPA and Tri-State challenged the Original and Second Orders because they do not need Craig Unit 1 and do not wish to unnecessarily incur costs to operate it.[38]

The other Craig Unit 1 Owners are subject to similar oversight by their state utility commissions. As part of their respective state-approved resource plans, Salt River Project and PacifiCorp have confirmed there are no resource adequacy concerns in their respective states associated with the retirement of Craig Unit 1.

[35] Exhibit E, ¶ 116.
[36] Tri-State, *Tri-State makes Craig Generating Station Unit 1 available to operate in compliance with DOE emergency order* (Jan. 23, 2026).
[37] Exhibit VV (CoPUC, Tri-State, Notice of 2026 Resource Adequacy Annual Report, filed on March 17, 2026, in Proceeding No. 26M-0028E).
[38] Exhibit UU; Exhibit MMM.

Underscoring the lack of need for Craig Unit 1, the unit suffered an outage on December 19, 2025 due to a mechanical failure of a valve.[39] Absent the Original Order, it is unlikely the Owners would have expended new resources to repair the aging unit given that they were not expecting to use it to generate energy after December 31st. Tri-State and the co-owners paid for the repair of Craig Unit 1 pursuant to the Original Order, and this cost has been passed along to Tri-State's and PRPA's,[40] and likely the other utilities', customers. Craig Unit 1 was in a forced outage until its repairs were completed around mid-January,[41] and it was then available to operate, but did not operate, for the remainder of the period of the Original Order. It is Colorado's understanding that at the time of filing this Request, Craig Unit 1 has again been put into a forced outage.

C. Federal Energy Regulatory Commission ("FERC") and its designated entities also oversee resource planning decisions for Craig Station to ensure reliability.

The structure of FERC's management of the bulk power system is important to understand various studies and reports as they relate to the claimed emergency identified in the Renewed Order. The reliability and resource adequacy of the electric power system in states that are not within Independent System Operators ("ISOs") or Regional Transmission Organizations ("RTOs") are typically managed by individual utilities, which are often vertically integrated, meaning they handle generation, transmission, and distribution of electricity within their service areas, and are

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[39] Exhibit QQ (Tri-State, *U.S. DOE Orders Tri-State to Keep Craig Generating Station Unit Operating for Next 90 Days* (Dec. 31, 2025)); *see also* Exhibit B, ¶ 11; Exhibit D, ¶ 15.
[40] Exhibit UU.
[41] Tri-State, *Tri-State makes Craig Generating Station Unit 1 available to operate in compliance with DOE emergency order* (Jan. 23, 2026).

typically overseen by state public utilities commissions or a similar state entity.[42] These utilities are also subject to reliability oversight by FERC and several balancing authorities, in addition to being subject to their state resource planning and reliability requirements. Utilities in an RTO, which now includes Tri-State and PRPA,[43] are subject to additional frameworks and oversight. These related processes are designed to govern long-term planning and resource adequacy, and are reserved to FERC, RTOs, and the states under the FPA.[44]

FERC oversees the reliability of the bulk power system, which is the network of generation, transmission, and distribution system components across the United States, by reviewing, approving, and enforcing mandatory reliability standards developed by the North American Electric Reliability Corporation ("NERC").[45] FERC designated NERC as the Electric Reliability Organization ("ERO") for the mainland United States in 2006 pursuant to the Energy Policy Act of 2005.[46] NERC is a non-profit international regulatory authority that assures the reliability of North America's bulk power system by creating reliability standards, approved by FERC, that are legally enforceable and include training and communications requirements, and emergency back up plans.[47] These standards apply to all users, owners, and operators of the continental United States' bulk power system.[48] NERC also annually analyzes seasonal

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[42] FERC, *Energy Markets* (Aug. 18, 2025) (last visited Jan. 26, 2026).
[43] Tri-State and PRPA are part of the Southwest Power Pool ("SPP")'s RTO expansion in the Western Interconnection, which began operations on April 1, 2026.
[44] *See* 16 U.S.C. § 824(b)(1); 16 U.S.C. § 824a(b).
[45] FERC, *Reliability Explainer* (Aug. 16, 2023) (last visited Jan. 26, 2026).
[46] *See id.*; 16 U.S.C. § 824*o*(a)(2); N. Am. Elec. Reliab. Corp., 116 FERC ¶ 61,062 (2006), at 3, order on reh'g & compliance, 117 FERC ¶ 61,126 (2006).
[47] FERC, *Reliability Explainer* (Aug. 16, 2023).
[48] 16 U.S.C. § 824o(b)(1).

and long-term reliability of the bulk power system and assesses risk by region using a three-tiered system.[49]

NERC is permitted to delegate authority to regional entities for the purpose of proposing and enforcing reliability standards.[50] NERC therefore divides the North American bulk power system into six regional entities to which it has delegated authority. One of these regional entities is WECC, which covers most of the Western United States, including all of the states served by Craig Unit 1.[51] WECC is a non-profit organization that assures a reliable electric system in the Western Interconnection, a region that covers the Pacific Ocean to the Rocky Mountain states.[52] All of the Craig Unit 1 Owners are members of WECC.[53]

WECC identifies and registers the Reliability Coordinators and balancing authorities that are responsible for maintaining operating conditions under NERC's reliability standards within its region.[54] Reliability Coordinators are the highest level of authority under NERC. They are responsible for the operation of the bulk electric system and have the operating tools, procedures, and authority to prevent or mitigate emergency operating situations.[55] Balancing authorities ensure that power system demand and supply are balanced, manage transfers of electricity and use economic dispatch to optimize the use of generating units and minimize real-time costs, and

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[49] *See* 18 C.F.R. § 39.11.
[50] *id*. § 39.8.
[51] *See* Fully Executed North American Electric Reliability Corp., *Amended And Restated Delegation Agreement Between NAERC And WECC* (2021 FERC Revisions – Clean) (Jan. 1, 2021).
[52] EPA, *U.S. Grid Regions* (Nov. 24, 2025).
[53] WECC, *Membership* (2026).
[54] Department, *Learning Series: Energy Security & Resilience*; WECC, *Registration and Certification* (2026).
[55] NERC, *NERCipedia: Reliability Coordinator* (2024).

maintain operating conditions under NERC reliability standards.[56] As of April 1, 2026, Southwest Power Pool, Inc. ("SPP") is the Reliability Coordinator for Public Service, Tri-State, and PRPA, and the Balancing Authority for Tri-State and PRPA.[57]

In addition to this structure, FERC has encouraged the formation of nonprofit entities known as ISOs and RTOs.[58] FERC concluded that the use of ISOs and RTOs could address operational and reliability issues, improve transmission grid management, improve market performance, and facilitate lighter regulation.[59] RTOs and ISOs work with FERC and the states to ensure resource adequacy by imposing resource adequacy requirements on member utilities and monitoring the day to day operations of the grid.[60]

In December 2025, the CoPUC determined that it is in the public interest for Tri-State to join the SPP RTO as part of SPP's western expansion in April of 2026.[61] Both Tri-State and PRPA joined the SPP RTO on April 1, 2026.[62] The SPP RTO is a "nonprofit corporation mandated by [FERC] to ensure reliable supplies of power, adequate transmission infrastructure, and competitive wholesale electricity prices on behalf of its members."[63] The SPP RTO runs an Integrated Marketplace, which includes, among other things, a real time balancing market and a day ahead market.[64]

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[56] Department, *Learning Series: Energy Security & Resilience*.
[57] SPP, *2026 RTOE SWPW Transition Plan - Market Participant* (Version 2.2, Mar. 19,2026).
[58] Regional Transmission Organizations, 65 Fed. Reg. 810, 811 (Jan. 6, 2000); Promoting Wholesale Competition Through Open Access Non-Discriminatory Transm. Servs. by Pub. Utils. and Recovery of Stranded Costs by Pub. Utils. and Transm. Utils., 61 Fed. Reg. 21540-01, 21542 (May 10, 1996).
[59] 65 Fed. Reg. at 811.
[60] Klass A., *The President and the Power Grid*, Mich. L. Rev. Online (forthcoming Apr. 2026).
[61] CoPUC, Decision No. C25-0906, issued on December 16, 2025, in Proceeding No. 25A-0266E, ¶ 2.
[62] SPP, *Order Accepting Tariff Revisions, Subject to Condition*, 190 FERC ¶ 61,169 (Mar. 20, 2025)
[63] SPP, *About Us* (last visited Apl. 24, 2026).
[64] *Id.* at SPP Portal.

SPP RTO's western expansion includes parts of Colorado, Wyoming, and several other states, but its footprint does not align exactly with either the WECC-Rocky Mountain region or the WECC-Basin region.[65]

The Renewed Order states, without support, that the WECC-Rocky Mountain Assessment area is experiencing an energy emergency based on the 2025 WECC Western Assessment of Resource Adequacy ("2025 WECC Assessment") and NERC's 2026 Summer Reliability Assessment ("2026 SRA").[66] But those materials do not find that the WECC-Rocky Mountain Assessment Area is experiencing an energy emergency, and neither NERC, WECC and its designees, nor SPP have made a similar emergency determination. The Renewed Order cites to the 2025 WECC Assessment's statements that the West could see energy shortfalls beginning in 2028, that planned resources are largely inverter-based resources, and that entities plan to retire generation over the next ten years.[67] The Renewed Order also cites to the 2025 WECC Assessment's statement that the Basin and Northwest subregions planned resource buildout will not keep up with anticipated load growth over the next decade, even though the Renewed Order only declares an emergency in the Rocky Mountain subregion.[68]

Next, the Renewed Order cites the 2026 SRA's statement that wildfires combined with extreme heat pose the greatest reliability risk scenario for the Rocky Mountains.[69] However, the Renewed Order itself notes that the 2026 SRA found that the WECC-Rocky Mountain region's anticipated reserve margins will remain above the

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[65] Compare *id.* at *RTO Expansion* to Exhibit WW (NERC, *Long-Term Reliability Assessment* (Jan. 2026).
[66] Exhibit KKK at 3-5.
[67] *See id.*, at 3-4.
[68] *Id.*
[69] Exhibit NNN (2026 NERC Summer Resource Adequacy Report).

reference margin level for the 2026 summer assessment period, and therefore the WECC-Rocky Mountain region is at “normal risk”.[70] NERC defines an assessment area as “normal risk” when its resource adequacy criteria are met, and it is expected to have sufficient resources for extreme conditions.[71] A region cannot have a better designation than "normal risk" in a SRA. The summer assessment period is June – September, which covers the duration of the Renewed Order.[72]

Even if these reports had included credible evidence of an emergency in the Rocky Mountain assessment area, the 2025 WECC Assessment does not address short-term, imminent reliability issues, and neither the 2026 SRA nor the 2025 WECC Assessment accounts for the westward expansion of SPP’s RTO and the resulting mismatch between SPP West and WECC-Rocky Mountain’s footprints. Therefore, these reports cannot support a decision by the Department to keep one power plant open in the name of the Department’s alleged region-wide emergency.

Thus, the assessments covering the areas served by Craig Unit 1 for both the 90-day term of the Renewed Order and beyond do not conclude that there is an energy shortfall or a reliability concern. Yet, the Department has re-issued a Section 202(c) Order declaring that an emergency exists within the WECC-Rocky Mountain assessment area “due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes.”[73] The Renewed Order requires the

[70] Exhibit KKK, at 3.
[71] Exhibit NNN, at 2.
[72] *Id.* at 1.
[73] Exhibit KKK, at 1.

Craig Unit 1 Owners to ensure that the unit is available to operate for the next 90 days and directs SPP to employ economic dispatch of Craig Unit 1.[74]

D. The Renewed Order is part of the broader federal efforts to support the coal industry.

On January 20, 2025, President Trump issued Executive Order 14156, "Declaring a National Energy Emergency."[75] That declaration did not provide any factual support for its assertion that the country was in the grips of an electricity emergency. In fact, U.S. energy production is at an all-time high and continues to grow.[76] Although the President recently extended the energy emergency declaration for an additional year, he did not cite any new evidence to justify the supposed emergency.[77]

Setting the stage for the Department's plan to use Section 202(c) orders to promote the administration's policy preferences for the nation's energy mix, on April 14, 2025, President Trump issued Executive Order 14262, "Strengthening the Reliability and Security of the United States Electric Grid."[78] This Executive Order directed the Department to streamline and expedite processes for issuing emergency orders under Section 202(c). It also ordered the preparation of a methodology to help identify areas with inadequate reserve margins and directed the use of Section 202(c) orders to prevent certain generation resources from leaving the bulk power system.[79]

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[74] *Id.*
[75] Declaring a National Energy Emergency, 90 Fed. Reg. 8433 (Jan. 20, 2025).
[76] Zaretskaya, V., *The United States was the world's largest liquified natural gas exporter in 2023* (Apr. 1, 2024); U.S. Energy Info. Admin., *U.S. Exports of Crude Oil* (Dec. 31, 2025); U.S. Energy Info. Admin., *U.S. Energy Facts Explained: Imports & Exports* (July 15, 2024).
[77] Continuation of the National Emergency With Respect to Energy, 91 Fed. Reg. 1667 (Jan. 12, 2026).
[78] Exec. Order 14262, Strengthening the Reliability and Security of the United States Electric Grid, 90 Fed. Reg. 15521 (Apr. 14, 2025).
[79] *Id.*

Pursuant to this Executive Order, the Department published its report titled *Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid* ("Resource Adequacy Report" or "Report"),[80] on July 7, 2025.

Colorado and several other states filed a request for rehearing of the Resource Adequacy Report that pointed out the Report's many analytical errors, including flawed and unexplained assumptions for load growth projections and resource retirements and additions.[81] The Department itself acknowledges in the Report that the agency is not equipped to analyze resource adequacy, stating that its own analysis "could benefit greatly from the in-depth engineering assessments which occur at the regional and utility level."[82] Thus, despite issuing a Report intended to guide its use of Section 202(c) authority, the Department does not have the ability to discern whether there is an energy emergency at the regional level.

Nevertheless, the Department proceeded to issue numerous orders under Section 202(c) in 2025 to prevent the retirement of several fossil fuel-fired power plants across the country. In May 2025, the Department issued orders preventing two fossil-fuel generation facilities in Michigan and Pennsylvania from retiring as planned. Both orders failed to identify an imminent energy emergency justifying the units'

[80] Exhibit M (Department, Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid (July 2025)).
[81] Exhibit N (Motion to Intervene and Protective Request for Rehearing by the Attorneys General of Maryland, Washington, Illinois, Michigan, Minnesota, Arizona, Colorado, Connecticut, and New York, filed on August 6, 2025 with the Department).
[82] Exhibit M, at 2.

continued operation and instead cited only generalized concerns about resource adequacy.[83] The Department has now re-issued both orders for the fifth time.[84]

In December 2025, four additional fossil fuel-fired generation facilities were scheduled to retire, and the Department issued orders requiring their continued availability. In addition to the Renewed Order at issue in this proceeding, the Department ordered that units in Washington and Indiana remain available to operate, and the Department has now re-issued all four of those orders for the third time.[85] Most recently, the Department issued a Section 202(c) order to prevent a Florida power plant from retiring in June 2026.[86] Like the Renewed Order, each of these other Section 202(c) orders failed to support their emergency determinations with evidence of a specific, imminent energy shortfall or other circumstances that qualify as an emergency under Section 202(c).

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[83] Exhibit O (Department, Order No. 202-25-3 ("Campbell Order") (May 23, 2025)); Exhibit P (Department, Order 202-25-4 ("Eddystone Order") (May 30, 2025)).

[84] *See* Exhibit I (Department, Order No. 202-25-7 (Aug. 20, 2025") ("Aug. Campbell Extension")); Exhibit U (Department, Order No. 202-25-9 (Nov. 18, 2025) ("Nov. Campbell Extension"); Exhibit V (Department, Order No. 202-25-8 (Aug. 28, 2025) ("Aug. Eddystone Extension")); Exhibit PP (Department, Order No. 202-25-10 (Nov. 25, 2025) ("Nov. Eddystone Extension")); Exhibit XX (Department, Order No. 202-26-16 (Feb. 17, 2026)) ("Feb 2026 Campbell Extension"); Exhibit YY (Department, Order No. 202-26-17 (Feb. 23, 2026)) ("Feb 2026 Eddystone Extension"); Exhibit OOO (Department, Order No. 202-26-22 (May 19, 2026))("May 2026 Campbell Extension"); Exhibit PPP (Department, Order No. 202-26-24 (May 21, 2026)) ("May 2026 Eddystone Extension").

[85] Exhibit Q (Department, Order No. 202-25-11 (Dec. 16, 2025) ("Centralia Order")); Exhibit S (Department, Order No. 202-25-12 (Dec. 23, 2025) ("Schahfer Order")); Exhibit R (Department, Order No. 202-25-13 (Dec. 23, 2025) ("Culley Order")); Exhibit ZZ (Department, Order No. 202-26-18 (Mar. 16, 2026)) ("March 2026 Centralia Extension"); Exhibit AAA (Department, Order No. 202-26-19 (Mar. 23, 2026)) ("March 2026 Schahfer Extension"); Exhibit BBB (Department, Order No. 202-26-19 (Mar. 23, 2026)) ("March 2026 Culley Extension"); Exhibit QQQ (Department, Order No. 202-26-28 (June 12, 2026) ("June 2026 Centralia Extension"); Exhibit RRR (Department, Order No. 202-26-29 (June 18, 2026) ("June 2026 Schahfer Extension")); Exhibit SSS (Department, Order No. 202-26-30(June 18, 2026) ("June 2026 Culley Extension")).

[86] Exhibit TTT (Department Order No. 202-26-26 (June 4, 2026) ("Stanton Order").

IV. Statement of Issues and Specifications of Error

The State of Colorado submits the following statement of issues and specifications of error:

1. The Renewed Order is contrary to law because Section 202(c) only authorizes the Department to respond to specific, imminent, unexpected, and temporary events, while the Renewed Order addresses long-term resource adequacy concerns. The statutory text, legislative history, judicial construction, and the Department's regulations all confirm that an emergency must be specific, imminent, unexpected, and temporary. 16 U.S.C. § 824a(c); *Richmond Power & Light of City of Richmond, Ind. v. FERC*, 574 F.2d 610 (D.C. Cir. 1978); S. Rep. No. 74 621, 74th Cong., 1st Sess. (1935); 16 U.S.C. § 824a(a) & (b); *Otter Tail Power Co. v. Fed. Power Comm.*, 429 F.2d 232 (8th Cir. 1970).

2. The Renewed Order is contrary to law because it exceeds the Department's statutory authority by preventing the long-planned retirement of Craig Unit 1. Section 201(b) of the FPA reserves decisions about plant retirement dates to the states, and Section 202(c) does not vest the Department with general regulatory authority over resource adequacy. By abusing a statute meant only for emergencies, the Renewed Order intrudes on authority reserved to states and to other federal regulators to regulate resource adequacy. 16 U.S.C. §824(a); *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009); *see also Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 155 (2016); *Devon Power LLC et al.*, 109 FERC ¶ 61,154, P 47 (2004).

3. The Renewed Order is contrary to law because it fails to present substantial evidence for its emergency determination and ignores critical facts. None of the materials cited in the Renewed Order provide evidence of an emergency in the WECC-Rocky Mountain assessment area, and the Renewed Order ignores critical facts, including the findings in its own Resource Adequacy Report, NERC's findings, and State and utility analyses. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962); *Chritton v. National Transportation Safety Board*, 888 F.2d 854, 856 (D.C. App. 1989); *Richmond Power & Light of City of Richmond, Ind. v. FERC*, 574 F.2d 610 (D.C. Cir. 1978); S. Rep. No. 74-621 (1935); 16 U.S.C. § 824a(a) & (b); *Otter Tail Power Co. v. Fed. Power Comm.*, 429 F.2d 232 (8th Cir. 1970); *Emera Maine v. FERC*, 854 F.3d 9, 22 (D.C. Cir. 2017); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

4. The Renewed Order is arbitrary and capricious because it requires generation that does not best meet the claimed emergency. 16 U.S.C. § 824a(c)(1); *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009); *Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1 (2020); *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); 10 C.F.R. § 205.371.

5. The Renewed Order's terms fail to comply with Sections 202(c)(2) and 202(c)(4)(b) of the FPA, and Section 103(b) of the Department Organization Act. 16 USC § 824a(c)(1); 16 U.S.C. § 824a(c)(2); 42 U.S.C. § 7113; *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009); *see also, e.g., Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 155 (2016).

6. The Renewed Order is arbitrary and capricious because it is designed to support the federal administration's policy goal of supporting the coal industry. *Dep't of Commerce v. New York*, 588 U.S. at 782; *Level the Playing Field v. FEC*, 961 F.3d 462, 464 (D.C. Cir. 2020) (quoting *Hagelin v. FEC*, 411 F.3d 237, 242 (D.C. Cir. 2005)).

