

UNITED STATES DEPARTMENT OF ENERGY

Midcontinent Independent System Operator

Order Nos. 202-26-19 & 202-26-20

**MOTION TO INTERVENE AND PETITION FOR REHEARING
OF THE STATES OF MINNESOTA, ILLINOIS, AND WISCONSIN AND THE PEOPLE
OF THE STATE OF MICHIGAN**

Pursuant to section 202(c) of the Federal Power Act, 16 U.S.C. §§ 824a(c), 8251, the States of Minnesota, Illinois, Wisconsin, and the People of the State of Michigan (“the States”) move to intervene and apply for rehearing of the Department of Energy’s (“DOE”) March 23, 2026, Order No. 202-26-19 (Ex. A)¹ and March 23, 2026, Order No. 202-26-20 (Ex. B) (together, “Orders”), directing the Midcontinent Independent System Operator (“MISO”), Northern Indiana Public Services Company (“NIPSCO”), and CenterPoint Energy to take all measures necessary to ensure that the coal-burning Schahfer Plant (“Schahfer”) in Wheatfield, Indiana and coal-burning Unit 2 of the F.B. Culley Generating Station (“Culley 2”) in Warrick County, Indiana are “available to operate” and “to take every step to employ economic dispatch of [Schahfer and Culley 2] to minimize cost to ratepayers.” The Orders are in effect from March 24, 2026, until June 21, 2026.² The Orders are the second round of directives requiring MISO to take the same actions for the same facilities based on the same alleged statutory authority and factual circumstances.

The States have an interest in and are aggrieved by the Orders. *FDA v. R.J. Reynolds Vapor*

¹ All Exhibits are lettered and attached.

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

Co., 606 U.S. 226, 232–36 (2025) (defining an “adversely affected or aggrieved” party within the APA as “anyone even ‘arguably within the zone of interests to be protected or regulated by the statute . . . in question.’” (quoting *Ass’n of Data Processing Svc. Orgs. v. Camp*, 397 U. S. 150, 153 (1970))).

The Orders continue the pattern established by DOE Orders 202-25-12 and 202-25-13 (“Prior Schahfer and Culley 2 Orders”), which also directed MISO, NIPSCO and CenterPoint Energy to keep Schahfer and Culley 2 available to provide economic dispatch from their planned retirement dates of December 31, 2025, through March 23, 2026. These Orders follow a long line of executive emergency power overreach, including numerous orders directing the J.H. Campbell Plant to remain similarly “available to operate” where the States have also requested rehearing and judicial review. *See* Order Nos. 202-25-3, 202-25-7, 202-25-9, & 202-26-16.

Multiple undersigned States requested rehearing of the Prior Schahfer and Culley 2 Orders and described the applicable facts, with record support, in those challenges. Ex. C (nested exhibits omitted). The Orders here are almost identical to the Prior Schahfer and Culley 2 Orders. Because the legal and factual issues here directly overlap and repeat the same matters previously raised, the States hereby incorporate by reference the petitions for rehearing of the Prior Schahfer and Culley 2 Orders, including all applicable arguments, exhibits, and other referenced materials, and assert them as grounds for rehearing of the Orders here.

The Orders will adversely affect the undersigned States in the same ways the Prior Schahfer and Culley 2 Orders harmed the States challenging those Orders, but the current Orders increase

those harms through ongoing, cumulative emissions and related impacts. The negative effects on the States were described in the prior challenges and are hereby incorporated by reference.³

The Orders compound the errors of the Prior Schahfer and Culley 2 Orders for all of the reasons set forth in the States' Petitions for Rehearing filed January 22, 2026. As with the Prior Schahfer and Culley 2 Orders, the Orders here should be rescinded because they lack reasoned decisionmaking, exceed DOE's authority, are not rationally tailored to meet the purported emergency, and demonstrated impermissible prejudgment of the relevant issues.

