UNITED STATES OF AMERICA
BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c) Emergency Order:	)	
CenterPoint Energy and	)	Order No. 202-25-13
Midcontinent Independent System Operator, Inc.	)	

MOTION TO INTERVENE AND REQUEST FOR REHEARING AND STAY OF THE ORGANIZATION OF MISO STATES, INC.

Pursuant to 16 U.S. Code § 825*l*[1] and other relevant procedures,[2] the Organization of MISO States, Inc. ("OMS") respectfully submits this Motion to Intervene, Request for Rehearing, and Request of Stay regarding Order No. 202-25-13 issued by the U.S. Department of Energy ("DOE") on December 23, 2025. In Order No. 202-25-13, DOE directed CenterPoint Energy ("CenterPoint") and the Midcontinent Independent System Operator, Inc. ("MISO") to ensure the continued operation of CenterPoint's F.B. Culley Generating Station – Unit 2 ("Culley Unit 2") beyond its December 2025 retirement date ("Culley Order").[3] Since the Culley Order invokes DOE's emergency authority under Section 202(c) of the Federal Power Act,[4] it is effective for a maximum of 90 days (*i.e.*, through March 23, 2026), or until superseded by a subsequent order.

I. STATEMENT OF INTEREST AND MOTION TO INTERVENE

OMS is a non-profit, self-governing organization representing the collective interests of 15 state utility regulators, the New Orleans City Council, and the Canadian province of Manitoba in the Midcontinent Independent System Operator, Inc. ("MISO") region and serves as the regional

[1] Section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l*(a).

[2] 18 C.F.R. §§ 385.203, .214, .713; U.S. Department of Energy, DOE's Use of Federal Power Act Emergency Authority, available at: https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority (accessed December 31, 2025).

[3] U.S. Department of Energy, Order No. 202-25-13 (December 23, 2025) (the "Culley Order").

[4] 16 U.S. Code § 824a(c)

state committee for the MISO region.[5] OMS coordinates regulatory oversight among its members, makes recommendations to MISO, MISO's Board of Directors, the Commission, and other relevant government entities, and intervenes in proceedings before the Federal Energy Regulatory Commission ("FERC") and other administrative and judicial bodies to express the positions of OMS members.

OMS has a direct and substantial interest in this proceeding as the Culley Order affects resource adequacy within the MISO footprint, state-jurisdictional planning and cost oversight (both cost allocation and cost recovery impacts), wholesale energy markets, grid operations, and system reliability across the MISO footprint. The Culley Order's implications for rate recovery, system planning, and federal-state coordination over resource decisions directly affect the jurisdiction and responsibilities of OMS member commissions.

As such, OMS respectfully requests that the DOE grant its Motion to Intervene and be recognized as a party in this proceeding.

II. BACKGROUND

Culley is an electric generating facility in Warrick County, Indiana. Culley is owned and operated by CenterPoint Energy and consists of two coal-fired generation units, Unit 2 (103.7 MW) and Unit 3 (265.2 MW), with a combined name plate capacity of 368.9 MW. Unit 2 and Unit 3 began operations in 1966 and 1973, respectively. Unit 2 has been studied extensively for retirement and was slated to cease operations in December 2025.

III. REQUEST FOR REHEARING

OMS moves for rehearing of the Culley Order on the following grounds:

[5] The Indiana Utility Regulatory Commission ("Indiana Commission") is a member of OMS and regulates CenterPoint's retail rates and resource decisions.