7. The Renewed Order violates the National Environmental Policy Act ("NEPA") because it fails to assess the environmental consequences of a major federal action significantly affecting the human environment. 42 U.S.C. § 4321, *et seq.*; 10 CFR § 1021.103.

V. Request For Rehearing

The Department must grant rehearing and rescind the Renewed Order because it suffers from numerous legal and factual deficiencies. Ignoring the legal standards that constrain the exercise of emergency authority under Section 202(c), and acting in disregard of the facts, the Renewed Order improperly impinges on state authority over resource planning decisions, fails to present substantial evidence of an emergency, imposes unreasonable and unnecessary costs, fails to include required provisions to minimize environmental harms, and advances the administration's preferred energy source with no reasonable basis. For these reasons, the Renewed Order is contrary to law, arbitrary and capricious, and unsupported by substantial evidence. The Department should withdraw it. To the extent the Department intends to rely on the facts and arguments presented in the Original or Second Orders to substantiate an emergency during the period of the Renewed Order, the arguments of the State of Colorado in its Original Request of the Original Order and Second Request are incorporated herein.[87]

A. The Renewed Order is contrary to law because it improperly expands the use of Section 202(c)'s emergency authority beyond the limited scope set forth in the FPA.

Section 202(c) authorizes the Department to command action from a utility unconstrained by many of the core procedural safeguards, jurisdictional boundaries, and substantive limitations normally imposed by the FPA.[88] This power far exceeds the Department's normal authority, and is therefore restricted to the extraordinary and limited circumstances set forth in the statute.[89] The FPA's statutory text and structure, along with the Department's regulations, historic practice, and case law interpreting the FPA all make clear that any such event, including a "shortage of electric energy" or the "demand for electric energy" must be one that constitutes a bona fide "emergency"—*i.e.*, a specific, imminent, unexpected and temporary event. The Renewed Order exceeds the Department's authority because those extraordinary and limited circumstances do not exist here, and the Department is instead attempting to use the Renewed Order to regulate long-term resource adequacy, which is expressly reserved to the states and FERC.

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[87] Exhibit CCC; Exhibit LLL.
[88] *See* 16 U.S.C. § 824a(c).
[89] *Id.* ("[d]uring the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes . . .").

i. The language, history and structure of Section 202(c) limit the Department to addressing specific, imminent, unexpected and temporary supply shortfalls.

Section 202(c)'s text authorizes the Department to act only upon an "emergency."[90] The statute itself does not define "emergency."[91] At the time Section 202(c) was enacted, "emergency" was defined as a "sudden or unexpected appearance or occurrence . . . An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency."[92] Contemporary dictionaries likewise define "emergency" as "an unforeseen combination of circumstances or the resulting state that calls for immediate action," or an "urgent need for assistance or relief."[93]

The remainder of Section 202(c)'s plain language also underscores the urgency and immediacy inherent in the word "emergency." The text's use of the present tense underscores its focus on imminent and certain shortfalls, empowering the Department to act only where "an emergency exists."[94] That near-term focus, along with the fact that this Section 202(c) authority is "temporary" authority,[95] precludes use of Section 202(c) to pursue long-term policy goals such as preference for a

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[90] *Id.*
[91] Although emergency is not defined, the statute does indicate that an emergency includes "the continuance of any war in which the United States is engaged." 16 U.S.C. § 824a(c)(1).
[92] *Emergency*, Webster's New International Dictionary of the English Language (1930).
[93] *Emergency*, Merriam-Webster Dictionary (Jan. 11, 2026); *See* also Benjamin Rolsma, *The New Reliability Override*, 57 Conn. L. Rev. 789, 812 n.147 (2025) (noting that dictionaries have given the term "emergency" the "same meaning for many years").
[94] 16 U.S.C. § 824a(c).
[95] *Id.*

particular fuel source[96] or interventions to address general concerns about long-term resource adequacy.[97]

The legislative history of the FPA confirms that Congress intended Section 202(c) authority to be used for true emergencies. In a report accompanying the FPA's original passage in 1935, Section 202(c) is described as a "temporary power" to be used in response to "crises:"

> This is a temporary power designed to avoid a repetition of the conditions during the last war, when a serious power shortage arose. Drought and other natural emergencies have created similar crises in certain sections of the country; such conditions should find a [f]ederal agency ready to do all that can be done in order to prevent a break-down in electric supply.[98]

Section 202's overall structure also highlights Section 202(c)'s emphasis on imminent, near-term concerns. Section 202 established three tiers of federal involvement in grid coordination. Section 202(a)[99] and Section 202(b)[100] together define and limit the tools by which the federal government may pursue "abundant" energy supplies in the normal course. Section 202(a) states that the federal government may seek "abundant supply of electric energy" by "divid[ing] the country into regional districts for the voluntary interconnection and coordination of facilities

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[96] *Richmond Power & Light*, 574 F.2d at 615 (Section 202(c) "is aimed at situations in which demand for electricity exceeds supply and not those in which supply is adequate but a means of fueling its production is in disfavor.").
[97] *See Coalition for Competitive Electricity, Dynergy Inc. v. Zibelman*, 906 F.3d 41, 50 (2018) (citing 16 U.S.C. § 824(b)) (FPA "leaves to the States alone" the authority "to regulate energy production and facilities used for the generation of electric energy"); *see also Arkansas Elec. Co-op Corp. v. Arkansas Public Service Comm'n*, 461 U.S. 375, 377 (1983) ("[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States.").
[98] S. Rep. No. 74-621 at 49 (1935).
[99] 16 U.S.C. § 824a(a).
[100] *id.* § 824a(b).

for the generation, transmission, and sale of electric energy." Section 202(b) provides a backstop if the voluntary interconnection and coordination provided for in Section 202(a) fails, allowing the federal government to order "physical connection . . . to sell energy or to exchange energy" upon application, and "after an opportunity for hearing."[101] However, Section 202(b) specifically states that the government has "no authority to compel the enlargement of generating facilities for such purposes."[102]

The resulting statutory "machinery for the promotion of the coordination of electric facilities" comprises the following: in subsection (a), an instruction to establish a general framework meant to facilitate "coordination by voluntary action;" in subsection (b), "limited authority to compel interstate utilities to connect their lines and sell or exchange energy," subject to defined procedural and substantive requirements, when "interconnection cannot be secured by voluntary action;" and in subsection (c), "much broader" but "temporary" authority "to compel the connection of facilities and the generation, delivery, or interchange of energy during times of war or other emergency."[103]

This structure relies on voluntary action for everyday energy planning, specifies limited authority where that voluntary system fails, and allows for "temporary" central command-and-control only in case of "emergency." Section 202(c) authority applies narrowly to immediate and unavoidable "break-down[s] in electric supply," rather than mere desire for more abundant supply in the future.[104] Interpreting

[101] *Id.*
[102] *Id.*
[103] S. Rep. No. 74-621 at 49 (1935).
[104] *Id.*

Section 202(c)'s "emergency" powers to encompass longer-term concerns such as potential shortfall years into the future would unwind the careful balance of voluntary, market-driven action and federal authority set out by Congress. Therefore, such an interpretation cannot be squared with the statutory text, history and structure of Section 202 as required by law.

ii. Section 215 of the FPA explicitly assigns federal regulation of long-term resource adequacy to FERC, further emphasizing that the Department's Section 202(c) authority is limited to imminent emergencies.

Section 215 of the FPA, 16 U.S.C. § 824o ("Section 215"), which delineates the scope of federal power to enforce mandatory long-term reliability requirements, confirms that Section 202(c) cannot be used to enforce the Department's preference for long-term reliability solutions. Congress added Section 215 to the FPA in 2005 precisely because the FPA as it then existed, which included Section 202(c), did not provide the federal government with the power to enforce measures designed to ensure broad, long-term reliability.[105] Implementation of Section 215, including the approval and enforcement of reliability standards for all entities operating in the bulk power system, is left to FERC and its designated ERO, not the Department.[106]

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[105] *See* Rules Concerning Certification of the ERO; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, 70 Fed. Reg. 53117, 53118 (Sept. 7, 2005) ("In 2001, President Bush proposed making Electric Reliability Standards mandatory and enforceable[,]" leading to enactment of Section 215 in 2005); National Energy Policy Development Group, *Reliable, Affordable, and Environmentally Sound Energy for America's Future* (May 2001) at 7-6 (noting that "[r]egional shortages of generating capacity and transmission constraints combine to reduce the overall reliability of electric supply in the country" and that "[o]ne factor limiting reliability is the lack of enforceable reliability standards" because "the reliability of the U.S. transmission grid has depended entirely on voluntary compliance," and then recommending "legislation providing for enforcement" of reliability standards) (emphasis added); S. Rep. No. 109-78,109th Cong., 1st Sess. at 48, Section 1211 (2005) (Section 215 "changes our current voluntary rules system to a mandatory rules system" for long-term reliability); *see Alcoa, Inc. v. FERC*, 564 F.3d 1342, 1344 (D.C. Cir. 2009) (noting that prior to the Energy Policy Act of 2005, "the reliability of the nation's bulk-power system depended on participants' voluntary compliance with industry standards").

[106] 16 U.S.C. § 824o.

By enacting Section 215, Congress newly created a comprehensive and carefully circumscribed scheme to allow FERC—not the Department—to address long-term reliability requirements. That statutory scheme strikes a careful balance between state and federal authority, and between private, market-driven decisions and top-down control. Reliability standards are devised by NERC independent "of the users and owners and operators of the bulk-power system" but with "fair stakeholder representation."[107] FERC may approve or remand those standards (but not replace them with its own) and must "give due weight" to NERC's "technical expertise" while independently assessing effects on "competition."[108] Section 215 specifies enforcement mechanisms and procedures for reliability standards and carefully preserves state authority over "the construction of additional generation" and regulation of in-state resource adequacy, establishing regional advisory boards to ensure appropriate state input on the administration of reliability standards.[109]

Interpreting Section 202(c) to permit the Department to mandate generation based on its determination that non-imminent and unsubstantiated reliability concerns create an "emergency" would effectively allow the Department to bypass Section 215's procedural safeguards, constraints on federal authority, and protection of state power over long-term reliability. This would impermissibly contradict Congress' clear intent as expressed in its more recent reliability-specific provisions, enacted with the understanding that the Department had no authority to address

[107] 16 U.S.C. § 824o(c)(2)(A); *see also id.* § 824o(a)(3) (defining reliability standards as "a requirement . . . to provide for reliable operation of the bulk-power system").
[108] *Id.* § 824o(d)(2)-(4).
[109] *Id.* §§ 824o(e), -(i)-(j).

long-term reliability through Section 202(c).[110] "Congress's specific and limited enumeration of [agency] power" over a particular matter in one section of the FPA "is strong evidence that [a separate section] confers no such authority on [an agency]."[111] Congress has, in Section 215, directly established the mechanisms by which the federal government may compel action to ensure long-term electric-system reliability, and that authority does not rest with the Department. In so doing, Congress has confirmed that the word "emergency," as used in Section 202(c), does not extend to long-term reliability concerns and only applies to specific, imminent, unexpected and temporary events.

iii. The Renewed Order is arbitrary, capricious and contrary to law because it contradicts the Department's regulations interpreting Section 202(c) and its historic practice in applying Section 202(c).

The Department's regulations confirm that Section 202(c)'s authority is confined to imminent and unexpected resource shortages rather than long-term reliability concerns. Those regulations define "emergency" for the purposes of Section 202(c) to mean circumstances that arise suddenly and unexpectedly:

> "Emergency," as used herein, is defined as an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power. Such events may be the result of weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected "entity" to prevent. An emergency also can result from a sudden increase in customer demand, an inability to obtain adequate amounts of the necessary fuels to generate electricity, or a regulatory action which

[110] *See also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 121 (2000) ("The meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand.").
[111] *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 401 (D.C. Cir. 2004).

> prohibits the use of certain electric power supply facilities.[112]

This focus on specific events like weather conditions, acts of God, or unforeseen circumstances outside of the power of the affected entity to prevent, along with the reference to a "sudden increase in customer demand" producing a "specific inadequate power supply situation,"[113] forecloses the Department from using 202(c) authority to address vague long-term supply and reliability issues, such as those articulated in the Renewed Order.

This need for specificity is repeated in the Department's regulations defining an inadequate energy supply: "[a] system may be considered to have inadequate" supply when "the projected energy deficiency . . . will cause the applicant [for a 202(c) Order] to be unable to meet its normal peak load requirements based upon use of all of its otherwise available resources so that it is unable to supply adequate electric service to its ultimate customers."[114] An emergency may exist where past planning failures produce an immediate, present-tense shortfall, but the Department has no authority to commandeer long-term planning merely because it deems current plans inadequate to meet long-term needs.[115] As the Department stated when it promulgated these regulations, the statute allows the Department to provide "assistance [to a utility] during a period of unexpected inadequate supply of electricity," but does not empower it to "solve long-term problems."[116]

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[112] 10 C.F.R. § 205.371.
[113] *Id.*
[114] 10 C.F.R. § 205.375.
[115] *See id.* (requiring present inability to meet demand to demonstrate inadequate energy supply).
[116] Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power, 46 Fed. Reg. 39984, 39985–86 (Aug. 6, 1981).

Until 2025, the Department's orders complied with this regulatory scheme, and the agency used its Section 202(c) authority only in response to concrete, particularized emergencies, subject to narrow, appropriate limitations. Established "practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred."[117] Until recently, the Department has used Section 202(c) to address specific, imminent, and unexpected shortages, never to address longer-term reliability concerns or demand forecasts.[118] As pointed out by the Congressional Research Service, the orders issued by the Department in May 2025 (and subsequently renewed) to keep coal plants open "all involve[d] seemingly new interpretations of the emergency authority."[119] The Renewed Order at issue in this proceeding continues this improper use of Section 202(c).

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[117] *See FTC v. Bunte Brothers, Inc.*, 312 U.S. 349, 352 (1941).
[118] *See, e.g.*, Department, Order No. 202-22-4 (Dec. 24, 2022), at 1 (responding to ongoing severe winter storm producing immediate and "unusually high peak load" between December 23 and December 26); Department, Order No. 202-20-2 (Sept. 6, 2020) (responding to shortages produced by ongoing extreme heat and wildfires); *see also* Rolsma, 57 Conn. L. Rev. at 803-4 (describing "sparing[]" use of Section 202(c) outside of wartime shortages during the twentieth century).
[119] Cong. Research Serv., *Federal Power Act: The Department of Energy's Emergency Authority*, CRS Report No. R48568, at 3 (June 12, 2025).

Similarly, before 2025, the Department used Section 202(c) on only three occasions to delay the retirement of generation facilities.[120] Each case met the following four criteria: (1) the order was requested by a system operator or governmental body; (2) the generation facility had ceased or would soon cease operation due to an inability to comply with environmental laws; (3) the request aimed to address a concrete and particularized emergency threatening an imminent loss of load; and (4) the Department tailored its order to go no further than necessary to address the emergency.

The Department's unexplained deviation from its prior interpretation of the statute, as demonstrated through its past practice, is unlawful, arbitrary and capricious.[121] And the Department cannot deviate from its regulations without conducting new notice and comment rulemaking and providing a reasonable basis for any change.[122] A cornerstone of administrative law is "that an agency must provide[ ] a reasoned explanation for departing from precedent or treating similar situations

[120] In 2005, the Department issued an order directing the continued operation of a facility in Alexandria, VA, after the facility was abruptly closed based on noncompliance with its air permit. The order only applied when one or both of the 230 kV transmission lines serving downtown D.C. were out of service. Department, Order No. 202-05-3 (Dec. 20, 2005). In 2017, an Oklahoma state agency asked the Department to direct the continued operation of a unit that would otherwise close because the unit was needed to provide dynamic reactive power support to the local grid, as confirmed by its reliability coordinator. The unit was needed because another unit at the station had been struck by lightning, and the third unit's construction had been delayed due to flooding delaying essential project materials. The Department subsequently ordered the unit to remain in operation for 90 days or until one of the other two units came online, to provide dynamic reactive power support when called upon by its reliability coordinator. Department, Order No. 202-17-1 (Apr. 14, 2017). Finally, in 2017, two Virginia utilities asked the Department to direct the continued operation of two units of a power station because they were necessary to prevent uncontrolled power disruptions and shedding of critical load. Letter from PJM Interconnection, LLC, to the Department (Aug. 24, 2017).

[121] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position.").

[122] *See* 5 U.S.C. § 553; *F.C.C.*, 566 U.S. at 515 (holding that an agency cannot simply change position on an issue without "a reasoned explanation" and "awareness that it is changing position.").

differently."[123] For this reason, "an interpretation of a legislative rule cannot be modified without the notice and comment procedure that would be required to change the underlying regulation—otherwise, an agency could easily evade notice and comment requirements by amending a rule under the guise of reinterpreting it."[124] The Department has not undertaken any such notice and comment procedure here and has not provided any reasoned justification for its recent departure from the binding requirements and interpretations of its governing statute and regulations.

iv. Courts have found that the Department's use of Section 202(c) is limited to true emergencies and the Department is bound by the courts' statutory interpretation.

There is little case law on Section 202(c). However, two decisions that have addressed the Department's authority under Section 202(c) both recognize that the Department's power under Section 202(c) is limited to specific, imminent, unexpected and temporary events.

First, during the 1973 oil embargo, the Federal Power Commission called for a voluntary transfer of electricity from non-oil power plants to areas of the country that relied heavily on oil, but the New England Power Pool petitioned for a Section 202(c) order because it was not convinced the voluntary program would work.[125] The Commission declined to issue a Section 202(c) order, and instead facilitated an

[123] *New England Power Generators Ass., Inc. v. FERC*, 881 F.3d 202, 210–12 (D.C. Cir. 2018) (quoting *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014)).
[124] *Env't Integrity Project v. EPA*, 425 F.3d 992, 995 (D.C. Cir. 2005) (internal citations omitted); *see also Center for Biological Diversity v. Haaland*, 998 F.3d 1061, 1067 (9th Cir. 2021) (internal citations omitted) ("When an agency changes its position, it must: (1) "display [ ] awareness that it is changing position," (2) "show "the new policy is permissible under the statute," (3) "believe[ ]" the new policy is better, and (4) provide "good reasons" for the new policy.").
[125] *Richmond Power & Light*, 574 F.2d at 613.

agreement between state commissions and supplying utilities.[126] In *Richmond Power and Light of City of Richmond, Indiana v. FERC*, the D.C. Circuit upheld the Commission's decision to not invoke Section 202(c).[127] The utility argued that the country's dependence on foreign oil, and the high cost and uncertain supply of foreign oil, left the country with a continuing emergency, but the court agreed with the Commission's argument that the facilitated agreement had worked, service was never interrupted, and there was no need for a Section 202(c) order.[128] The court highlighted that the statute "speaks of 'temporary' emergencies, epitomized by wartime disturbances, and is aimed at situations in which demand for electricity exceeds supply[.]"[129] The court upheld the Commission's view that Section 202(c) <u>cannot</u> be used when "supply is adequate but a means of fueling its production is in disfavor."[130]

The Eighth Circuit Court of Appeals has also held that Section 202(c) can only be used to respond to immediate crises. In *Otter Tail Power Co. v. Fed. Power Comm'n.*, a utility insisted a Section 202(c) order was necessary to properly order the utility to connect to a municipal power provider. The demand for electricity in the city had increased, and the peak load of the municipal power provider was high enough that both of its two generators would likely be needed simultaneously in the near future, which could cause a possible loss of service if one of them malfunctioned

[126] *Id.*
[127] *Id.*, at 614.
[128] *Id.*, at 615.
[129] *Id.*
[130] *Id.*

during a peak period.[131] Instead of issuing a Section 202(c) order, the Commission issued an order under Section 202(b), which the utility argued was incorrect.[132]

In upholding the Commission's decision, the court distinguished between an emergency that is likely to occur and one that is actually occurring, concluding that Section 202(b) applies to the former, while Section 202(c) applies to the latter:

> On its face, § 202(c) enables the Commission to react to a war or national disaster and order immediate interconnection of the facilities to maintain electrical service during such emergency. . . On the other hand, § 202(b) applies to a crisis which is likely to develop in the foreseeable future but which does not necessitate immediate action on the part of the Commission.[133]

Therefore, the court agreed that a potential crisis in the foreseeable future was not an emergency, making this current situation "just the type of situation to fit into a Section 202(b) hearing rather than a Section 202(c)."[134]

Because courts, not agencies, decide "all relevant questions of law" arising on review of agency actions, the Department is bound by these courts' "best reading" of the statutory language.[135]

B. Section 202(c) does not vest the Department with general regulatory authority over resource adequacy, which is regulated by the states and FERC under other provisions of the FPA.