In addition to the grounds laid out in the requests for rehearing on the Prior Schahfer and Culley 2 Orders, NIPSCO's parent company NiSource filed its most recent 10-K report with the Securities and Exchange Commission on February 11, 2026. Ex. D. NiSource reported:

Although we had previously intended to retire them by the end of 2025, the two coal units at R.M. Schahfer Generating Station are currently subject to a federal directive to remain open. These units are being replaced with a diverse, flexible, and scalable mix of incremental resources, including short-term contracted capacity resources, expanded demand side management programs, wind, solar, battery energy storage, and new natural gas peaking resources U.S. federal policy actions, **such as additional federal directives preventing the retirement of these or other assets and the duration of such directives**, could create uncertainty around the timing and availability of key input materials necessary to develop and place our electric generation projects in service.

We expect renewable generation, battery energy storage and natural gas generation to be the primary ways in which we will meet our electric generation capacity and reliability obligations to the MISO market and reliably serve our customers when we retire our coal generation capacity An inability to secure and deliver on electric generation projects has negatively impacted, and could in the future negatively impact, our generation transition timeline and could negatively impact our achievement of decarbonization goals and reputation. **Our electric generation strategy may require additional investment to meet our MISO obligations and**

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

may require significant future capital expenditures, operating costs and charges to earnings that may negatively impact our financial position, financial results and cash flows.

Id. at 22 (emphasis added). NIPSCO’s SEC filing confirms that DOE’s exercise of emergency authority to wade into the waters of long-term resource planning is hindering regional suppliers’ ability to efficiently participate in the generation market.

CenterPoint Energy filed their most recent 10-K reports with the Securities and Exchange Commission on February 19, 2026. Ex. E. CenterPoint Energy reported:

While Indiana Electric’s 2025 IRP (similar to previous IRPs) preferred portfolios included the retirement of F.B. Culley Unit 2, a coal-fired generation unit, by the end of 2025, the U.S. Department of Energy issued an emergency 202(c) order in December 2025 directing Indiana Electric to continue operating the unit through March 23, 2026. Indiana Electric has filed a complaint with the FERC to request creation of a cost recovery/cost allocation mechanism. If created, a separate filing will be made at a later date with the FERC to seek recovery of all costs incurred to comply with the U.S. Department of Energy’s emergency 202(c) order. Indiana Electric has also filed an application with the IURC in Cause No. 46350 to recover any compliance costs associated with the emergency 202(c) order that are not recovered through the FERC proceedings.

Id. at 72. The additional costs NIPSCO and CenterPoint Energy describe in their SEC filings have already come to pass in other cases. Consumers Energy, the operator of the J.H. Campbell Plant in Michigan has asserted a \$135 million “net financial impact” for the continued operation of the plant to comply with 202(c) orders from May through December of 2025. Ex. F at 117–118. And Consumers Energy is already seeking to recover a portion of those costs from MISO ratepayers.⁴ Here too NIPSCO filed a complaint at FERC seeking a modification of the MISO Tariff to establish a mechanism for recovery and allocation of the cost to comply with the federal emergency orders. Ex. D at 97. The real-world consequences of these types of orders show that requiring coal plants

⁴ FERC Docket ER26-1138.

to remain available to operate when no emergency exists is incredibly inefficient, and they confirm that continued operation cannot “minimize the cost to ratepayers” as the Orders require. Ex. A at 8–9; Ex. B at 8–9.

Tellingly, CenterPoint Energy itself asked DOE not to issue its most recent Order as to Culley 2. In a letter dated February 17, 2026, CenterPoint Energy made clear that the unit, which it described as “inefficient and increasingly unreliable,” was not necessary for reliability purposes, asserting that “current industry data shows sufficient capacity without Unit 2.” Ex. G at 1. It further noted that “extending the life of Unit 2 is neither practical nor financially responsible” *Id.* at 2. CenterPoint Energy thus requested that DOE “abstain from issuing subsequent 202 Orders for Unit 2.” *Id.* DOE should listen to CenterPoint Energy and rescind or vacate its March 23, 2026, Orders.