The FPA preserves states' authority over generation facilities and resource adequacy planning, and Section 202(c) does not vest the Department with general regulatory authority over resource adequacy. Under the FPA, states are responsible

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[131] *Otter Tail Power*, 429 F.2d at 233-234.
[132] *Id.*
[133] *Id.*, at 234.
[134] *Id.*
[135] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 392, 399-400 (2024).

for their own resource adequacy and decisions about generation facilities, and FERC is responsible for assuring the reliability of the nation's bulk power system, including through its oversight of RTOs and ISOs. The Department itself has recognized that "resource adequacy planning and capacity requirements[] have traditionally been the domain of state regulatory commissions, NERC-certified Regional Entities, and RTOs/ISOs."[136] Because there is no imminent shortfall or other circumstance constituting an emergency, the Renewed Order is an illegal attempt to regulate long-term resource adequacy by misusing the Department's Section 202(c) authority.

i. The Renewed Order attempts to use the Department's short-term emergency authority to regulate long-term resource adequacy.

The Department is attempting to regulate long-term resource adequacy and energy production under the guise of a Section 202(c) emergency and is therefore intruding on FERC and state authority.

It is clear from the Renewed Order that the Department is using its Section 202(c) authority for circumstances beyond actual emergencies. The Renewed Order repeatedly references long-term reliability. The Department's determination that an emergency exists rests on the assertion of a long-term concern that "increasing demand and shortage from premature retirement of generation facilities . . . could lead to the loss of power to homes, and businesses" that is "likely to continue in subsequent years."[137] The Renewed and Second Orders both stated that their issuance was necessary "in the long term."[138] The Renewed Order admits that the WECC-Rocky

[136] Research Power Corp., Order No. EA-365-C, Order Authorizing Electricity Exports to Canada (Dep't of Energy Oct. 21, 2025), at 5.
[137] Exhibit KKK, at 6.
[138] Exhibit TT; Exhibit KKK.

Mountain region, where it has currently declared there to be an energy emergency, is expected to have "Anticipated Reserve Margins [that will] remain above the Reference Margin Level"[139] for the three month time period covered by the Renewed Order. As evidence of an energy emergency, the Renewed Order cites only the 2025 WECC Assessment's assertion that the "West *could* see energy shortfalls as early as *2028*." [140] First putting aside the fact that "the West" in this case refers to seven other subregions besides the Rocky Mountain subregion, attempting to remedy vague assertions of a potential energy shortfalls two years from now at the earliest falls into the realm of long-term resource planning, not a Section 202(c) emergency, which must be imminent, unexpected, sudden, and temporary.[141] And when looking at the 2025 WECC Assessment's outlook for the relevant Rocky Mountain subregion, shortfalls are not expected until 2030, and only in a scenario where only 67% of planned resources are acquired.[142] Given that the Renewed Order purports to address an emergency in the Rocky Mountain subregion, the Department cannot credibly say that an "emergency" that comes in the form of potential energy shortfalls four years from now are reddressable by a 90-day 202(c) order, particularly where those potential shortfalls are anticipated only if 67% of resource acquisitions go through. That is a long-term resource planning concern.

[139] Exhibit KKK, at 4.
[140] *Id.*, at 4 (emphasis added).
[141] *See supra*, Section V.A.
[142] Exhibit VVV.

ii. Regulating long-term resource adequacy is outside the scope of the Department's Section 202(c) authority.

The structure and language of the FPA reflect Congress' deliberate choice to preserve the states' traditional authority over generating facilities and to limit the Department's emergency authority. The FPA states that "the Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy . . ."[143] Congress also recognized the states' exclusive authority over generating facilities in Section 202(b), which provides that FERC's interconnection authority does not include the power to "compel the enlargement of generating facilities for such purposes."[144] FERC's role in regulating electricity generation and transmission is related to matters of interstate commerce and extends "only to those matters which are not subject to regulation by the [s]tates."[145]

Pursuant to the FPA, "[t]he states are thus authorized to regulate energy production . . . and facilities used for the generation of electric energy."[146] Decisions around what facilities to build, whether they remain feasible, and retail rates are areas governed by the states.[147] The Supreme Court has acknowledged that "States retain their traditional responsibility in the field of regulating electric utilities for determining questions of need, reliability, cost, and other related safety concerns.

[143] 16 U.S.C. § 824(b)(1).
[144] 16 U.S.C. § 824a(b).
[145] 16 U.S.C. § 824(a).
[146] *Coal. for Competitive Elec.*, 906 F.3d at 50.
[147] *Pac. Gas & Elec. Co. v. State Energy Res. Conservation and Dev. Comm'n*, 461 U.S. 190, 205 (1983).

Need for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States."[148] Courts have also held that Section 201(b)(1) reserves to the states authority over electric generating facilities, including that states retain the right "to require the retirement of existing generators" or to take any other action in their "role as regulators of generation facilities."[149] FERC has acknowledged that "[r]esource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there. States have traditionally designated the entities that are responsive for procuring adequate capacity to serve loads within their respective jurisdictions."[150] As relevant to Craig Unit 1, because SPP does not have a capacity market, states are still required to ensure utilities have sufficient generation capacity to meet their needs; SPP simply determines when to dispatch it. While many RTOs or ISOs have a centralized capacity market, SPP instead uses a resource adequacy requirement that establishes minimum capacity levels but maintains traditional state authority over how to meet those minimum levels.

The electric power sector is governed by longstanding principles of cooperative federalism encouraged in Section 209(b) of the FPA, which explicitly declares that FERC may consult with states "regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission."[151] FERC

[148] *Id.*
[149] *Conn. Dep't of Pub. Util.*, 569 F.3d at 481; *see also Hughes*, 578 U.S. at 155.
[150] *Devon Power LLC, et al.*, 109 FERC ¶ 61,154, at 47 (2004).
[151] 16 U.S.C. § 824h(b).

has embraced these cooperative federalism principles and developed long-standing consultation practices with the states, including through creation of a Joint Federal-State Task Force,[152] and more recently, a Federal-State Current Issues Collaborative which was formed due to the success of the Task Force.[153] The importance of this cooperation is evident in the Department's own Resource Adequacy Report, which flagged that it could have benefitted greatly from cooperation with the states due to the "in-depth engineering assessments which occur at the regional and utility level."[154]

In the Renewed Order, the Department seeks to substitute its own judgment about which resources should be employed to maintain resource adequacy for the states' decisions, despite these decisions resting firmly in the jurisdiction of the states. Section 202(c) does not provide the Department with the authority to mandate that resources remain running to address long-term resource adequacy. If Congress intended to vest regulatory authority over long-term resource adequacy in Section 202(c) and displace state law, it would have needed to make that intent "unmistakably clear."[155] Section 202(c) says that the Department may "require by order . . . such generation . . . of electric energy as in its judgment will best meet the emergency and serve the public interest."[156] Empowering the Department to generally

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[152] FERC, *Joint Federal-State Task Force on Electric Transmission* (Sept. 3, 2025).
[153] FERC, *Federal-State Current Issues Collaborative* (Jan. 21, 2026).
[154] Department, *Resource Adequacy Report Evaluating the Reliability and Security of the United States Electric Grid* (July 2025) at 2.
[155] *Gregory v. Ashcroft,* 501 U.S. 452, 460 (1991) (The clear statement rule requires Congress to make its intent unmistakably clear if it intends a statute to alter the usual constitutional balance between the federal government and the states.); *see also DeMarco v. Holy Cross High Sch.*, 4 F.3d 166, 169 (2d Cir. 1993) (Congress must express an affirmative intention to use a statute to alter the federal balance.).
[156] 16 U.S.C. § 824a(c)(1).

determine which power plants may retire across every utility and independent power producer in the entire country would have profound implications for rates, state sovereignty, and a broad array of other state policy and stakeholder interests. If Congress had intended to do that, it would not have done so through the only provision in the FPA that empowers the Department to act outside normal procedural safeguards.

The Supreme Court has rejected statutory interpretations where an agency "claim[s] to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority."[157] The Department may not radically reinterpret a 90-year-old statute to manufacture a basis to exercise much broader authority than it ever has in the past. Previous exercises of Section 202(c) authority have been at the request of a system operator or governmental body and in a manner narrowly tailored to respond to a concrete and particularized emergency. Prior to the current administration, the Department has never issued a Section 202(c) order to impose its policy preferences to contravene the judgment of those bodies properly responsible for ensuring resource adequacy, *i.e.*, the states and FERC. For these reasons, the Renewed Order should be withdrawn.

[157] *W. Virginia v. EPA*, 597 U.S. 697, 724, (2022) (quoting *Util. Air. Regul. Grp. V. E.P.A.*, 573 U.S. 302, 324 (2014)) (internal quotations omitted).

C. The Renewed Order fails to present substantial evidence for its emergency determination and ignores critical facts.

Agencies "must examine the relevant data and articulate a satisfactory explanation for [their] actions, including a rational connection between the facts found and the choice made[,]" and make findings that are supported by substantial evidence.[158] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[159] Similarly, orders under the FPA must reflect "a principled and reasoned decision supported by the evidentiary record."[160] Here, the Department failed to provide evidence of an imminent resource adequacy shortfall, making the Renewed Order contrary to law.

The Renewed Order cites the following purported evidence of an emergency: a conclusory statement that the production of electricity from Craig Unit 1 continues to be critical to maintain reliability; WECC's 2025 Western Assessment of Resource Adequacy, the 2026 SRA, and the Department's Resource Adequacy Report; generation retirements and summer resource adequacy forecasts in Colorado; and the Grid Reliability and Energy Emergency Executive Orders, data center load growth, and a recent Presidential Memorandum.[161] Contrary to the Renewed Order's claims, these reports and observations, whether considered separately or together, do not provide sufficient evidence of an energy emergency in the WECC-Rocky Mountain assessment area.

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[158] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).
[159] *Chritton*, 888 F.2d at 856 (quoting *Refrigerated Transport Co., Inc. v. I.C.C.*, 616 F.2d 748, 751 (5th Cir.1980) (quoting *Chem-Haulers, Inc. v. United States*, 536 F.2d 610, 617 (5th Cir.1976)).
[160] *Emera Maine*, 854 F.3d at 22.
[161] Exhibit KKK.

i. Minimal usage of Craig Unit 1 over the past seven months does not demonstrate an emergency.

The Renewed Order states that the "production of electricity from Craig Unit 1 *continues to be critical* to maintain reliability in the WECC-Rocky Mountain assessment area."[162] At best, this is a misrepresentation of the need for and use of Craig Unit 1. From the issuance of the Original Order on December 31, 2026, to the date of this request for rehearing, a period of almost seven months, Craig was only called up to run a handful of times, including once for about two weeks in April, which was immediately upon Tri-State and PRPA's entrance to SPP RTO, and for about a week in July.[163] This means that Craig Unit 1 has run for a total of around two weeks in a seven-month period, and mostly at minimum capacity.[164] Craig Unit 1 also likely had to run longer than was needed for the circumstances it was called up to address, because the unit has a minimum run time of approximately four to five days, which is longer than the typical resource alerts called by SPP in this period. The Department fails to include in its Renewed Order evidence sufficient to demonstrate that Craig Unit 1 was needed to address an emergency, and the bare fact of Craig Unit 1's minimal usage does not constitute evidence of an emergency requiring the continued availability of Craig Unit 1.

And when Craig Unit 1 did run, it did so at the direction of SPP, for SPP's needs, not to maintain reliability in the WECC-Rocky Mountain assessment area. Tri-State and PRPA continue to assert that they do not need Craig Unit 1 to maintain their

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[162] *Id.*, at 3 (emphasis added).
[163] Exhibit B, ¶¶ 17-20.
[164] *Id.*, ¶ 19.

system reliability, and the remaining co-owner located in the Rocky Mountain assessment area, Public Service, is not in SPP and therefore did not benefit from Craig's operation on the rare occasion that it did run.[165]

ii. NERC's assessments do not establish that there is an energy emergency in the areas served by Craig Unit 1.

The Renewed Order cites the 2026 SRA's statements that the WECC-Rocky Mountain assessment area's anticipated reserve margins will remain above the reference margin level for the summer of 2026, and that wildfires and extreme heat conditions pose the greatest reliability risk scenario for the Rocky Mountains.[166] The Renewed Order relies on these statements to assert the WECC-Rocky Mountain assessment area is experiencing an energy emergency. This mischaracterizes and misapplies the 2026 SRA's conclusions. By failing to consider relevant facts and to support its findings with substantial evidence, the Department's Renewed Order is contrary to law.

The 2026 SRA assessment does not actually demonstrate an emergency for the WECC-Rocky Mountain assessment area, contrary to the Renewed Order's claims. In terms of resource adequacy in the WECC-Rocky Mountain region, the Renewed Order itself states that the Rocky Mountain assessment area's "Anticipated Reserve Margins will remain above the Reference Margin Level," but goes on to cite to the 2026 SRA's statement that "'wildfires in the region, along with extreme heat conditions for the summer, pose the greatest reliability risk scenario for the Rocky Mountains . . .

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165 Exhibit UU; Exhibit MMM.
166 Exhibit KKK.

[which] can impact rural communities disproportionately.'"[167] NERC's general recognition of a possible reliability risk from wildfires does not negate its overall assessment that the WECC-Rocky Mountain Region's resource adequacy criteria are met and the region is expected to have sufficient resources for extreme conditions during the time period addressed by the Renewed Order.[168]

The Renewed Order also ignores that the WECC-Rocky Mountain assessment area has existing certain and anticipated reserve margins of 43% and 52% respectively, which are over approximately triple the reference margin level of 15%.[169] Even in a scenario with higher demand, outages, and derates (an intentional reduction of the operating capacity of an electric generating unit) in extreme conditions, the Rocky Mountain assessment area has an anticipated reserve margin of 21.5%.[170] Furthermore, internal demand has slightly decreased from 2025, and tier 1 planned capacity has increased by 1059.6%.[171] Importantly, the units forced to stay online by 202(c) orders were not incorporated into the analysis of anticipated resources for assessment areas.[172]

The 2026 SRA therefore does not provide substantial evidence of an energy emergency in the WECC-Rocky Mountain assessment area.

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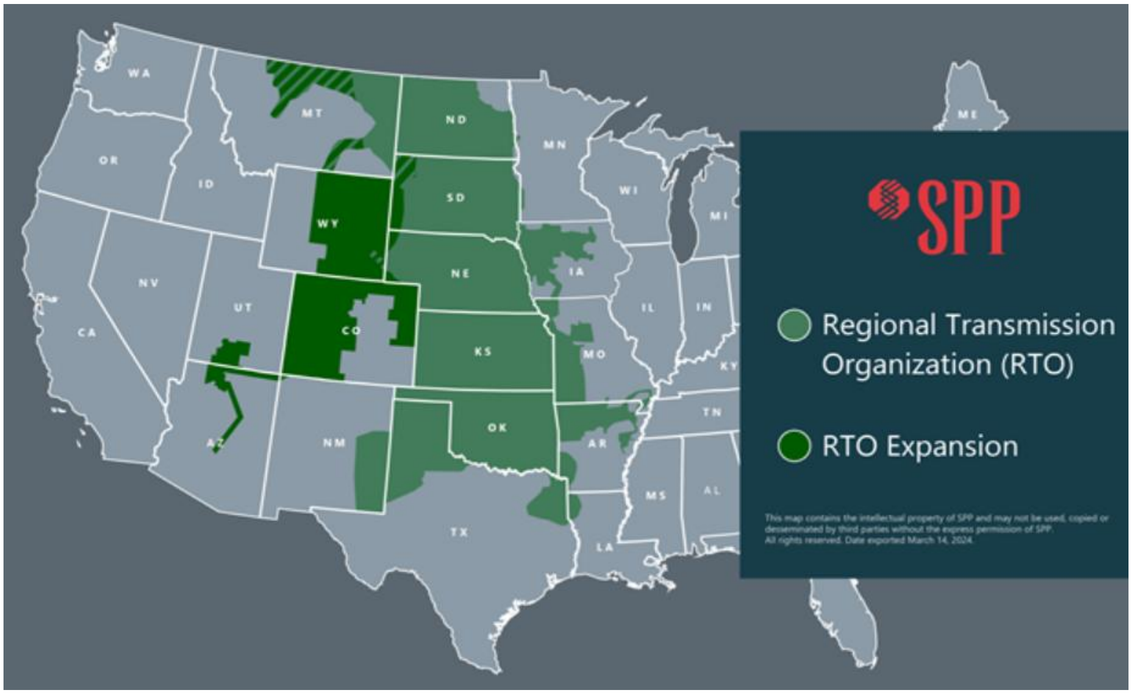
[167] *Id.*, at 4-5.
[168] Exhibit NNN.
[169] *Id.*, at 37.
[170] *Id.*, at 10.
[171] *Id.*, at 50; Exhibit VVV
[172] Exhibit NNN.

Even if the 2026 SRA contained some indication of reliability concerns, the Department's reliance on the 2026 SRA as evidence of an emergency is fundamentally flawed. NERC serves an important advisory role by providing recommendations about risks to the grid, but ultimately, determinations about generation resources remain within state authority.[173] Importantly, NERC's reports do not examine regions at the level of granularity that would be required to determine whether a particular resource is essential for regional resource adequacy. The reports only provide the anticipated planning reserve margins of large regions as a whole. The purpose of NERC assessments is to identify for grid operators constraints that might arise and implicate grid reliability if not mitigated.[174] Thus, even "at risk" designations are not grid emergencies. They merely reflect potential areas of future concern so that the relevant grid operators and planners for the applicable region can consider whether mitigation measures are necessary to maintain grid reliability, under their set procedures.

The Department's choice to rely on the 2026 SRA is also flawed because the 2026 SRA does not account for the fact that Tri-State and PRPA have joined the SPP RTO. SPP's new footprint after its April 1, 2026, western expansion is demonstrated in the figure below:

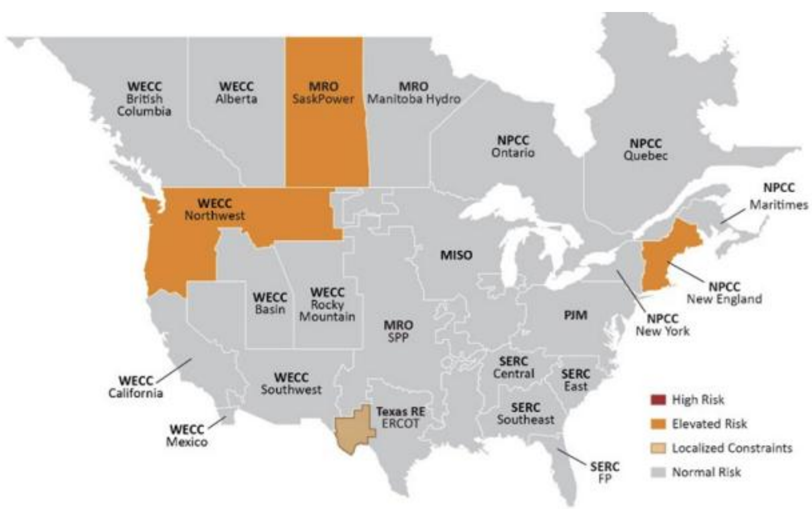
[173] NERC, *Reliability Assessments* (2026).
[174] Exhibit L.

Figure 1: SPP Expanded RTO Footprint[175]



The other 2026 SRA assessment areas match up with RTO and ISO footprints, as shown in the map below:

Figure 2: NERC Assessment Areas Map[176]



175 SPP, *RTO Expansion*, Western Services (Apr. 1, 2026) (map at top of page).
176 Exhibit NNN, at 3.

The MRO-SPP and WECC-Rocky Mountain assessment area no longer accurately reflect operational and planning realities, as well as RTO footprints.

Thus, it is unreasoned for the Department to rely on the 2026 SRA as substantial evidence of a reliability concern in the WECC-Rocky Mountain assessment area.

iii. WECC's Western Assessment of Resource Adequacy and the Department's Resource Adequacy Report do not demonstrate an emergency.

The Renewed Order also cites the 2025 WECC Western Assessment of Resource Adequacy ("2025 WECC Assessment") to support its declaration of an emergency. The 2025 WECC Assessment does not analyze near-term resource adequacy and instead uses a probabilistic approach to evaluate reliability over the next ten years.[177] This makes the 2025 WECC Assessment inappropriate for providing evidence of an emergency under Section 202(c).

Even if the 2025 WECC Assessment was appropriate evidence for the Department to rely upon, it does not demonstrate an emergency in the areas served by Craig Unit 1 or the WECC-Rocky Mountain subregion.[178] Once again, the Department selectively cites information from that report.[179] The Renewed Order mentions long-term resource adequacy concerns regarding the Basin and Northwest subregions, despite the fact that the Renewed Order only designates an emergency for the WECC-Rocky Mountain subregion.[180] The Renewed Order cites WECC's vague

[177] WECC, *2025 Western Assessment*, WECC Feature (last visited Apr. 27, 2026).
[178] The Rocky Mountain subregion used in the WECC assessments is equivalent to the Rocky Mountain assessment area used in the NERC assessments.
[179] Exhibit KKK.
[180] Exhibit UUU, (WECC, Summer 2026 Assessment Overview).

statement that "[t]he West could see energy shortfalls as early as 2028"[181] without explaining why potential shortfalls located somewhere in the West, which WECC's supporting documents assign to the Northwest subregion,[182] result in an emergency in the Rocky Mountain subregion.

The Renewed Order also states that planned resources are largely inverter-based resources, but it fails to demonstrate how that results in an imminent reliability risk for the Rocky Mountain subregion. In fact, the WECC Summer Reliability Assessment Western Overview 2026 ("WECC 2026 Summer Assessment") finds the potential variability of inverter-based resources to be a concern for the California subregion, not the Rocky Mountain subregion.[183]

Finally, the Renewed Order states "that entities plan to retire 22 GW [of largely baseload] generation over the next 10 years."[184] Again, the Renewed Order does not identify how much of that generation is in the Rocky Mountain subregion and provides no evidence that those retirements would pose a concern even if they were in the Rocky Mountain subregion. The Renewed Order then fails to acknowledge the 2025 WECC Assessment's actual findings for the Rocky Mountain subregion, namely that the Rocky Mountain subregion is again designated as normal risk. According to WECC, the subregion does not have demand at risk hours until 2030, where it has one loss of load hour, only in a scenario where 67% of resource additions are completed on

[181] Exhibit KKK, at 4.
[182] Exhibit VVV (WECC, 2025 Western Assessment Supplemental Information).
[183] Exhibit UUU.
[184] Exhibit KKK, at 4.

time.[185] Thus, the 2025 WECC Assessment does not provide substantial evidence of an emergency in the WECC-Rocky Mountain subregion.

The Department also completely fails to acknowledge the more recent and more relevant WECC 2026 Summer Assessment.[186] The WECC 2026 Summer Assessment "covers the upcoming summer season," the same period covered by the Renewed Order, "providing an evaluation of reliability for projected risk periods,"[187] whereas the 2025 WECC Assessment "provides a high level examination of resource-adequacy-related risks to the reliability of the Western Interconnection over the next 10 years . . . This work is intended to help stakeholders target specific areas and topics for deeper evaluation and mitigation."[188]

The WECC Summer 2026 Assessment found for the Rocky Mountain subregion that "peak demand is projected to decline by 3%, while anticipated resource capacity is expected to increase by 15%."[189] The WECC Summer 2026 Assessment also points out that although "[c]limate change and ecological factors are raising the wildfire risk in the subregion, [] the entities have engaged in substantial mitigation efforts."[190] The Rocky Mountain subregion is not one of the three areas that face an elevated risk of supply shortfalls during periods of more extreme summer conditions.[191]

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[185] Exhibit VVV.
[186] Exhibit UUU.
[187] *Id.*, at 2.
[188] Exhibit VVV, at 2.
[189] Exhibit UUU, at 6.
[190] *Id.*
[191] *See generally id.*

Next, the Renewed Order briefly references the Department's Resource Adequacy Report,[192] which purports to provide a uniform methodology for identifying at-risk regions and grid reliability issues and guide reliability interventions. As with other reports cited in the Renewed Order, this Report provides no support for the Department's determination that there is an emergency requiring continued availability of Craig Unit 1 in the next 90 days, or even the next year. The Report assesses the ability of the electric grid to "meet *future* demand through 2030" and is a "*forward-looking* snapshot of resource adequacy."[193] This Report was not designed to assess imminent emergency conditions of the electric grid and explicitly does not do so.

Indeed, the Report's only conclusions are for 2030, which is completely irrelevant for an emergency Section 202(c) order issued for 90 days in 2026. The Report finds potential reliability issues in 2030 only under a set of unsupported assumptions that assume unrealistically high load projections stemming from unfounded assumptions about data center load and assume that utilities virtually cease construction of new generation and transmission resources. Its 2030 projections are at odds with the analyses from NERC and WECC, as well as the findings from Colorado's ERP proceedings and utilities' resource adequacy reporting. In any case, a claimed reliability issue in 2030 cannot justify a 90-day emergency order in 2026. Forcing ratepayers to pay to keep generation online that is not needed, simply because technology companies may be building more data centers in the future that

[192] Exhibit M.
[193] Department, *Resource Adequacy Report Evaluating the Reliability and Security of the United States Electric Grid* (July 2025), at 9 (emphasis added).

may need power is arbitrary and violates the FPA's requirement that rates be just and reasonable, especially as other analyses indicate that data center projections may be overblown.[194]

Given their focus on non-imminent future conditions and unverified assumptions, neither the 2025 WECC Assessment nor the Department's Resource Adequacy Report provide substantial evidence of an emergency under Section 202(c).

iv. The Executive Orders and Presidential Memorandum cited in the Renewed Order are not evidence of an energy emergency.

The Renewed Order relies on the Energy Emergency and Grid Reliability Executive Orders as evidence of an energy emergency, generally stating that the Energy Emergency and Grid Reliability Executive Orders underscore "the [ ] energy challenges facing the Nation due to growing resource adequacy concerns[.]"[195] The Renewed Order also cites to a White House Memorandum issued by President Trump to the Secretary of Energy ("Coal Memorandum") that emphasizes the findings of the Energy Emergency Executive Order.[196] However, these executive orders and the memorandum do not present evidence of an energy emergency in the WECC-Rocky Mountain assessment area or any other region of the country within the meaning of Section 202(c).[197]

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[194] Exhibit SS (Behr, P., *PJM to ratchet down projected AI power demand for eastern US* (Jan. 6 , 2026)); Institute for Policy Integrity, *Fiscal Year 2025 Annual Report*; London Economics International LLC, *Uncertainty and Upward Bias are Inherent in Data center Electricity Demand Projections* (July 7, 2025).
[195] Exhibit KKK, at 5.
[196] *Id.*
[197] *See* 10 C.F.R. § 205.371 (2026) (defining emergency as a "specific inadequate power supply situation").

On January 20, 2025, President Trump issued Executive Order 14156, *Declaring a National Energy Emergency* ("Energy Emergency Executive Order").[198] Despite its title, the Energy Emergency Executive Order fails to describe any type of energy emergency. It generically claims "[t]he energy. . . generation capacity of the United States [is] far too inadequate to meet our Nation's needs," and the situation "will dramatically deteriorate in the near future . . . "[199] The Energy Emergency Executive Order also specifically calls out the Northeast and West Coast states, claiming those states' "dangerous" "policies jeopardize our Nation's core national defense and security needs, and devastate the prosperity of not only local residents but the entire United States population."[200] The Executive Order does not identify any specific policies or explain how they are jeopardizing grid reliability.

President Trump then issued Executive Order 14262, *Strengthening the Reliability and Security of the United States Electric Grid*, ("Grid Reliability Executive Order") on April 8, 2025.[201] The Grid Executive Order also claims that the country is "experiencing an unprecedented surge in electricity demand," generically pointing to expansions of data centers and increases in domestic manufacturing as demand drivers.[202] These vague statements on nationwide energy needs are not sufficiently specific to justify a Section 202(c) order.

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198 Exec. Order 14156, 90 Fed. Reg. 8433, 8434 (Jan. 20, 2025).
199 *Id.*, at Sec. 1.
200 *Id.*, at 8434.
201 Exec. Order 14262, 90 Fed. Reg. 15521.
202 *Id.*

The April 20, 2026, Coal Memorandum emphasizes the findings of the Energy Emergency Executive Order and states that coal supply chains and baseload power generation are essential to the U.S. national defense, and therefore action to expand coal supply chain capacity and baseload generation availability is necessary.[203]

Neither of these Executive Orders nor the Coal Memorandum provide data or other evidence in support of their claims of inadequate nationwide generation, let alone evidence of inadequate generation in the areas served by Craig Unit 1 such that they could constitute the evidence required to support the Renewed Order. The Energy Emergency Executive Order refers to a deterioration "in the near future,"[204] while the Grid Reliability Executive Order offers no projection for the timing or location of the increased demand it speculates.[205] The Coal Memorandum states that the "Nation's current inadequate and intermittent energy supply leaves us vulnerable . . ." with no evidence to support that statement.[206] The generalized statements in these unsupported executive documents do not satisfy Section 202(c)'s requirements, discussed above in Section V.A., that an emergency must be specific and imminent.

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[203] Memorandum on Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Grid Infrastructure, Equipment, and Supply Chain Capacity, Pres. Determination No. 2026-11 (Apr. 20, 2026).
[204] Exec. Order 14156 at 8433.
[205] *Id.*
[206] Memorandum on Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Grid Infrastructure, Equipment, and Supply Chain Capacity, Pres. Determination No. 2026-11 (Apr. 20, 2026).

Importantly, the facts contradict the vague assertions of an energy emergency contained in the Executive Orders and the Coal Memorandum. For example, America's domestic energy production is at an all-time high given its diverse mix of both fossil and non-fossil fuel resources. The United States is producing record quantities of oil and natural gas,[207] and has been a net energy exporter since 2019.[208] The Energy Emergency Executive Order's assertion that the United States has an "inadequate and intermittent energy supply, and an increasingly unreliable grid" is unsupported by the facts.[209] NERC reports that the bulk power system is resilient, and that the largest challenge for reliability is extreme weather induced by climate change.[210] Renewable energy resources both mitigate climate change and improve the overall reliability and affordability of the United States' energy supply by tempering the impact of international commodity price swings on natural gas prices and reducing grid operators' reliance on interruptible natural gas deliveries.[211] Solar and wind generated more than 15% of all electricity and 8% of all energy consumed in the United States in 2024.[212] The 2026 SRA found that a large influx of generation resources has outpaced demand and is boosting reserves, and that battery resource additions help maintain stable frequency on the grid.[213] The WECC Summer 2026 Assessment found that "[a]n influx of resources, primarily solar and battery but also natural gas-fired generation, has outpaced demand and boosted reserves, easing resource adequacy concerns across the continent."[214]

Next, the Renewed Order relies in part on "the expansion of artificial intelligence data centers" referenced in the Grid Reliability Executive Order and other projected demand growth noted in the Department Resource Adequacy Report to support its finding of an emergency.[215] But the Order's discussion of data center load growth is both irrelevant and unsubstantiated.

Neither the Grid Reliability Executive Order nor the Renewed Order specify any timeframe for when the increased energy demand from data centers is expected to occur. Section 202(c) does not give the Department the authority to retain generation units for possible conditions that may arise at some indeterminate time in the future. Authority to address long-term threats to resource adequacy rests with the states and FERC and its designated entities, all of which are aware of and extensively planning for this potential load growth. The Renewed Order does not cite any evidence that data center load growth will occur in the areas served by Craig Unit 1 during the 90-day period of the Renewed Order. As demonstrated in their respective resource plans, the Craig Unit 1 owners have sufficient capacity for any new data centers or other large loads over 50 MW that are scheduled to come online in their service territory in the next 90 days.[216] And where Colorado utilities anticipate data centers coming online in the next five years, they are planning for that additional load through their established resource planning processes.

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[207] U.S. Energy Information Admin. ("EIA"), *Short-Term Energy Outlook Data Browser* (Jan. 13, 2026).
[208] EIA, *In-Brief Analysis: The United States was the world's largest liquified natural gas exporter in 2023* (Apr. 1, 2024); EIA, *U.S. Exports of Crude Oil* (Dec. 31, 2025); EIA, *U.S. Energy Facts Explained* (July 15, 2024).
[209] Exec. Order 14156 at 8433.
[210] NERC, *2024 State of Reliability* (June 2024), at 5.
[211] FERC, *The February 2021 Cold Weather Outages in Texas and the South Central United States* (Nov. 16, 2021), at 172 ("Natural gas fuel supply issues alone caused 27.3[%] of the generating unit outages" during Winter Storm Uri).
[212] EIA, *Short-Term Energy Outlook* (Feb. 11, 2025), *see* the 2024 data; EIA, *December 2025 Monthly Energy Review* (Dec. 23, 2025).
[213] Exhibit NNN.
[214] Exhibit UUU, at 2.
[215] Exhibit KKK, at 5.
[216] *See supra,* Section V.D.

D. State and utility planning processes have ensured that the areas served by Craig Unit 1 will continue to have sufficient capacity without Craig Unit 1.

The Renewed Order notes that Colorado's share of coal generated electricity has fallen from 45% to 25% since 2016, that further coal and natural gas plant retirements are planned by 2029, that intermittent wind accounts for 5,300 MW of Colorado's electric generating capacity, and that CoPUC Commissioners have discussed resource adequacy concerns for Summer 2026 as evidence of an energy emergency in the WECC-Rocky Mountain assessment area.[217] However, the Renewed Order does not provide any evidence that any of these factors have resulted in a resource shortfall in Colorado. Pursuant to the authority reserved to the states by the FPA, Colorado has robust electric resource planning processes that ensure resource adequacy and grid reliability. Tri-State and PRPA, the two co-owners of Tri-State that are both located in Colorado and members of SPP, also have robust electric resource planning processes that accounted for the retirement of Craig Unit 1.

i. Colorado's robust planning process ensures sufficient capacity for the State's utility customers.

For decades, Colorado has implemented robust and successful electric resource planning processes that serve as a model for other states. Colorado's process assesses resource adequacy and reliability across utilities' service territories, requires regulated utilities to use competitive resource solicitations to acquire new resources of multiple fuel types, and ensures that there will be sufficient electricity to meet expected load, even with planned plant closures.[218]

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[217] Exhibit KKK, at 4.
[218] *See* Exhibit C, ¶¶ 12-17.

As part of Colorado's overall energy planning framework, each investor-owned retail electric utility and wholesale electric generation and transmission cooperative is required to submit to the CoPUC an application for approval of an ERP.[219] Each Colorado ERP proceeding thoroughly considers resource adequacy and reliability at multiple stages.[220] In developing their forecasted resource needs, utilities' electric energy and demand forecasts must be completed for each year within the ERP planning period and must include, among other components, the electric demand placed on the utility's system for each hour of the day for peak-day, average-day, and representative off-peak days for each calendar month.[221] Utilities must "develop and justify a range of forecasts of coincident summer and winter peak demand and energy sales that its system may reasonably be required to serve during the planning period[,] . . . including base case, high, and low" demand growth scenarios.[222] Since the announcement of Craig Unit 1's retirement in 2016, the CoPUC has received annual resource planning reports from Tri-State and Public Service, and has conducted two adjudicated resource planning proceedings for Tri-State's system and three for Public Service's system, with administrative records totaling in the tens of thousands or hundreds of thousands of pages. All of these proceedings have included the planned Craig Unit 1 retirement as a foundational assumption in forecasting, modeling, and portfolio selection.

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[219] § 40-2-125.5, Colo. Rev. Stat.; 4 Colo. Code Regs. §§ 723-3-3603(a), -3605(a).
[220] *Id.*
[221] 4 Colo. Code Regs. § 723-3-3605(b).
[222] *Id.* at -(b)(II).

In an ERP proceeding, the utility must describe and justify the means by which it assesses the desired level of system reliability, and it must propose target planning reserve margins for each forecasted scenario.[223] Utilities' planning reserve margin studies employ probabilistic modeling to determine the amount of capacity necessary to maintain a certain level of reliability, for example a Loss of Load Expectation of 0.1 days/year. The studies must account for a wide variety of risks, "includ[ing] risks associated with: the development of generation; losses of generation capacity . . . , losses of transmission capability; [and] risks due to known or reasonably expected changes in environmental regulatory requirements[.]"[224] Planning reserve margin studies also rely on thorough analyses, for each resource type, of the Effective Load Carrying Capability ("ELCC"), or the amount of dependable capacity that can be counted on by the system for resource adequacy purposes.[225] Utilities must present contingency plans for the acquisition of additional resources in the event demand increases or expected generation resources are not developed.[226] "The additional generation must be able to [ ] meet system needs, including availability or dispatchability at certain hours of the day."[227]

Upon completion of a resource solicitation, the utility presents a number of potential resource portfolios. Included in this presentation are the results of additional reliability checks, which further ensure resource adequacy and reliability by demonstrating that each portfolio satisfies relevant metrics such as meeting the

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[223] 4 Colo. Code Regs. § 723-3-3605(e).
[224] *Id.* at -(e)(II).
[225] Exhibit C, ¶¶ 23, 43, 54.
[226] 4 Colo. Code Regs. § 723-3-3605(e)(III).
[227] Exhibit C.

required planning reserve margin, meeting a Loss of Load Hours target and meeting an Annual Expected Unserved Energy target.[228] After opportunities for stakeholder input, the CoPUC issues a decision establishing the final cost-effective resource plan. In making this decision the CoPUC considers various statutory factors, including whether the resource plan meets the energy policy goals of Colorado, such as giving full consideration to cost-effective resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases.[229]

Colorado's electric resource planning process also allows for the filing of interim ERPs and certificates of public convenience and necessity to fill generation needs not identified or fully satisfied by ERPs completed on the regular cadence.[230] This "allow[s] electric utilities and the State to quickly respond to changes in load or available resources."[231]

The Renewed Order states that CoPUC Commissioners "have expressed concerns about the ability of certain utilities to meet projected summer 2026 loads[,]" citing a March 26, 2026, RTO Insider article titled *Comanche 3 Repair Delay Raises RA Concerns in Colorado*.[232] The Renewed Order's reliance on the article is overbroad and misplaced.

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[228] *E.g.*, Exhibit J, at 94-95.
[229] 4 Colo. Code Regs. § 723-3-3605(h); § 40-2-134, Colo. Rev. Stat.
[230] 4 Colo. Code Regs. §§ 723-3-3603(a), 3605(a)(II); Exhibit C.
[231] *Id.*, ¶ 16.
[232] Exhibit KKK, at 4.

The article discusses just one Colorado utility - Public Service – and its projected loads and resources for Summer 2026. Discussions around Summer 2026 loads have been prompted in significant part by the extended unplanned outage of coal-fired Comanche Unit 3, Colorado's newest coal-fired power plant, which has been offline since August 12, 2025. As stated in the article, CoPUC Commissioners noted Public Service's forecasted loads and resources and required the utility to quickly explore additional capacity resources. The CoPUC's actions are part of an ongoing proceeding to address the impacts of Comanche Unit 3's unavailability, including requiring Public Service to fully explain its plan for meeting forecasted load for the summer months of 2026 through 2027. As noted in the RTO Insider article, there are various strategies available to Public Service to increase capacity, and these include market purchases, unit extensions and uprates, extensions of power purchase agreements, the acquisition or acceleration of additional generation resources, pre-construction development assets, and demand response.

The Department's citation to a single news article regarding one Colorado utility is not substantial evidence of an emergency under Section 202(c). The Renewed Order provides no explanation of why concerns raised in ongoing discussions with a utility would justify continued operation of Craig Unit 1. This is particularly true where the Department disregards the CoPUC's other conclusions regarding system reliability after Craig Unit 1's retirement.[233] The Department also disregards that the article describes discussions that are representative of the regulatory process

[233] Exhibit E, ¶ 116. The CoPUC made a factual finding "that Craig Unit 1 is not required for reliability or resource adequacy purposes . . .".

and the CoPUC's careful attention to resource adequacy issues. As demonstrated by Colorado's robust and iterative resource planning processes, the CoPUC closely monitors resource adequacy issues to ensure regulated utilities can provide reliable service. The issues described in the RTO Insider article are subject to the CoPUC's timely regulatory process; by the time the Renewed Order was issued, the CoPUC had already directed Public Service to present its full contingency plan to meet forecasted load. The Renewed Order fails to present any evidence that a capacity shortfall will occur in summer 2026, it merely references a discussion of forecasted loads and resources that the CoPUC is already taking steps to address.

ii. Tri-State and PRPA demonstrate a reliable resource portfolio after Craig Unit 1's retirement.

The extensive planning processes conducted by Tri-State and PRPA, the owners of Craig Unit 1 that have joined SPP, have ensured that the unit's retirement will not negatively impact the reliability of any of their electric grids. All of the utilities are resource adequate for the 90 days covered by the Renewed Order and none of them have expressed a need for Craig Unit 1.