Rescinding or vacating the Orders would be a step toward normalcy. As noted in the request for rehearing of the Prior Schahfer and Culley 2 Orders, DOE’s use of section 202(c) to require coal plants to remain generally available is novel. Ex. C at 35–36. Recent scholarship confirms that the executive branch has a long history of relying on experts to regulate the power grid, which it has abandoned in its attempt to take over long-term planning through emergency orders like the ones at issue here. Ex. H. DOE’s exercise of emergency authority to require outdated energy sources to operate is not only novel, it relies on fundamental misunderstandings of what constitutes an emergency and uses that misunderstanding to saddle ratepayers with the cost of inefficient energy production. *Id.* at 25.

The latest Schahfer and Culley 2 Orders misapprehend NERC’s 2025 Long-Term Reliability Assessment (LTRA) to reach their findings. Ex. A at 4; Ex. B at 4. As a starting point, the LTRA categorizes MISO as “normal” risk—the lowest risk designation—for 2026, and only

“elevated” risk in 2027.⁵ Ex. I. Further, the Order’s description of the LTRA’s long-term MISO forecasts omits reference to the large amounts of resources planned to be added in MISO pursuant to the “recently approved Expedited Resource Addition Study (ERAS) process” that “is expected to result in additional resources in the MISO system beginning in 2028 that are not included in the model for the 2025 LTRA.” *Id.* at 8. The assessment further provides the following context and explanation as to how it considers those resources in the context of its other evaluations:

The timing of FERC’s approval of MISO’s ERAS process in July meant that the generator additions that MISO plans as part of that process were not included in the resource adequacy modeling for the 2025 LTRA. ERAS is already expected to result in considerable new resource additions to the MISO system in the near term. The additional summer on-peak capacity from ERAS is expected to grow to over 20 GW by summer 2030. These expedited resource additions are expected to reduce the shortfall risk identified in this year’s ProbA. Furthermore, the timing of the ERAS additions would mitigate an identified winter ARM shortfall if the approximately 8.6 GW of winter on-peak capacity anticipated by 2028–29 reaches operation as projected. The latest ERAS projects, along with current load forecasts and resource projections as of July 2026, will be included in the input data for the 2026 LTRA

Id. at 16.

The LTRA likewise concludes that “if ERAS projects come in as currently planned, the projected reserve margin shortfall would be eliminated.” *Id.* at 15. Thus, not only does the Order omit the finding of merely “normal” risk during the period of the Order—which in itself rebuts any “emergency” designation⁶—the Order arbitrarily ignores key evidence from the LTRA contradicting the Department’s assertions as to long-term planning.

⁵ NERC’s “elevated risk” designation in no way signifies an emergency condition, falls below the highest risk designation of “high risk,” and is far from unusual. This point was addressed at length in the challenge to the Prior Schahfer and Culley 2 Orders. Ex. C. at 25–26.

⁶ Even without the planned ERAS resources, the LTRA estimates only that MISO would “fall below reserve margin targets to become a high-risk area beginning Winter 2028” (the end of 2028). *Id.* This would not be a sudden or unexpected emergency during the period of the Orders.

Finally, although the Orders purport to rely on the occurrence of Winter Storm Fern to justify a need for increased power generation, the Orders do not identify any emergency during the time period governed by the Orders, between March 24, 2026 and June 21, 2026. Further, to the extent DOE attempts to rely on the events of Fern to support its Orders, the Orders fail to identify any actual shortfalls, brownouts, or blackouts during Winter Storm Fern that would have required the specific additional capacity from Schahfer or Culley 2 versus other more cost-effective and less-polluting alternatives. Thus, DOE's reliance on Winter Storm Fern does not identify any particular need for which operating coal-burning units at Schahfer or Culley 2 would be an appropriate or even reasonable response, much less one that "best-meets" the purported emergency. To the contrary, forcing inefficient and outdated coal plants to remain online does not "best-meet" any purported emergency because of their slow response time, lack of reliability and high cost. Ex. C at 48–49.

DOE is already in possession of the exhibits the States submitted in support of their petitions for rehearing of the Prior Schahfer and Culley 2 Orders. The States are not resubmitting those same documents since they are incorporated by reference into the record for this petition. If DOE needs additional copies of any documents, please contact any of the signatories to this request.

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