Tri-State's most recent electric resource proceeding[234] concluded in August 2025 with the selection of Tri-State's preferred resource portfolio as the approved cost effective resource plan.[235] The portfolio includes the addition of 700 MW of wind and solar, 650 MW of storage, and 307 MW of gas between 2026-2031, replaces the turbines on one of Tri-State's gas plants to improve its capacity contributions, and

[234] Tri-State's planning processes encompass all states in its service territory, including Wyoming and Colorado. *See* Exhibit X, at 6.
[235] Exhibit E, ¶ 90.

maintains the retirement dates of three coal plants (including Craig Unit 1).[236] Tri-State demonstrated that the portfolio meets all reliability metrics, and avoids costly transmission upgrades required by other analyzed portfolios.[237] Tri-State remains in a capacity-long position until 2030 but has planned on the above resource acquisitions to ensure reliability as its coal units retire in 2025, 2028, and 2030 and to maintain progress toward emissions reductions.[238]

Tri-State supported each of the considered resource portfolios with two levels of rigorous reliability metric checks. The first level, intended to meet industry standards, required each portfolio's satisfaction of: (1) the target planning reserve margin for each year in the resource acquisition period, or 22% transitioning to 30.5% in 2028; (2) a Loss of Load Hours maximum of 1 day in 10 years and a maximum of 2.4 hours annually; and (3) an Expected Unserved Energy maximum of less than or equal to 0.4 Gigawatt hours ("GWh") annually.[239] The second level of reliability metrics was applied to the extreme weather event sensitivities to ensure reliable service during likely future weather events, and required that this modeled sensitivity for each portfolio resulted in: (1) no more than 12 hours of expected unserved energy during all extreme weather events modeled in the years 2026-2031; (2) no more than 3 Loss of Load Hours per each year in the years 2026-2031; and (3) an Expected Unserved Energy maximum of 20% of load in any hour.[240] Tri-State demonstrated that each

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[236] Exhibit X, at 6.
[237] Exhibit J.
[238] Exhibit W (CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Lisa K. Tiffin, Rev. 1, filed on May 15, 2024, in Proceeding No. 23A-0585E), at 30:15-16.
[239] Exhibit J, at 18.
[240] *Id.*; Exhibit W.

presented resource portfolio met these reliability metrics. For the portfolio approved by the CoPUC, planning reserve margins ranged from 24% in 2025 to 34% in 2031, with zero Loss of Load Hours and zero annual expected unserved energy during that period.[241]

Tri-State initially proposed the planning reserve margin targets satisfied by each portfolio through a detailed analysis of grid parameters, including the reliability needs of a system transitioning away from coal generation and toward increased reliance on renewables. ELCCs were determined for each resource type to appropriately model each resource's capacity potential for the specifics of Tri-State's system, rather than relying on nameplate capacity.[242] Incorporating these ELCCs and the reliability standard of 0.1 Loss of Load Expectation, Tri-State proposed that after the retirement of the Craig Station and the departure of certain member loads in 2028, the target planning reserve margin be 30.5%, which is considerably higher than its existing and historic reserve margin.[243] These planning reserve margins were carried through to Tri-State's portfolio approved in August 2025.[244]

In summary, every portfolio that Tri-State modeled in its most recent ERP assumed the retirement of Craig Unit 1 at the end of 2025, and every modeled portfolio met all reliability metrics, including Tri-State's approved portfolio.[245] And as

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241 Exhibit J, at 62.
242 Exhibit OO (CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Lisa K. Tiffin, Rev. 1, filed on May 15, 2024, in Proceeding No. 23A-0585E, Attachment LKT-1 – Attachment G-1 (Astrape Consulting, Reserve Margin and ELCC Study, Public (Aug. 2, 2023)), at 8.
243 *Id.*
244 Exhibit W, at 20:8-15; Exhibit E.
245 Exhibit J, Table 7: Modeled Retirements (Portfolio 1 - NEE), at 21, Table 32: Social Cost of Methane Nominal Dollars – System Wide (Portfolio 2 – NELG), at 35, Table 28: Modeled Retirements (Portfolio 2 – NELG), at 32, Table 49: Modeled Retirements (Portfolio 3 – FLEX), at 43, Table 70: Modeled

specifically found by the CoPUC in its decision approving Tri-State's preferred portfolio, "Craig Unit 1 is not required for reliability or resource adequacy purposes based on the record in this ERP."[246] Tri-State's two most recent ERP progress reports, filed on March 17, 2026 and June 30, 2026, confirm that it is progressing with resource contracting.[247] And in its 2026 Electric Resource Adequacy Report, filed on March 17, 2026, Tri-State demonstrates that it expects to have excess resources for years 2026 through 2035.[248] Tri-State's anticipated excess capacity ranges from 123 MW in 2026 to 95 MW in 2035.[249]

These forecasts are not changed by Tri-State's recent entry into SPP. Tri-State has explained that its assets in the Western Area Colorado Missouri ("WACM") Balancing Authority will be subject to SPP's planning reserve margin requirements.[250] Tri-State intends to compare SPP's requirement to its most recent planning reserve margin requirement and follow the more stringent of the two.[251] Tri-State has stated that entering SPP will be "key for integrating intermittent resources on a large scale and further supporting affordable and reliable operations . . ."[252]

Retirements (Portfolio 4 – FLEXSR), at 54, Table 91: Modeled Retirements (Portfolio 5 – NNG), at 75, Table 112: Modeled Retirements (Portfolio 6 – NNGSR), at 75.

[246] Exhibit E, ¶ 116.

[247] Exhibit EEE (CoPUC, Tri-State, *Notice Regarding Phase II Developments,* filed on March 17, 2026, in Proceeding No. 23A-0585E), at 3; Exhibit ZZZ (CoPUC, Tri-State, *Phase II Status Update*, filed on June 30, 2026, in Proceeding No. 23A-0585E), at 1-2.

[248] Exhibit VV, Table 1 – Load and Resources, at 4.

[249] *Id.*

[250] Exhibit Z, at 8.

[251] *Id.*

[252] *Id.*, at 14.

PRPA, though not overseen by the CoPUC, develops an Integrated Resource Plan ("IRP") to conduct long-term resource planning and ensure resource adequacy.[253] PRPA ran all of its scenarios to meet a planning reserve margin of 19.9%.[254] With its current and committed resources, PRPA has enough capacity to maintain a 19.9% planning reserve margin through 2029.[255] PRPA began commercial operation of a 150 MW solar project in 2025,[256] plans to begin a 130 MW solar project in 2027, and is beginning processes to obtain additional dispatchable capacity.[257] PRPA has no resource adequacy issues now or forecasted upon the retirement of Craig Unit 1. As shown by its annual required filing with the Colorado Energy Office ("CEO"), its capacity well exceeds forecasted demand with a total accredited capacity of 885 MW and a native load forecast of 722 MW for 2026, leading to a planning reserve margin of 25.4%.[258] PRPA's General Manager and CEO has publicly stated that the utility does "not need the Craig 1 unit because it has already replaced the energy that came from it."[259]

iii. FERC and RTO oversight ensures reliability at the regional level.

In addition to these extensive State processes developed under the States' sovereign authority, the Craig Unit 1 Owners are all overseen by a variety of authorities, acting under FERC's delegated authority. As noted above, the FPA places this authority with FERC and does not provide any authority for oversight of long-term

[253] Exhibit EE.
[254] *Id.*
[255] *Id.*
[256] PRPA, *Solar Energy* (2026).
[257] Exhibit EE, at 178.
[258] PRPA, *Worksheet Certification Form* (Apr. 28, 2025).
[259] Exhibit RR (Powell, R., *1 coal plant open amid order* (Jan. 6, 2026)), at 3.

resource planning to the Department in Section 202(c). The FERC, RTO, and State processes work together to ensure reliability, and the Renewed Order illegally intrudes on these processes without any reasonable basis.

RTOs are well recognized for their grid reliability benefits. An RTO is the most comprehensive structure operating within the bulk power system, as it typically has "oversight of centralized unit commitment, economic dispatch, coordinating over a larger, multi-utility footprint and planning transmission system expansion."[260] The general benefits of being in an RTO are increasing as localized threats, such as extreme weather, become more common, which can affect supply while also increasing demand.[261] SPP's recent western expansion makes it the first RTO spanning two interconnections.[262]

States can elect to require their utilities to join RTOs and often do so due to their additional reliability benefits. Colorado requires all its transmission utilities to join an organized wholesale market on or before January 1, 2030, in part because the legislature found that the participation of utilities in RTOs and ISOs will assist in "ensuring the resilience of the electric grid and its resistance to both natural disasters and intentional attacks."[263] Accordingly, Tri-State and PRPA have joined SPP as of April 1, 2026, and now have capacity obligations under SPP's tariff.[264]

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[260] Ahumada-Paras, M. et. al., *Grid Regionalization in the West: Reliability Benefits from Increased Cooperation in Electricity Markets and Operations* (Stanford Climate & Energy Policy Program, Aug. 2024), at 1.
[261] Clean Energy Buyers Institute, *The Benefits of New Regional Transmission Planning Entities in the U.S. West and Southeast Region* (Feb. 2023), at 4.
[262] SPP, *SPP And Member Utilities Successfully Complete Historic Western Expansion* (Apr. 2, 2026).
[263] § 40-5-108, Colo. Rev. Stat.
[264] SPP, *Open Access Transmission Tariff, Sixth Revised Volume No. 1* ("OATT"), Attachment AA (FERC e-Tariff, last viewed Apl. 27, 2026); *see also* SPP Transmittal Letter, FERC Dockets ER24-2184 and ER24-2185 (filed June 4, 2024), at 50.

SPP's resource adequacy requirements complement the primary role of the states. SPP sets a base planning reserve margin that is determined by a probabilistic loss of load expectation study, which compares resources availability to forecasted peak demand.[265] Each member of the RTO must meet the summer season and winter season resource adequacy requirement or pay for any deficient capacity.[266] After each summer and winter season, transmission providers are required to conduct an analysis to compare actual net peak demand versus the planning forecast, in order to evaluate the accuracy and consistency of the forecast.[267] Beginning January 1, 2027, entities joining in the SPP West balancing authority area must own or procure the capacity to meet the entity's seasonal non-coincident peak load plus SPP's planning reserve margin for each summer and winter season.[268] In the interim, the entities' current resource adequacy processes will apply.[269]

A Future Energy and Resource Needs Study ("FERNS") for SPP conducted by the Brattle Group found that across all five of the scenarios it ran, "resource adequacy and reliability are maintained through an hourly 5% operating reserve margin requirement during all system conditions, including the challenging weather and resource adequacy conditions captured in the [] proxy year."[270] Planning reserve margins are anticipated to significantly increase over time, and remain approximately 40% during the summer and 60% during the winter through the mid-2030s.[271]

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[265] SPP *OATT*, Att. AA § 4.
[266] *Id.* § 5.
[267] *Id.* § 12.
[268] SPP OATT, Att. AA; SPP, *see also* 195 FERC ¶ 61,015, P9 (Apr. 7, 2026).
[269] SPP Transmittal Letter, ER24-2184 & ER24-2185, at 56.
[270] The Brattle Group, *Future Energy & Resource Needs Study (FERNS)* (Mar. 2025), at 25.
[271] *Id.*

Importantly, Craig Unit 1's capacity was not factored into any of SPP's reliability assessments or considerations because the unit was expected to be retired by December 31, 2025. Thus, Craig Unit 1 is not needed for SPP to meet its reliability and resource adequacy needs.

Additionally, RTOs, including the SPP RTO, often act as balancing authorities and reliability coordinators. Reliability coordinators are the highest level of authority under NERC. They are responsible for the operation of the bulk electric system and have the operating tools, procedures, and authority to prevent or mitigate emergency operating situations.[272] Balancing authorities ensure that power system demand and supply are balanced, manage transfers of electricity and use economic dispatch to optimize the use of generating units and minimize real-time costs, and maintain operating conditions under NERC reliability standards.[273]

SPP is the reliability coordinator for Tri-State, PRPA, and Public Service.[274] SPP has been a reliability coordinator for over 20 years and has extensive operating criteria, outage coordination methodology, and emergency protocols from its operation of the eastern balancing authority.[275] SPP has a Reliability Plan that details how it monitors for and responds to an emergency.[276] Like all Reliability Coordinators, SPP has "a wide-area view, operating tools, processes and procedures to prevent or mitigate emergency operating situations in next day analysis and real-time conditions[]" and has the authority to act and instruct its members to take actions to

[272] NERC, *NERCipedia: Reliability Coordinator* (2024).
[273] Department, *How it Works: The Role of a Balancing Authority* (Apr. 17, 2023).
[274] SPP, *Western RC Services* (2026).
[275] SPP, *Operating Reliability* (2026).
[276] Exhibit HH (SPP, *SPP Reliability Plan* (Jun 2, 2025)).

preserve the integrity and reliability of the bulk electric system.[277] SPP is also now the balancing authority for Tri-State and PRPA.[278]

An energy emergency is defined by NERC, WECC, and SPP as a situation when a load serving entity has exhausted all options for obtaining capacity and can no longer provide its customers with expected energy requirements.[279] A reliability coordinator will initiate an energy emergency alert at their own request, upon the request of a balancing authority, or upon the request of a load serving entity.[280] Reliability Coordinators and balancing authorities make the decision to call or request the calling of an emergency pursuant to their emergency plans and operating procedures, and SPP has processes in place to address such conditions. Therefore, if an emergency did occur in the areas in the WECC-Rocky Mountain assessment area or SPP, there are extensive procedures in place for that emergency to be handled by the complex and comprehensive network of the utilities themselves, Reliability Coordinators, and balancing authorities without the Department overstepping and preemptively trying to

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[277] *Id.*, at 6-7.

[278] SPP, *2026 RTOE SWPW Transition Plan — Market Participant* (Mar. 4, 2026); SPP, *Consolidated Balancing Authority*, SPP Portal (last viewed Apr. 27, 2026).

[279] WECC, *Standard EOP-002-2 - Capacity and Energy Emergencies* (2007); SPP, *Current Grid Conditions,* Markets & Operations (last viewed Apr. 27, 2026).

[280] *Id.* At an Energy Emergency Alert Level 1, a Balancing Authority will call on all available power supplies, regardless of economics, including from other grids, and enable demand-side resource deployments.# At an Energy Emergency Alert Level 2, a Balancing Authority will initiate demand response programs that shed load from large industrial customers that have contractually agreed to do so and will publicly appeal to customers to cut back on electricity consumption.# If the highest level of emergency, Energy Emergency Alert Level 3, is called, then Reliability Coordinators will conduct emergency operating procedures to increase transfer capabilities into the entity declaring the emergency. NERC has general emergency operating instructions that address the effects of emergencies by ensuring each transmission operator and Balancing Authority has developed plans to mitigate operating emergencies and those plans are implemented and coordinated within the reliability coordinator. Exhibit II (NERC, Emergency Operations).

solve an emergency that has not occurred and is not predicted to occur in any relevant assessment.

The Renewed Order states merely that there is an emergency in the WECC-Rocky Mountain assessment area because of a potential shortfall eight years from now. There is no evidence, and the Renewed Order cites none, that an emergency within the WECC-Rocky Mountain assessment area or SPP system could not be handled by SPP's existing procedures and the existing mix of resources available in the region upon Craig Unit 1's retirement.

E. The Renewed Order is arbitrary and capricious because it requires generation that does not best meet the claimed emergency.

Even if there were an emergency within the meaning of the FPA, which there is not, Section 202(c)(1) requires the Department to impose requirements that "will best meet the emergency and serve the public interest."[281] The Department has failed to demonstrate that delaying the retirement of Craig Unit 1 satisfies this standard, and the Renewed Order is therefore arbitrary and capricious. The Renewed Order's operating instructions do not best meet the emergency or serve the public interest. Preventing the retirement of Craig Unit 1 cannot meet the Department's claimed emergency, and even if it could, it would not be the best means to do so.

i. Directing SPP to employ economic dispatch of Craig Unit 1 is vague and does not best meet the alleged emergency.

The instruction for SPP to employ economic dispatch of Craig Unit 1 is vague. The Renewed Order does not define "economic dispatch" or specify any other

[281] 16 U.S.C. § 824a(c)(1).

parameters for how it intends SPP to dispatch the Unit. The Renewed Order also states that "Craig Unit 1 shall not be considered a capacity resource[,]"[282] but SPP does not use the term "capacity resource" in its procedures and operations, making it unclear what the Renewed Order is referring to.

In addition, the Renewed Order does not reconcile the fact that operating a unit using economic dispatch is inherently at odds with that unit being operated only in an emergency. The Energy Policy Act defines economic dispatch as "the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities."[283] Economic dispatch is standard procedure for grid operators, including SPP.[284] Emergencies necessarily require unique grid operation, which is why generation units may be dispatched to provide "Out-of-Merit Energy" during an emergency. When SPP needs to resolve a reliability issue the market system cannot solve, or an emergency condition, it will dispatch "Out-of-Merit Energy" so that a resource can produce what is necessary to address a constraint.[285] This necessarily means that the resources may be operated out of economic order.[286] The dispatch directive typically specifies the MW level a resource should produce at until the constraint can be resolved through security constrained economic dispatch.[287] Operating a unit pursuant to economic dispatch is necessarily inconsistent with

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[282] Exhibit KKK, ¶¶ A, G.
[283] 42 U.S.C. § 16432(b).
[284] SPP, *Integrated Systems Scenario Detail: OOME (Out-of-Merit Energy Dispatch),* (rev. 3.0 Apr. 24, 2013)
[285] *Id.*; SPP, *Integrated Marketplace Protocols*, Section 4.4.2.5 (Apr. 17, 2026).
[286] *See* Kim Farris, *Assorted Charge Types - SUG Presentation* (Feb. 14, 2012), at slide 12.
[287] SPP, OOME Scenario (rev. 3.0).

operating a unit to address an energy emergency. If a unit is necessary to address an emergency, it would need to be dispatched regardless of price, which does not conform to economic dispatch. The Renewed Order fails to grapple with this conflict.

Further, the Department makes no attempt to demonstrate that operating Craig Unit 1 at economic dispatch is in the public interest. Because the Renewed Order's operating instructions are vague and not aimed at meeting a specific emergency, the Department does not ensure that Craig Unit 1 only operates when necessary for an emergency, thereby unnecessarily increasing emissions and costs to customers, and rendering the Renewed Order an improper exercise of the Department's emergency authority.

The problems with the Renewed Order's operating instructions, which are the same as those in the Second Order, were demonstrated soon after the Second Order was issued. SPP has called several Resource Advisories since the Second Order was issued.[288] SPP Resource Advisories are considered normal operating conditions, and do not constitute emergency conditions.[289] According to SPP, "Resource Advisories are still considered Normal Operating Conditions, and do not require the public to conserve energy or take any action, but are issued to raise awareness of potential threats to reliability among entities responsible for operating transmission and generation facilities."[290]

[288] *See*, *e.g.*, Exhibit FFF (SPP, *Current Grid Conditions* (Apr. 20, 2026)).
[289] Exhibit GGG (SPP, *Current Grid Conditions* (Apr. 7, 2026)); SPP, *Current Grid Conditions*.
[290] SPP, *Current Grid Conditions*.

Craig Unit 1 has been called to run during a few of these Resource Advisories. Therefore, the Department's vague and improper operating instructions resulted in SPP calling on Craig Unit 1 for a reliability need that did not rise to the level of an emergency and thus was outside the scope of the Department's authority under Section 202(c).

ii. Preventing Craig Unit 1's retirement does not "meet the emergency."

It is unclear how preventing Craig Unit 1's retirement could meet the emergency that the Department alleges. The nature and extent of the claimed emergency are unclear. And even if there were a capacity shortfall in any of the states served by Craig Unit 1 or the WECC-Rocky Mountain assessment area, the Renewed Order does not provide a reasoned basis for its conclusion that the continued operation of Craig Unit 1 is the best or even a viable means of alleviating the purported shortfall.

The Department cannot demonstrate that delaying Craig Unit 1's retirement meets the emergency because the Renewed Order's emergency declaration is unclear and unsupported by the record. The Renewed Order declares there is an emergency in the WECC-Rocky Mountain assessment area.[291] However, the Renewed Order goes on to remedy this emergency by directing SPP to employ economic dispatch of Craig Unit 1, meaning that Craig Unit 1 can only meet an emergency in the SPP RTO area. The SPP RTO does not cover all the WECC-Rocky Mountain assessment area.[292] Thus, the Renewed Order's remedy does not match its declared emergency.

[291] Exhibit KKK, at 1.
[292] Exhibit WW, at 8; SPP, *SPP and Member Utilities Successfully Complete Historic Western Expansion* (Apl. 2, 2026).

The Renewed Order also fails to demonstrate that there is a resource shortfall imminent and specific enough to require the continued operation of any particular resource. It is unclear how Craig Unit 1 could meet the Department's alleged emergency, regardless of how the Renewed Order's emergency determination is interpreted.

iii. Delaying the retirement of Craig Unit 1 does not "best" meet the Department's purported emergency.

Even if delaying the retirement of Craig Unit 1 could meet the non-existent alleged emergency in the WECC-Rocky Mountain assessment area, the Department has provided no explanation of how that resource would best meet such an emergency. "Best" means "that which is 'most advantageous'" or "excelling all others."[293]

The Renewed Order, and the materials upon which it relies, offer no facts that would support a determination that Craig Unit 1 is the "most advantageous" way to address the alleged emergency. Even if the Renewed Order had successfully described an emergency scenario for the regions served by Craig Unit 1 or the WECC-Rocky Mountain assessment area, the Department has not provided any specific evidence or reasoning explaining why requiring Craig Unit 1 to be available to operate is the most advantageous way to meet the scenario. Other orders issued by the Department in 2025 suffer from the same flaw, as the Congressional Research Service identified in July 2025, noting that Orders issued to the Campbell and Eddystone units have not "identified reliability risks specifically associated with the retirement of the power

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[293] *Entergy Corp.*, 556 U.S. at 218 (quoting Webster's New International Dictionary 258 (2d ed.1953)); *Best*, Merriam-Webster Dictionary (Jan. 25, 2026).

plants in question at the time they approved those retirements."[294] In this respect, the Department's exercise of its emergency authority in 2025 departs markedly from past uses of Section 202(c) and from the Department's regulations implementing Section 202(c). Those regulations specify that: "[a]ctions under this authority are envisioned as meeting a specific inadequate power supply situation."[295] The Department's 2026 Section 202(c) orders have not remedied this deficiency.

The definition of "best" includes "excelling all others," which requires a comparative judgment that there are no better alternatives. This means the Department must consider alternatives and choose the alternative that is most advantageous to meet the emergency the Department has identified. The Department need not consider every conceivable alternative, but it must consider alternatives within the ambit of the existing policy as well as alternatives which are significant and viable or obvious.[296]

The Department's regulations specify information the Department must consider in deciding how to best address an emergency in a Section 202(c) order. This includes conservation or load reduction actions, efforts to obtain additional power through voluntary means, available imports, demand response, and behind the meter generation resources.[297] The Renewed Order considers none of these alternatives. Nor

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[294] Exhibit T (Congressional Research Service, Federal Power Act: The Department of Energy's Emergency Authority (June 12, 2025)), at 5-6.
[295] 10 C.F.R. § 205.371.
[296] *See Dep't of Homeland Sec.*, 591 U.S. at 30 (failure to consider alternative was arbitrary and capricious); *see also Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 51 (must consider alternatives "within the ambit of the existing [standard]").
[297] 10 C.F.R. § 205.373(g)-(h). While this information is specifically required when a utility applies for a 202(c) order, it illustrates the types of information that is relevant to an alternatives analysis.

does it explain whether less burdensome measures were considered or exhausted before invoking the Department's emergency authority. Indeed, the Renewed Order never quantifies the extent of the emergency it purports to identify within Colorado or any of the states served by Craig Unit 1, making a meaningful alternatives analysis impossible. To satisfy Section 202(c)(1)'s requirement that the ordered solution best meet the emergency, the Renewed Order must address why the resources that make up the excess planned reserve margins could not meet the alleged emergency.

The Craig Unit 1 Owners chose to retire Craig Unit 1 for economic reasons.[298] And because the unit was set to retire, Craig Unit 1 has not had major maintenance since 2019;[299] it is also 45-years-old, beyond the typical economic design life of a coal burning generator and near the end of a generator's typical operational life.[300] Keeping Craig Unit 1 running is more costly now because of the deferred maintenance costs in addition to costs for fuel and continued operations.[301] Tri-State and PRPA expressed these concerns in their second request for rehearing, stating that "Craig Unit 1 is an older, uneconomic unit" that has experienced years of prudently deferred maintenance and therefore faces particularly high costs to restore and maintain operations compared to possible alternatives."[302] Colorado's understanding is that, since the issuance of the Original Order, Tri-State has had to expend costs on

[298] Tri-State, *Craig Station owners, regulators and environmental groups reach agreement on proposed revisions to Colorado regional haze plan* (Sept. 1, 2016).
[299] Exhibit B, ¶ 38.
[300] Grid Strategies, *The Economic Cost of a DOE Mandate for the Craig Unit 1 Coal-Burning Generator to Continue Operating* (Dec. 2025), at 2.
[301] Exhibit D, ¶¶ 13-15.
[302] Exhibit MMM, at 40.

maintenance and staffing.[303] These costs are currently unknown but expected to be significant, and will continue needlessly as long as the Department continues to prevent Craig Unit 1's retirement. There will also be additional costs every time SPP dispatches Craig Unit 1. Tri-State and PRPA have already stated that the costs of compliance with the orders "fall directly on their members and customers" and that the Original Order "impose[d] additional costs to Tri-State's membership and the communities served by Platte River."[304] In their Request for Rehearing of the Original Order, Tri-State and PRPA asserted that keeping Craig Unit 1 is not a best option because their members and customers will have to pay the costs associated with Craig Unit 1 even though "neither Tri-State nor Platte River are experiencing these shortages and not all the members and customers served by Tri-State and Platte River are located in the region identified by the Order."[305] One analysis estimates the annual gross cost of keeping Craig Unit 1 operational to be over $79 million.[306]

Complicating the fuel issue, Tri-State did not plan on continuing to acquire or use coal for Craig Unit 1 due to its scheduled retirement. Craig Station is supplied with coal from the Colowyo Mine, which ceased coal production at the end of 2025.[307] Two of the Colowyo Mine pits are in the final reclamation stage, and the third pit transitioned to reclamation on October 15, 2025.[308] Tri-State obtained enough coal to

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[303] *See* Exhibit B, ¶ 38.
[304] Exhibit UU, at 2.
[305] *Id.*, at 5.
[306] Wannier, G., et al., *Unpacking the Cost of 202(c) Orders: Facility-Specific Cost Estimates and Methodological Approach* (June 8, 2026).
[307] Jaffe, M., *Tri-State expects federal order to keep coal-fired power plant in northwestern Colorado running* (Nov. 14, 2025).
[308] Tri-State, *Colowyo Mine to conclude coal production in 2025, transitioning to full reclamation* (Aug. 7, 2025); Weiser, C., *Colowyo coal mine near Craig lays off 133 workers as mine closes* (Nov. 26, 2025);

fuel Craig Units 2 and 3 through their planned retirement dates in 2028 but did not expect to need coal to power Craig Unit 1.[309] If Tri-State needs to use coal acquired to fuel Craig Units 2 and 3 to unexpectedly fuel Craig Unit 1, it will likely not have enough supply to also fuel the other units.[310] Tri-State would then have to buy more expensive, and possibly dirtier, coal from another source.[311]

In addition, coal generation is generally more costly than other generation resources.[312] The inefficiency of running a coal plant makes it uneconomic and is the main reason that Craig Unit 1 (and eventually, the rest of Craig Station) was slated for retirement. In fact, the CoPUC approved coal fired generating unit retirements to be replaced with lower cost wind, solar, and use of gas as a capacity resource because wind and solar were the lowest cost resources available and it was cheaper to add new renewables, storage and gas generation to the system and retire coal units.[313]

WarnTracker.com, *1 WARN Layoff Notice for ColoWyo Coal Company LP on Nov 2025* (2025); Exhibit MMM, at 8.

309 Exhibit MMM, at 8.

310 *See generally id.*

311 *See* Exhibit B, ¶ 36.

312 Weiser, C., *Colowyo coal mine near Craig lays off 133 workers as mine closes* (Nov. 26, 2025). A report by Grid Strategies found that ratepayer costs could exceed $3 billion per year if the Department mandates that all of the fossil power plants scheduled to retire between the time the report was published in August 2025 and the end of 2028 remain open. Grid Strategies asserts that the Department is ignoring the careful planning of states and utilities and "overriding cost-minimizing retirement decisions that have been made by state utility regulators and merchant power plant owners based on extensive information regarding the cost, performance, condition, and need for each plant." *see also* Grid Strategies, LLC, *The Cost of Federal Mandates to Retain Fossil-Burning Power Plants* (Aug. 2025), at 3; Exhibit O, which cost a staggering $29 million over the first 38 days; Solomon, M., et al., *Coal Cost Crossover 3.0: Local Renewables Plus Storage Create New Opportunities for Customer Savings and Community Reinvestment* (Jan. 2023), at 1-2 (a report by Energy Innovation found that "99[%] of all coal-fired plants in the U.S. are more expensive to operate on a forward looking basis than the all-in cost of renewable energy projects," and that "all but one of the country's 210 coal plants are more expensive to operate than either new wind or solar.").

313 CoPUC, Decision No. C18-0761, issued on September 10, 2018, in Proceeding No. 16A-0396E, ¶ 103.

Coal generation also does not guarantee reliability, which further emphasizes that Craig Unit 1 does not best meet any emergency. For example, Unit 18 of the R.M. Schahfer Generating Station has been in a forced outage since July 9, 2025, after experiencing another forced outage from February 16, 2025 to June 23, 2025.[314] The unit is not expected to return to service until the third quarter of 2026.[315] Yet, despite the unit being offline, the Department issued an order requiring it to remain available on December 23, 2025, and has re-issued two more orders since then.[316] Additionally, the newest large coal-fired plant in the U.S. suffered an outage in fall of 2025 and will now be offline until March 2027.[317] This is the second time that plant has been unable to operate for a year or more. The unreliability of fossil fuel generation was demonstrated during Winter Storm Fern in late January 2026, where "renewable energy greatly exceeded the output that grid operators had expected . . . while coal and gas generators fell short."[318] This was primarily because of generator outages and derates, which impact fossil fuel fired generation more frequently than other generation resources.[319]

Finally, Craig Unit 1's long ramp up time, approximately two days, makes it particularly unhelpful in addressing short term and unexpected resource needs. It is Colorado's understanding that when addressing a situation such as SPP's designated

[314] *Id.*
[315] Howland, E., *Power plants under DOE emergency orders are producing way less energy than before* (June 23, 2026).
[316] Exhibit S; Exhibit AAA; Exhibit RRR.
[317] Institute for Energy Economics and Financial Analysis, *Newest big U.S. coal-plant offline until 2027* (Oct. 7, 2025).
[318] Goggin, M., *Winter Storm Fern Shows the Value of Transmission and Diverse Generation* (Mar. 25, 2026), at 1.
[319] *See id.*

Resource Advisories, it is preferable to use units that can be called up quickly in order to efficiently address potential short-term concerns for peak hours. The problem with this long ramp up time is demonstrated by the minimal usage of Craig Unit 1 over the seven-month period since the Original Order was issued. Craig Unit 1 has only run for a few of the times that SPP has called Resource Advisories and is generally not well suited to respond quickly to the changing demand needs that give rise to these advisories.

These facts illustrate a clear pattern: coal is not the first choice when considering reliable, affordable generation. And the Renewed Order contains no facts (either in its text or in the cited materials) that supports any determination that ordering continued availability and operation of an off-line coal unit is a reasonable response to a perceived emergency, much less "best meets" such an emergency. This is especially concerning given that Craig Unit 1's continued operation will also prevent the use of solar electricity generated by a newly added solar Axial Basin generating facility in Moffat County due to limited transmission capacity.[320] The Department does not explain how use of Craig Unit 1 is the best means to address an alleged energy shortfall when its use curtails use of other sources of power.

Given the cost of operating Craig Unit 1 and questions of reliability surrounding coal plants generally, the Department has failed to demonstrate that Craig Unit 1's continued operation "best meets the emergency" and therefore the Renewed Order is arbitrary and capricious.

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[320] Exhibit UU, at 7.

F. The Renewed Order's Terms Fail to Comply with Statutory Requirements.

The Renewed Order fails to comply with Sections 202(c)(2) and 202(c)(4)(b) of the FPA, and Section 103(b) of the Department Organization Act.

i. The Renewed Order violates Section 202(c)(2) because it fails to ensure consistency with federal and State environmental laws and fails to minimize adverse environmental impacts.

Section 202(c)(2) imposes mandatory duties on the Department if a Section 202(c) order "may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation[.]"[321] The Renewed Order explicitly conflicts with the environmental laws and regulations that apply to the Craig Station Unit 1 Owners, and may also result in additional conflicts with environmental laws and regulations that apply to the State of Colorado.[322] The Department failed to comply with these requirements, rendering the Renewed Order illegal.

a. <u>The Renewed Order directly conflicts with federal and State laws requiring Craig Unit 1 to close by December 31, 2025.</u>

The Renewed Order directly conflicts with federal and State environmental laws and regulations that require the closure of Craig Unit 1 by December 31, 2025. These include the Air Commission's Regulation Number 23, Colorado's Regional Haze SIP adopted pursuant to the federal Clean Air Act, and Tri-State's operating permit issued pursuant to Title V of the federal Clean Air Act.[323]

[321] 16 U.S.C. § 824a(c)(2) (emphasis added).
[322] *See* Exhibit B.
[323] *Id.*

The Air Commission (with the Craig Unit 1 owners' consent) adopted the December 31, 2025 closure date into State law through Regulation Number 23, which regulates regional haze.[324] The EPA then approved this closure date into federal law when it approved Colorado's Regional Haze SIP in 2018.[325] In addition, Craig Unit 1 is a major source of air pollution[326] and therefore requires, and operates under, an operating permit issued pursuant to Title V of the federal Clean Air Act.[327] A Title V permit includes emissions limits, operational requirements, reporting obligations, and other requirements to ensure the safe and environmentally responsible operation of major sources. Condition 1.10 of Craig Unit 1's operating permit specifies that the Unit must close on or before December 31, 2025.[328]

In addition, the Colorado Legislature directed the Air Commission to adopt rules to help meet statewide statutory GHG reduction goals.[329] The Renewed Order's direction for continued availability and operation of Craig Unit 1 may restrict Colorado's ability to meet these statutory goals.

Thus, by ordering the Craig Station owners to return Craig Unit 1 to service and to be available to operate beyond the December 31, 2025, closure date, the Renewed Order directs the owners to violate both State and federal law and is subject to the requirements of Section 202(c)(2).

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[324] *See* 5 Colo. Code Reg. § 1001-27:A.IV.D.
[325] Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3049, fn. 9 (Jan. 26, 2026); EPA, *EPA Approved Statues and Regulations in the Colorado SIP* (Jan. 6, 2026); 83 Fed. Reg. 31332 (July 5, 2018).
[326] Craig Station is a major source and Craig Unit 1, by volume of pollution emitted, is itself a major source. Exhibit B, ¶ 32; Exhibit KK (Division, *Operating Permit No. 96OPMF155* (July 1, 2021));
[327] *See* Exhibit KK; 42 U.S.C. § 7661a(a).
[328] *See* Exhibit KK, at 25.
[329] *See* § 25-7-105(1)(e), Colo. Rev. Stat.; Exhibit B, ¶ 34; § 25-7-102(2)(g), Colo. Rev. Stat.

b. The Renewed Order does not comply with Section 202(c)(2).

Because the Renewed Order conflicts with State and federal environmental laws, the Department was required to ensure that the Renewed Order: 1) " requires generation, delivery, interchange, or transmission of electric energy *only* during hours necessary to meet the emergency and serve the public interest;" 2) "to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation;" and 3) "minimizes any adverse environmental impacts."[330] The Department's Renewed Order contains no conditions or instructions that meet these requirements.

First, by referring to the "hours" necessary to meet the emergency, Congress placed a high burden on the Department to demonstrate that the remedy provided in a Section 202(c) order is narrowly tailored to the specifics of the emergency that the order is designed to address. Even if the Department had identified a true emergency (which it has not), the FPA authorizes the Department to compel generation only when an emergency shortage of electric energy would occur absent operation of Craig Unit 1 specifically.[331] The Department's Renewed Order merely states that "SPP is directed to take every step to employ economic dispatch of Craig Unit 1 to minimize costs to ratepayers."[332] The Renewed Order's terms fail to require operation "only during the hours necessary to meet the emergency" described by the Renewed Order

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330 16 U.S.C § 824a(c)(2) (emphasis added).
331 *Id.*; *see, e.g.*, Department, Order No. 202-17-4, *Summary of Findings* (Sept. 14, 2017), at 9 ("authorizing operation of" units subject to emergency order "only when called upon . . . for reliability purposes," according to "dispatch methodology" approved by Department.).
332 Exhibit KKK, ¶ A.

and violates Section 202(c)(2) because the Renewed Order does not establish any limited hours for SPP to follow when dispatching Craig Unit 1.

The Renewed Order does not define economic dispatch or specify how it intends SPP to dispatch Craig Unit 1. By leaving the dispatch of Craig Unit 1 entirely in the hands of SPP, the Department is failing to properly limit operation as required by Section 202(c). Without a clearly defined emergency, SPP has no standards to determine under what circumstances they should require the continued operation of Craig Unit 1. The premise for such continued operation is the energy "emergency" articulated in the Renewed Order, but it is impossible to know what conditions require Craig Unit 1 to operate by reading the Renewed Order.[333] Orders issued by the Department prior to 2025 demonstrate that the Department is capable of including appropriate limiting conditions in Section 202(c) orders. For example, in 2022, the Department issued an order in response to periods of extreme heat, drought conditions, and threat of wildfires that were expected to occur over several days and threaten the reliable operation of the bulk electric power system in California. That order directed the Balancing Authority of Northern California to dispatch specific units only "under the following conditions: the issuance and continuance of an Energy Emergency Alert Level[ ] 2 condition or greater between the hours of 14:00 Pacific Time and 22:00 Pacific Time after exhausting all reasonably and practically available

[333] Indeed, the Order contains confusing and contradictory instructions regarding the unit's operations, stating both that "Craig Unit 1 shall not be considered a capacity resource" and that its "continuous operation" is required. Exhibit KKK, at 1, ¶ G. Presumably, this means that the unit may only be called up by WAPA or SPP when there is an actual supply shortage that existing resources cannot meet. But if that is the intent, it is not clear from the face of the Order.

resources."[334] Although Section 202(c)(2) requires the Department to include limiting conditions in the Renewed Order as well, it chose not to, and that choice is contrary to law.

Second, Section 202(c)(2) requires that where an order may result in a conflict with environmental law or regulation, it must "to the maximum extent practicable, [be] consistent with any applicable Federal, State or local environmental laws." The Renewed Order contains no analysis of the plant's environmental obligations and no operational criteria established to minimize impacts. The Renewed Order merely states that "operations of Craig Unit 1 must comply with applicable environmental requirements… to the maximum extent feasible while operating consistent with the emergency conditions."[335] Further, the Renewed Order's acknowledgement that it "does not provide relief from any obligation to pay fees, or purchase offsets or allowances for emissions[,]"[336] does not alleviate those deficiencies.

There are numerous environmental requirements that are affected by the continued operation of the Craig Unit 1 facility, but the Department failed to identify mechanisms to allow Craig Unit 1 to remain available or operate while minimizing conflicts with these requirements. As discussed further in Section V.G.iii., the Department also did not consult with the State of Colorado, including its

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334 Department, Order No. 202-22-2 (Sept. 4, 2002), at 4; *see also Letter from Kevin Kolevar, Director, Office of Electricity Delivery and Energy Reliability to Robert Driscoll, CEO, Mirant Mid-Atlantic, LLC* (May 31, 2007) (Letter from the Department describing the emissions limitations that a utility should follow when complying with a 202(c) order.); Department, Order No. 202-17-1 (Apr. 14, 2017) (202(c) Order from the Department instructing SPP to adopt a temporary operating guide and comply with additional operating requirements set out in an EPA compliance order).
335 Exhibit KKK, ¶ C.
336 *Id.*

environmental regulators, who could have advised on ways to minimize impacts.[337] The Renewed Order does not reference or discuss the applicable environmental laws and regulations impacted by the Renewed Order, revealing the Department's failure to analyze these requirements to ensure compliance with environmental standards.

In particular, the Renewed Order fails to reflect any consideration of interactions with the federal Clean Air Act Regional Haze program[338] or National Ambient Air Quality Standards ("NAAQS") attainment and permitting programs. The Regional Haze program requires states to reduce emissions of NOx, SO_2, and PM from sources that affect Class I federally protected areas.[339] States must conduct detailed and expensive analyses, and based on the results of those analyses, impose federally enforceable controls and emission limits upon the largest and most impactful sources of haze pollutants.[340] The federal Clean Air Act, through the NAAQS attainment and permitting programs, also directs states to achieve and maintain air quality standards for certain pollutants, including NOx, SO_2, and PM.[341] The Department does not appear to have conducted any analysis of the impact keeping Craig Unit 1 operational may have on sources' and Colorado's ability to comply with either of these programs.

[337] Exhibit B, ¶¶ 10, 37-39; *see also* Section 103 of the Department of Energy Organization Act, 42 U.S.C. § 7113 (requiring the Department to give due consideration to the needs of states when proposing any action that conflicts with a state energy plan, and to attempt to resolve conflicts through consultations with appropriate state officials). The Order plainly conflicts with Tri-State's decision-making process, the CoPUC's approved ERPs, the EPA-approved Regional Haze SIP, and Air Commission's Regulation Number 23.
[338] EPA recently disapproved Colorado's Regional Haze Plan for Round 2 (which does not involve Craig Unit 1) by, in part, pointing to this Order. 91 Fed. Reg. at 3049, fn. 9 (Jan. 26, 2026). While Colorado maintains that EPA's action was improper, and that its Regional Haze SIP currently meets federal requirements, it does reveal that EPA considers Craig Unit 1 relevant to Colorado's compliance with Regional Haze requirements now and in the future. The federal government must, but fails to, take a consistent position in the Regional Haze SIP disapproval and the Order as it relates to Craig Unit 1.
[339] *See* 42 U.S.C. §§ 7491, 7492; *see also* implementing regulations at 40 C.F.R. § 51.300-309.
[340] *Id.*
[341] *See, e.g.*, 42 U.S.C. §§ 7409, 7410.

The Renewed Order gives no guidance as to whether it creates conflicts with either of these requirements and, if it does, how to navigate them.

Accordingly, the Renewed Order violates the Department's statutory obligation to "ensure" the maximum feasible compliance with applicable environmental standards.[342] This obligation requires the Department to offer some discrete guidance as to the unit's operations, rather than merely parroting the statutory text. This lack of detail also makes it impossible for Colorado's environmental regulators to know what operational activities are excused from environmental compliance by the Renewed Order, increasing the complexity and burdens associated with any state enforcement actions.

Third, Section 202(c)(2) requires the Department to minimize the adverse environmental impacts of the Renewed Order, which the Renewed Order fails to do. This mandate is textually and substantively distinct from the Department's (also unfulfilled) obligation to ensure maximum practicable compliance with environmental standards. By failing to include a sufficient or legal description of the purported emergency, this Renewed Order authorizes Craig Unit 1 to generate electricity and pollute beyond any emergency needs, thereby increasing the environmental impacts that, by law, the Renewed Order must minimize. When Craig Unit 1 operates, it emits NOx, SO_2, fine PM, GHG emissions, HAPs, and other harmful pollutants.[343] The Renewed Order includes no measures to mitigate impacts when compliance with environmental standards proves impracticable, even though those types of measures

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[342] 16 U.S.C. § 824a(c)(2) (emphasis added).
[343] Exhibit B, ¶ 18.

have been routinely included in past orders.[344] At a minimum, the statute requires the Department to include sufficiently detailed reporting obligations to ascertain what impacts result from emergency operations; without such reporting, the Department has no ability to "ensure" that adverse impacts are minimized.[345] The Renewed Order here instead merely requires "such additional information" as the Department, in the future, may (or may not) "request[] . . . from time to time."[346] That possibility of future, unspecified information gathering cannot satisfy the statute's demand that the Department "ensure" that its Renewed Order minimizes environmental impacts.[347]

Similarly, the Renewed Order does not address or assess mechanisms to minimize the pollution from Craig Unit 1 associated with its operation in response to the Renewed Order. It also does not address or assess the environmental impacts associated with the acquisition and transport of additional coal that may be necessary to facilitate Unit 1's operation and contains no limitations on the type of coal that may be used so as to minimize the impacts of any new emissions. Not all coal is inherently compatible with the units at the Craig Station, and depending on where new coal is sourced from, there could be significant emissions and costs associated

[344] *See, e.g.*, Department, Order No. 202-17-4 (Sept. 14, 2017), at 2 (permitting non-compliant operation only during specified hours, and requiring exhaustion of "all reasonably and practicably available resources," including available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions); Department, Order No. 202-22-4 (Dec. 12, 2022) (requiring "reasonable measures to inform affected communities" of non-compliant operations).
[345] *See, e.g.*, Department, Order No. 202-24-1 (Oct. 13, 2024), at 4-5 (requiring detailed data on emissions of pollutants).
[346] Exhibit KKK, ¶ D.
[347] 16 U.S.C. § 824a(c)(2).

with the distances required to import that coal.[348] Nor are these impacts addressed by the Department's cursory instruction to Tri-State to comply with applicable environmental requirements "to the maximum extent feasible."[349] Because the Department made no attempt to address the requirements of Section 202(c)(2), the Renewed Order is unlawful.

ii. The Renewed Order violates Section 202(c)(4)(B) because the Department failed to consult with the primary federal agency with expertise in the relevant environmental interests.

Finally, the Renewed Order provides no indication that the Department has, as required by Section 202(c)(4)(B), "consult[ed] with the primary Federal agency with expertise in the environmental interest protected" by any laws with which the renewed or re-issued order may conflict.[350] Nor does the Renewed Order include any conditions such federal agency "determines necessary to minimize any adverse environmental impacts to the extent practicable" or a public explanation of the Department's determination that such conditions "would prevent the order from adequately addressing the emergency."[351]

The Renewed Order serves as a renewal of the Second and Original Orders on the claimed basis that "[t]he emergency conditions that necessitated the issuance of [the Second Order] continue[.]"[352] As stated above, the Renewed Order conflicts with several federal and State environmental laws.[353] The EPA is the federal agency with

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[348] Exhibit B, ¶¶ 37-38.
[349] Exhibit KKK, ¶ C.
[350] *See* 16 U.S.C. § 824a(c)(4)(B).
[351] *See id.*
[352] Exhibit KKK, at 3.
[353] *See supra*, Section F.ii.a.

expertise and authority over federal air quality regulations and approved Craig Unit 1's retirement date, Colorado's Regional Haze SIP, and Craig Stations' Title V Permit, making them federally enforceable. Therefore, the Department was required to consult with, at a minimum, the EPA prior to issuing the Renewed Order.

The Renewed Order makes no mention of this consultation requirement and provides no evidence of consultation with the primary federal agency, as the Department has in other Section 202(c) orders.[354] If the Department has failed to consult and procure any required conditions from the relevant federal agency, it has violated the statute. If it has received and declined conditions but refused to disclose them or provide any explanation of why the Department believes such conditions would prevent the order from adequately addressing the claimed emergency, that too violates the statute.

For these reasons, the Renewed Order fails to comply with the Department's obligations under Section 202(c)(2) and should be withdrawn.

iii. The Renewed Order violates Section 103 of the Department Organization Act because the Department failed to consult with the appropriate Colorado officials.

The Renewed Order violates Section 103 of the Department Organization Act, which requires:

[354] *See, e.g.*, Exhibit U, at 8 ("Pursuant to [S]ection 202(c)(4)(B) of the FPA, the Department has consulted with the primary [f]ederal agency with expertise in the environmental interest protected by the laws or regulations that may conflict with this Order. The agency did not submit additional conditions for inclusion in this Order."); Exhibit PP, at 8 ("Pursuant to [S]ection 202(c)(4)(B) of the FPA, the Department has consulted with the primary [f]ederal agency with expertise in the environmental interest protected by the laws or regulations that may conflict with this Order. The agency did not submit additional conditions for inclusion in this Order.").

> Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable shall attempt to resolve such conflict through consultations with appropriate State officials.[355]

The Department has acknowledged that Section 103 of the Department Organization Act is applicable to the Department in this situation. The Department argued in the Campbell case that the provision did not apply to the Original Campbell Order because consultation is not practicable in an emergency situation.[356] However, the Department has now had 180 days since the issuance of the Original Order to comply with Section 103 of the Department Organization Act, and it has failed to do so.

The Renewed Order conflicts with Colorado's statewide GHG pollution reduction targets[357] and interferes with Tri-State's plan to reduce GHG emissions 80 percent by 2030,[358] as reflected in the CoPUC's approval of Tri-State's ERP, which included the retirement of Craig Unit 1 by December 31, 2025. The Department also did not make any attempt to give "due consideration" to the needs of Colorado, nor did it make any attempt to consult with the CoPUC or Colorado Air Pollution Control Division.[359]

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[355] 42 U.S.C. § 7113.
[356] The Department, *Order No. 202-25-3B* (Sep. 8, 2025).
[357] § 25-7-102(2)(g)(I), Colo. Rev. Stat.
[358] § 25-7-105(1)(e)(VIII)(I), Colo. Rev. Stat.
[359] Exhibit B; Exhibit C.

G. The Renewed Order is designed to support the federal administration's policy goal of propping up the coal industry, making it an arbitrary and capricious pretext.

Agency action is arbitrary and capricious when it rests on a "pretextual" reason that is "incongruent with what the record reveals about the agency's priorities and decision-making process."[360] Agency decisions that feature "unjustifiable bias or partisanship are precisely the types of agency actions that 'would work a violation of the arbitrary-and-capricious standard.'"[361] Here, the record demonstrates that there is no evidence of an energy emergency within the meaning of Section 202(c) that would support issuance of the Renewed Order. Instead, the Renewed Order is a transparent attempt to favor the Trump administration's preferred energy source and revive the coal industry. Because the Renewed Order is pretextual and divorced from any actual emergency, the Renewed Order violates the law and must be withdrawn.

i. The federal administration intends to promote coal.

Over the course of 2025 and 2026, the Department and the President have made clear that they are using Section 202(c) orders to prevent coal-fired generating plants from retiring, simply because the current administration prefers coal and other fossil fuel generation. On his first day in office, the President declared a "National Energy Emergency" and identified coal as one of his preferred energy resources.[362] The President later directed the Department to "streamline" its use of emergency orders, explaining that his goal was to "revitaliz[e] America's big beautiful coal

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360 *Dep't of Commerce*, 588 U.S. at 785.
361 *Level the Playing Field*, 961 F.3d at 464 (quoting *Hagelin v. FEC*, 411 F.3d 237, 242 (D.C. Cir. 2005)).
362 Exec. Order 14156, 90 Fed. Reg. 8433, 8434 (Jan. 20, 2025), Sec. 8(a).

industry to support grid stability and American jobs."[363] In July, Secretary Chris Wright stated "'I think our biggest impact by far is going to be — there are like 40 coal plants that are supposed to close this year — and our biggest impact is going to be to stop the closure of most of those[.]'"[364]

Both the Department and President Trump have publicly acknowledged that their goal is to regulate long-term resource adequacy and mandate coal generation. Secretary Wright has stated that "[t]he goal [of the recent Section 202(c) orders] is to stop the political closure of coal plants."[365] The "Clean Beautiful Coal" Executive Order directed the Department to "identify regions where coal-powered infrastructure is available and suitable for supporting [artificial intelligence ("AI")] Data centers; assess the market, legal and technological potential for expanding coal-based infrastructure to power data centers to meet the electricity needs of AI . . ."[366] Most recently, the President received a trophy proclaiming him the "Undisputed Champion of Beautiful Clean Coal" after issuing yet another executive order, this time ordering the Department of War to purchase coal power.[367]

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[363] The White House, *Fact Sheet: President Donald J. Trump Strengthens the Reliability and Security of the United States Electric Grid* (Apr. 8, 2025); *see also* New York Times, Trump Signs Orders Aimed at Reviving a Struggling Coal Industry, April 8, 2025); Exec. Order 14261, Reinvigorating American's Beautiful Clean Coal Industry and Amending Executive Order 14241, 90 Fed. Reg. 15517 (April 14, 2025); Exec. Order 14260, Protecting American Energy from State Overreach, 90 Fed. Reg. 15513 (April 14, 2025); Regulatory Relief for Certain Stationary Sources To Promote American Energy, 90 Fed. Reg. 16777 (April 21, 2025).

[364] Young, C., *Energy Secretary Chris Wright: Future of U.S. coal is 'long and bright'* (July 7, 2025).

[365] Exhibit III, (Brown, C., Plumer, B., *Trump Wants to Halt Almost All Coal Plant Shutdowns. It Could be Messy* (Jan. 16, 2026)), at 1.

[366] Exec. Order No. 14241, 90 Fed. Reg. 15517 (Apr. 14, 2025).

[367] Shah, S., *Coal Power is Rebounding in the U.S. Here's How it Happened* (Mar. 3, 2026); Exec. Order 14386, Strengthening United States National Defense with America's Beautiful Clean Coal Power Generation Fleet, 91 Fed. Reg. 7393 (Feb. 17, 2026).

These statements and actions demonstrate a clear intention to use coal plants to meet long-term resource adequacy needs, which exceeds the Department's Section 202(c) emergency authority.

ii. The Department's 2025 and 2026 Section 202(c) orders demonstrate a pattern of arbitrary and capricious behavior designed to carry out a policy goal.

In line with the policy goals described above, the Department has issued orders for nearly every coal plant scheduled to retire in 2025 and 2026, all for the statutory maximum of 90 days. Collectively, the Department's Section 202(c) orders have now forced seven power plants to stay open past their planned retirement dates. Each of these orders have been summarily renewed; [368] the Campbell and Eddystone Orders for the fifth time—meaning they have now been subject to an emergency order for over a year— and the remainder for the third time. None of these orders or their renewals meet the same criteria as previous orders issued pursuant to Section 202(c). Specifically, none were publicly requested by a utility;[369] none were based on an inability to comply with environmental laws; and none were responsive to or tailored to meet a specific, imminent, unexpected and temporary emergency.

The Department, Secretary Wright has confirmed that "[t]he goal [of the recent 202(c) orders] is to stop the political closure of coal plants."[370] These orders have claimed emergencies in arbitrary and changing regions, largely based on a variety of NERC assessments that describe a host of different circumstances and reach

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[368] Excluding the Stanton Order, which was just issued for the first time.

[369] It is common practice for the Department to post the request of the entity requesting a specific order within that order's docket. *See, e.g.* Department, *2024 DOE 202(c) Orders* (2024); Department, *2023 DOE 202(c) Orders* (2023).

[370] Exhibit III, at 1.

varied conclusions. For example, in the Original Order for Craig Unit 1, the Department claimed an emergency in the WECC-Northwest assessment area, based on the 2024 LTRA, despite the fact that the Winter 2025-2026 NERC assessment was much more relevant for an order extending from Denver to March. In the Second and Renewed Orders, the geographic area of the claimed emergency has changed to WECC-Rocky Mountain because of realignment in the assessment areas, and yet according to the Department, the claimed "emergency" still exists in this new area, and Craig Unit 1 is still the best way to meet that emergency. The Department failed to acknowledge or explain this change. The Department is pointing to cherry picked information from each report to arbitrarily find an emergency to support a single solution (prevention of a planned coal plant retirement), even though it looked at two completely different geographic areas between the first and second report. This is evidence of arbitrary pre-judgment.

The Department consistently relies on resource assessments that are devoid of any evidence of an energy emergency. The 2026 SRA found normal risk for the MISO assessment area, which includes the Campbell, Schahfer, and Culley plants; normal risk for the Rocky Mountain assessment area, which includes Craig Unit 1; normal risk for the PJM assessment area, which includes the Eddystone plant; and normal risk for the SERC-Florida Peninsula assessment area, which includes the Stanton plant.[371] The 2026 SRA also found that a large influx of generation resources has outpaced demand and is boosting reserves, and that battery resource additions help maintain stable

[371] Exhibit NNN.

frequency on the grid.[372] And the WECC Summer 2026 Assessment found that "[a]n influx of resources, primarily solar and battery but also natural gas-fired generation, has outpaced demand and boosted reserves, easing resource adequacy concerns across the continent."[373] The program director of GridLab, a nonprofit technical consulting organization focused on the electric grid, emphasized that NERC's recent SRA and WRA indicate that there is no energy emergency.[374]

Additionally, the Department has issued Section 202(c) orders for closing coal plants in complete disregard of their condition or age. For example, the most recent Section 202(c) order to keep R.M. Schahfer Plant Units 17 and 18 running ignores the fact that Unit 18 was in a forced outage from February 16, 2025 to June 23, 2025, and then again starting on July 9, 2025. The unit is still in a forced outage and is not expected to come online until the third quarter of this year, meaning that unit has been and will be in an outage for the entire duration of the issued 202(c) orders.[375] It is unclear how a plant that barely operated throughout 2025 and was not operational at the time the Department issued its original, second, or third Section 202(c) orders could help in an alleged emergency. Similarly, when the Original Order was issued, Craig Unit 1 was in a forced outage and was not repaired until a third of the way into the period of the Original Order. And as of the time of filing this Request, it is Colorado's understanding that Craig Unit 1 is once again in a forced outage.

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[372] *Id.*
[373] Exhibit UUU, at 2.
[374] Howland, E., *DOE emergency orders are incurring additional costs. What are the benefits?* (June 25, 2026).
[375] Howland, E., *Power plants under DOE emergency orders are producing way less energy than before* (June 23, 2026).

Every single Section 202(c) order to keep a retiring coal plant online in 2025 and 2026 has been challenged. The Department has summarily denied the numerous requests for rehearing challenging each of these orders, often with no substantive explanation. Before the Culley Order was renewed, the Region President of its operating utility asked the Department to not issue another Section 202(c) order because Culley Unit 2, which is 60 years old, "will require substantial investment to support an inefficient and increasingly unreliable asset, rather than advancing affordable and reliable service for customers in southwestern Indiana."[376] The letter pointed out that over the 48 days between the issuance of the order and the letter, the unit was on outage for 26 days, available but not economically dispatched by MISO for 5, and online but limited to 45 MW due to maintenance issues for 17 days.[377] The letter also highlighted that operation beyond the expiration of the first order would require a four week or longer outage with a projected cost of $1.9 to $2.5 million to perform necessary maintenance.[378] The Department ignored this and issued a renewed Culley Order. The Department also did not substantively respond to Tri-State and PRPA's request for rehearing of the Original Order until June 24, 2026, over five months later, and in the interim issued the Second Order, followed shortly by the Renewed Order, ignoring their request that the Department work with them to find a more effective and affordable path forward to meet the Department's concerns.[379]

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[376] Letter from Michael Roeder, President, Indiana Region, to the Honorable Chris Wright, Secretary for Energy (Feb. 17, 2026), at 1.
[377] *Id.*, at 2.
[378] *Id.*
[379] Exhibit UU, at 5-6.

When asked what it would take for DOE to stop issuing orders for a particular power plant, DOE asserted that it has made "individual decisions based on the particular set of facts and circumstances in each case."[380] This is clearly a misrepresentation of the Department's actions. These orders have been consistently renewed for the maximum 90-day period like clockwork, disregarding the season, the state of the power plant, opinions of the plant operators, and even the location of the plant in relation to the area for which the order calls an emergency. The Orders all cite to the President's multiple unfounded declarations of a "national energy emergency" and the Department's own Resource Adequacy report which only found potential reliability issues in 2030.[381] Further, the Orders frequently rely on the same long term NERC assessments that do not assess imminent resource adequacy, and often find that the area where DOE has declared an emergency is at normal risk.[382] The Orders also frequently ignore more relevant assessments, such as NERC's winter or summer reliability assessments, in favor of cherry picking statements from these long term reliability assessments.[383]

Together, the Department's orders demonstrate that, rather than addressing emergencies, the Department is working to prevent the retirement of coal plants across the United States as part of their larger efforts to bolster the coal industry.[384]

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[380] Lutz, M., *DOE's Alex Fitzsimmons on energy markets, AI, renewables and more* (June 5, 2026).
[381] *See, e.g.*, Exhibit OOO; Exhibit PPP; Exhibit QQQ; Exhibit RRR; Exhibit SSS.
[382] *See, e.g.*, Exhibit PP; Exhibit ZZ; Exhibit AAA; Exhibit QQQ; Exhibit SSS.
[383] *See, e.g.*, Exhibit A; Exhibit R; Exhibit S (the Department relied on NERC's 2024 Long Term Reliability Assessment instead of the 2025-2026 Winter Reliability Assessment that covered the same period as the Original Order).
[384] *See, e.g.*, The Department, Energy Department Converse First National Coal Council Meeting Under Renewed Charter, Reaffirming Coal's Role in Unleashing American Energy (Jan. 15, 2026); The Department, *Energy Department Announces $175 Million to Modernize Coal Plants, Keeping Affordable Reliable Power Online for Americans* (Feb. 11, 2026); The Department, *Fact Sheet: The Department of*

iii. Despite claims it is addressing energy emergencies, the Department is simultaneously interfering with efforts to increase generation through renewable resources.

At the same time the Department is claiming that an energy emergency justifies exercise of its Section 202(c) emergency authority, it is also working to stymie development of renewable generation sources, particularly wind and solar. It has also failed to acknowledge that Craig Unit 1's continued operation will also prevent the use of solar electricity generated by a newly added solar farm in Moffat County due to limited transmission capacity.[385]

The Department's own website explains that "wind energy offers many advantages which explains why it's one of the fastest-growing energy sources in the world[,]"[386] and that solar energy "can support household savings, energy independence, economic opportunities, grid reliability, resilience, security and affordability, and a safer planet."[387] Wind and solar energy are also extremely cost competitive with other energy sources. The most recent Levelized Cost of Energy+ Report ("LCOE Report") found that "[o]n an unsubsidized $/MWh basis, renewable energy remains the most cost-competitive form of generation."[388] Renewables are also important in a high demand scenario, as they are the "quickest-to-deploy generation resources."[389] Colorado has confirmed that wind and solar energy are low

Energy Is Ending The War On Beautiful, Clean Coal (Jan. 15, 2026); *see also* Exec. Order 14261, Reinvigorating American's Beautiful Clean Coal Industry and Amending Executive Order 14241, 90 Fed. Reg. 15517 (April 14, 2025).

[385] *See* Exhibit UU.

[386] Department, *Advantages and Challenges of Wind Energy*.

[387] Department, *Solar Energy*.

[388] Lazard LCOE, *Levelized Cost of Energy+* (June 2025), at 4.

[389] *Id.*

cost options to provide reliable electricity generation in the Northwest Colorado region, including Craig Unit 1.[390]

Despite these advantages, the federal government and the Department have been actively repressing wind, solar, and hydrogen fuel deployment. Alongside the Energy Emergency Executive Order, President Trump issued an executive memorandum ("Memo") directing federal agencies to pause the issuance of all wind energy authorizations.[391] That Memo has since been declared unlawful and vacated.[392] In addition, the One Big Beautiful Bill Act ended subsidies for wind and solar energy projects years earlier than planned.[393] The Department has also cut funding for grants that were supposed to go to projects such as hydrogen technology and upgrades to the electric grid.[394] And although the solar industry installed nearly 18 GW of new capacity in the first half of 2025, the federal administration's efforts to stymie wind and solar energy has resulted in significantly reduced solar deployment.[395]

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[390] *See* Colorado Energy Office, *Exploring Advanced Energy Solutions for Rural Colorado* (Dec. 19, 2025) (study looked at both the levelized cost of energy and the levelized cost of capacity for multiple generation options and found that solar combined with battery storage has the lowest levelized cost of electricity, and wind combined with battery storage has the lowest cost levelized net cost of capacity).

[391] Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 29, 2025).

[392] Judgement Ordered 12/18/2025 in *State of New York v. Trump*, 25-cv-11221-PBS (D. Mass.).

[393] Sidley, *The "One Big Beautiful Bill" Act - Navigating the New Energy Landscape* (Jul. 15, 2025); *see also* 26 U.S.C.A. § 45Y (creating wind production tax credits, passed Aug. 2022); 26 U.S.C.A. § 48E (creating solar investment tax credits, passed Aug. 2022); One Big Beautiful Bill Act, Pub. L. 119-21, Title VII, § 70512-3, 139 Stat 72 (July 4, 2025) (amending 26 U.S.C.A § 45Y and 26 U.S.C.A. § 48E to end subsidies for wind and solar projects).

[394] *See* Walton, R., *DOE cancels $7.6B in clean energy awards in states that voted against Trump* (Oct. 2, 2025); Banse, T., *Trump administration yanks funding for Northwest green hydrogen project* (Oct. 2, 2025); Kaufman, A., *Trump's cuts to billion-dollar hydrogen hubs rattle industry* (Oct. 2025).

[395] Wood Mackenzie, *Solar and storage dominate new power additions in first six months of Trump administration as federal policies drive up energy costs* (Sept. 9, 2025); Economy+Environment, *Clean Economy Works: November 2025 Analysis* (Dec. 12, 2025).

In March, the federal government announced that it will pay an energy developer almost $1 billion in taxpayers funds to cancel federal leases for two offshore wind projects, in exchange for a commitment from the company to reinvest in oil and gas projects.[396] The federal government has struck two more similar deals since then, spending roughly $2.5 billion to get companies to terminate offshore wind leases.[397] President Trump has gone as far as to admit that his "goal is to not let any windmill be built . . . They're losers."[398] In line with these policy goals, the Department of Interior has cancelled 30 onshore wind farm projects, thereby stalling around 7.5 GWs of capacity.[399] The Rural Energy for America program has also been put on hold, and forthcoming changes will discourage larger-scale solar projects.[400] Finally, the Department of Defense has refused to authorize any new onshore wind projects since August 2025, which is affecting a least 125 utility-scale wind energy projects across 25 states.[401]

As the Department has observed, "the reliability of the power grid is intrinsically a system-wide property that cannot be ensured by an individual resource or technology in that system."[402] Focusing on one technology instead of a portfolio of resource adequacy measures increases risk.[403] The Department's current single-

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[396] U.S. Department of the Interior, *Interior and TotalEnergies Agree to End Offshore Wind Projects, Lowering Costs for American Families* (Mar. 23, 2023).
[397] Plumer, B., *Trump Administration to Pay $765 Million to Cancel 4 More Wind Projects* (June 17, 2026).
[398] Exhibit JJJ (Harder, A., *Exclusive: Wind projects pile up as Pentagon reviews stall* (Mar. 30, 2026)), at 3.
[399] *Id.*, at 2.
[400] Heller, M., *Trump's opposition to renewables stalls rural energy grants* (Apr. 1, 2026).
[401] Amended Compl., ¶ 18, *Renewable Northwest v. Hegseth,* No. 3:26-cv-01092-IM (D. OR.).
[402] Department, *The Future of Resource Adequacy* (Apr. 2024), at 8.
[403] *Id.*

minded focus on coal and other fossil fuels reflects a policy preference as opposed to a desire to address any actual energy emergency and constitutes an unlawful pretext.

H. The Department failed to comply with NEPA.

By requiring Craig Unit 1 to remain available beyond its planned retirement date, the Renewed Order has the potential to cause significant environmental impacts and requires evaluation under NEPA, particularly as it now seems clear the Department will continue issuing renewals regardless of the existence of an emergency.[404] Because the Department has misused its emergency authority in the Renewed Order,[405] it cannot rely on the exception to NEPA's implementing procedures that applies to emergency actions. Quite simply, there is no "emergency situation[] that demand[s] immediate action" here.[406] As demonstrated above, there is no current or imminent energy shortfall or near-term reliability emergency that justifies continued operation of Craig Unit 1.[407] Accordingly, to the extent the Department is relying on the exception for emergency actions to avoid full NEPA analysis, such reliance is contrary to law.

Moreover, the Department's NEPA implementing regulations recognize that where an action has the potential to cause significant impacts on an environmentally sensitive area, such as federally- and state-designated wilderness areas, national parks, scenic areas, and similar resources, the action is not appropriate for categorical exclusion and instead must be analyzed under NEPA.[408] Here, retirement

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[404] 42 U.S.C. § 4336(b), *supra*.
[405] *See supra*, Sections V.A-H.
[406] 10 C.F.R. § 1021.103.
[407] *See supra*, Section V.C.
[408] 10 C.F.R. Part 1021, Appx. B, § B(4)(iv).

of Craig Unit 1 by December 31, 2025 is a requirement of Colorado's federally approved SIP to address the federal Clean Air Act visibility program. This program is designed to protect federally-designated areas home to sensitive ecosystems or species potentially harmed by even small increases in pollution.[409] Specifically, the Colorado Regional Haze SIP, which incorporated Craig Unit 1's retirement date in Round 1, is designed to protect national parks and wilderness areas in Colorado including Black Canyon of the Gunnison National Park, Great Sand Dunes National Park, Rocky Mountain National Park, and Mount Zirkel Wilderness Area.[410] Craig Unit 1 is located near the Mount Zirkel Wilderness Area.[411] As a result, the Department's own NEPA regulations dictate that the action was subject to NEPA review.

VI. Request For Stay

In addition to seeking rehearing, the State of Colorado moves the Department for a stay of the Renewed Order until the conclusion of judicial review.[412] The Department should also refrain from renewing the Renewed Order as currently drafted beyond its current expiration in September 2026. The Department has the authority to issue a stay under the Administrative Procedure Act and should do so where "justice so requires."[413] In deciding whether to grant a request for stay, agencies consider: (1) whether the party requesting the stay will suffer irreparable

409 Exhibit B, ¶ 31.
410 Exhibit MM (Division, *Colorado Visibility and Regional Haze SIP for the Twelve Mandatory Class I Federal Areas in Colorado* (Dec. 15, 2016)).
411 5 Colo. Code Regs. § 1001-5:F.VI. (2014).
412 18 C.F.R. § 385.212.
413 5 U.S.C. § 705.

injury without a stay; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest.[414]

Injuries under this standard must be actual, certain, imminent, and beyond remediation.[415] Financial injury is irreparable where no "adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation."[416] Environmental injury, however, "can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment."[417]

A. Colorado and its people will suffer irreparable injury absent a stay.

Here, a stay is necessary to prevent irreparable harm to the State of Colorado. Craig Unit 1 emits dangerous air pollutants that would not otherwise occur but for the Renewed Order. Craig Unit 1's continued availability and operation increases costs, which have already been passed on to ratepayers, along with increasing pollution directly through readying activities, and indirectly through the sourcing and transportation of fuel. Even if the unit dispatches rarely, these excess pollutants

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[414] *See Nken v. Holder*, 556 U.S. 418, 434, 436 (2009); *Ohio v. EPA*, 603 U.S. 279, 291 (2024); *see, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,020, at 41 (2023); *ISO New Eng. Inc.*, 178 FERC ¶ 61,063, at 13 (2022), *rev'd on other grounds sub nom. In re NTE Conn., LLC*, 26 F.4th 980, 987-88 (D.C. Cir. 2022).

[415] *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015); *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *ANR Pipeline Co.*, 91 FERC ¶ 61,252, at 61,887 (2000); *City of Tacoma*, 89 FERC ¶ 61,273, at 61,795 (1999) (recognizing that, absent a stay, options for "meaningful judicial review would be effectively foreclosed").

[416] *Wis. Gas Co.*, 758 F.2d at 674 (quoting *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *see also In re NTE Conn., LLC*, 26 F.4th at 990-91. (Colorado refuses to concede that its residents, as ratepayers, should bear the cost of the Department's illegal actions here. Nonetheless, we assume that neither the Department nor the Craig Station owners want to bear those costs either and will seek to impose them on Coloradans.).

[417] *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987).

contribute to and exacerbate respiratory problems, cardiovascular issues, and other health conditions.[418] By continuing to delay the retirement of a 45-year-old coal-fired unit, the Department is causing Colorado's electric customers to be served by a more costly and less reliable and resilient electric grid. Instead of continuing to invest in and develop more reliable resources as planned, the Craig Unit 1 Owners will have to dedicate resources to repair and maintain a coal plant that is less reliable and more costly than other generation resources.

A stay would not result in harm to any other interested parties. The issuance of a stay would not harm end-use electricity consumers because there is no emergency addressed by the operation of Craig Unit 1. The lack of an actual emergency means that a stay would not disrupt the provision of electricity. Furthermore, because Tri-State had already planned for the closure of Craig Unit 1, a stay would have the effect only of relieving Tri-State of the administrative, compliance, and planning burdens imposed by the Renewed Order. On the balancing of equities, there is therefore no meaningful countervailing harm that would follow from a stay.

B. A stay is in the public interest.

There is no public interest served by the Renewed Order, and a stay will only benefit the public. First, the Renewed Order exceeds the Department's authority; it has provided no reasonable grounds to substantiate any near-term or imminent shortfall in electricity supply that would necessitate Craig Unit 1's continued

[418] Exhibit B, ¶ 26.

operation.[419] Second, a stay would protect the broader public from the costs and additional pollution produced by unnecessary operation of Craig Unit 1.

VII. Conclusion

For the reasons set forth above, the State of Colorado respectfully requests that the Department grant intervention; grant a rehearing and rescind the Renewed Order; and stay the Renewed Order.

Filed on July 24, 2026.

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[419] *See League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (noting that "there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations'") (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)).

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Certificate of Service

This is to certify that I have duly served the foregoing, **The State of Colorado's Request for Rehearing, Motion to Intervene, and Stay Request**, upon all parties below electronically via e-mail this 24th day of July, 2026:

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State of Colorado's Exhibit List

Exhibit No.	Document Description
A	Department, Order No. 202-25-14 (Dec. 30, 2025)
B	Declaration of Josh Korth Declaration (July 22, 2026)
C	Declaration of Erin O'Neil (July 23, 2026)
D	Declaration of Joseph Pereira (July 22, 2026)
E	CoPUC, Decision No. C25-0612, issued on August 26, 2025, in Proceeding No. 23A-0585E.
F	CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Brad Nebergall, filed on December 1, 2020, in Proceeding No. 20A-0528E, Attachment BN-2, (Tri-State, *2020 IRP/ERP,* Public (Dec. 1, 2020))
G	CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Brad Nebergall, filed on December 1, 2020, in Proceeding No. 20A-0528E, Attachment BN-1 (Tri-State, *Responsible Energy Plan* (Jan. 2020)
H	Salt River Project, 2023 Integrated Systems Plan
~~I~~	Department, Order No. 202-25-7 (Aug. 20, 2025)
J	CoPUC, 120 Day ERP Implementation Report, Public, filed on April 11, 2025, in Proceeding No. 23A-0585E
K	NERC, *2024 Long-Term Reliability Assessment* (Dec. 2024)
L	NERC, *2025-2026 Winter Reliability Assessment* (Nov. 2025)
M	Department, Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid (July 2025)
N	Motion to Intervene and Protective Request for Rehearing by the Attorneys General of Maryland, Washington, Illinois, Michigan, Minnesota, Arizona, Colorado, Connecticut, and New York, filed on August 6, 2025 with the Department
O	Department, Order No. 202-25-3 (May 23, 2025)
P	Department, Order No. 202-25-4 (May 30, 2025)
Q	Department, Order No. 202-25-11 (Dec. 16, 2025)
R	Department, Order No. 202-25-13 (Dec. 23, 2025)
S	Department, Order No. 202-25-12 (Dec. 23, 2025)
T	Congressional Research Service, *Federal Power Act: The Department of Energy's Emergency Authority* (June 12, 2025)
U	Department, Order No. 202-25-9 (Nov. 18, 2025)
V	Department, Order No. 202-25-8 (Aug. 28, 2025)
W	CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Lisa K. Tiffin, Rev. 1, filed on May 15, 2024, in Proceeding No. 23A-0585E
X	CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Lisa K. Tiffin, Rev. 1, filed on May 15, 2024, in Proceeding No. 23A-0585E, Attachment LKT-1 (Tri-State, 2023 ERP Phase I, Rev. 2 (Apr. 22, 2024)

Y	CoPUC, *Verified Petition of Trial Staff of the Commission, CEO, UCA, and Public Service for a Variance from Decision No. C18-0761 and Any Other Requirements, Request for Shortened Notice and Intervention Period, and Request for Approval of Associated Procedures,* filed on November 10, 2025, in Proceeding No. 25V-0480E
Z	CoPUC, Tri-State, *2025 Annual Progress Report*, filed on December 1, 2025, in Proceeding No. 23A-0585E
AA	CoPUC, Decision No. R24-0602, issued on August 22, 2024, in Proceeding No. 23A-0585E
BB	CoPUC, Decision No. C25-0892, issued on December 10, 2020, in Proceeding No. 25V-0480E
CC	CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Lisa K. Tiffin, Rev. 1, filed on May 15, 2024, in Proceeding No. 23A-0585E, Attachment LKT-1-Attachment F (*Electric Energy and Demand Forecast*, Public)
DD	CoPUC, Hrg. Ex. 103, Direct Testimony and Attachments of Brian L. Thompson, Rev. 1, filed on May 24, 2024, in Proceeding No. 23A-0585E
EE	PRPA, 2024 Integrated Resource Plan (Apr. 2023)
FF	PRPA, Craig Units 1&2 (Yampa Project) (2026)
GG	PacifiCorp, Utah Integrated Resource Plan Volume I (Mar. 31, 2025)
HH	SPP, *SPP Reliability Plan* (June 2, 2025)
II	NERC, *Emergency Operations*
JJ	CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Brad Nebergall, filed on December 1, 2020, in Proceeding No. 20A-0528E, Proceeding 20A-0528E
KK	Division, *Operating Permit No. 96OPMF155* (July 1, 2021)
LL	Division, *Technical Review Document for Operating Permit 96OPMF155* (Jan. 2005)
MM	Tri-State, General APEN- Form APCD-200 (Apr. 21, 2025)
NN	Division, *Colorado Visibility and Regional Haze SIP for the Twelve Mandatory Class I Federal Areas in Colorado* (Dec. 15, 2016)
OO	CoPUC, Hrg. Ex. 101, Direct Testimony and Attachments of Lisa K. Tiffin, Rev. 1, filed on May 15, 2024, in Proceeding No. 23A-0585E, Attachment LKT-1 – Attachment G-1 (Astrape Consulting, *Reserve Margin and Effective Load Carrying Capability (ELCC) Study*, Public (Aug. 2, 2023)
PP	Department, Order No. 202-25-10 (Nov. 25, 2025)
QQ	Tri-State, *U.S. DOE Orders Tri-State to Keep Craig Generating Station Unit Operating for Next 90 Days* (Dec. 31, 2025)
RR	Powell, R., 1 coal plant open amid order (Jan. 6, 2026)
SS	Behr, P., *PJM to ratchet down projected AI power demand for eastern US* (Jan. 6 , 2026)
TT	Department, Order No. 202-26-21 (Mar. 30, 2026)
UU	Tri-State, *Request for Clarification and for Rehearing of Tri-State Generation and Transmission Association and Platte River Power Authority* (Jan. 29, 2026)

VV	CoPUC, Tri-State, Notice of 2026 Resource Adequacy Annual Report, filed on March 17, 2026, in Proceeding No. 26M-0028E
WW	NERC, *Long-Term Reliability Assessment* (Jan. 2026)
XX	Department, Order No. 202-26-16 (Feb. 17, 2026)
YY	Department, Order No. 202-26-17 (Feb. 23, 2026)
ZZ	Department, Order No. 202-26-18 (Mar. 16, 2026)
AAA	Department, Order No. 202-26-19 (Mar. 23, 2026)
BBB	Department, Order No. 202-26-20 (Mar. 23, 2026)
CCC	State of Colorado, The State of Colorado's Request for Rehearing, Motion to Intervene, and Stay Request (Jan. 28, 2026)
DDD	Letter from Jerome H. Sturhahn, Senior Vice President of Tri-State, to Shannon McMillian, Compliance and Enforcement Program Manager, CDPHE (Jan. 26, 2026)
EEE	CoPUC, Tri-State, Notice Regarding Phase II Developments, filed on March 17, 2026, in Proceeding No. 23A-0585E
FFF	SPP, *Current Grid Conditions* (Apr. 7, 2026)
GGG	SPP, *Current Grid Conditions* (Apr. 20, 2026)
HHH	Cook, A., *NERC to OMS: Long-term Assessment not a Predictor of Risk* (Feb. 10, 2026)
III	Brown, C., Plumer, B., *Trump Wants to Halt Almost All Coal Plant Shutdowns. It Could be Messy* (Jan. 16, 2026)
JJJ	Harder, A., *Exclusive: Wind projects pile up as Pentagon reviews stall* (Mar. 30, 2026)
KKK	Department, Order No. 2026-26-31 (June 26, 2026)
LLL	State of Colorado, The State of Colorado's Request for Rehearing, Motion to Intervene, and Stay Request (Apr. 28, 2026)
MMM	Tri-State, *Request for Clarification and for Rehearing of Tri-State Generation and Transmission Association and Platte River Power Authority* (Apr. 29, 2026)
NNN	NERC, 2026 Summer Resource Adequacy (May 2026)
OOO	Department, Order No. 202-26-22 (May 19, 2026)
PPP	Department, Order No. 202-26-24 (May 21, 2026)
QQQ	Department, Order No. 202-26-28 (June 12, 2026)
RRR	Department, Order No. 202-26-29 (June 18, 2026)
SSS	Department, Order No. 202-26-30 (June 18, 2026
TTT	Department, Order No. 202-26-26 (June 4, 2026)
UUU	WECC, Summer 2026 Assessment Overview
VVV	WECC, 2025 Western Assessment Supplemental Information
WWW	Intentionally Left Blank
XXX	Intentionally Left Blank
YYY	Intentionally Left Blank
ZZZ	CoPUC, Tri-State, *Phase II Status Update*, filed on June 30, 2026, in Proceeding No. 23A-0585E