A. The Culley Order Lacks a Demonstrated Justification for an Emergency Situation

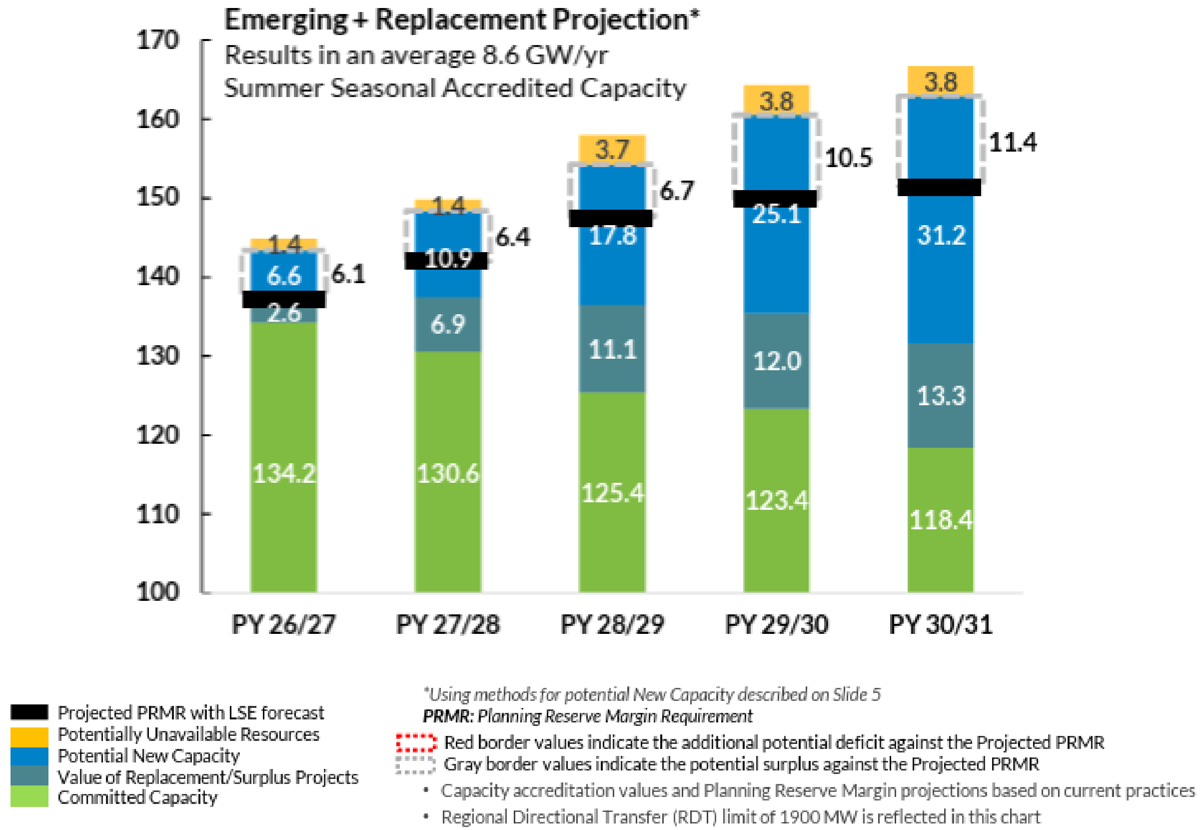
The Culley Order rests on a claim of "emergency conditions" that are not supported by regional data, MISO assessments, or state-approved resource plans. The Culley Order fails to establish, based on a dependable and comprehensive reliability assessment, that an emergency condition exists in the MISO footprint warranting the continued operation of Culley Unit 2. The Culley Order invokes the North American Electric Reliability Corporation's ("NERC") 2024 Long Term Reliability Assessment ("LTRA"), the MISO Planning Resource Auction, MISO's Attributes Roadmap, the OMS-MISO Survey, among other items, as evidence for the existence of an Emergency Situation and the need for the continued operation of the Culley Unit 2. However, the OMS-MISO Resource Adequacy Survey, MISO's 2025/2026 Planning Resource Auction, MISO's on-going readiness assessments, and CenterPoint's plans all do not indicate a regional reliability emergency, shortfall, or an unmet reliability criterion that justifies reversal of the planned resource retirement of Culley Unit 2.[6]

The OMS-MISO Survey in Table 1 below depicts MISO's member-planned resource addition outlook. This view shows how MISO members expect to meet their future capacity needs through 2031, and not just sufficiently – or 'getting by' – but with 11.4 GW of excess capacity and another 3.8 GW of potential resources; a total of a potential 15.2 GW *excess* beyond seasonal reliability targets. The numbers used by DOE and others only show how the capacity surplus the MISO region has utilized for decades to keep power prices low may be tightening – but *only* if you look at how many resources were built historically (over a time period with less new demand for new generation resources and retirement replacements) in lieu of looking forward at what is

[6] On May 14, 2023, the Indiana Commission's Director of Research, Policy, and Planning issued a report on CenterPoint's 2022/2023 Integrated Resource Plan, which proposed retiring Culley Unit 2 by the end of 2025. Director's Report available here: https://www.in.gov/iurc/files/Draft-Director-CenterPoint-IRP-Report-5-14-24.pdf

upcoming and planned for by our utilities with an obligation to serve load reliability. And even if the capacity net decrease were true, it is a logically flawed view to consider a decrease (no matter how small) in *excess* capacity as an energy reliability emergency.

Table 1: 2025 OMS-MISO Survey: Member Planned Additions, Resource Adequacy Outlook[7]



DOE previously relied on similar reasoning in the Campbell proceeding, and those errors are repeated and amplified here.[8] Since the Campbell Order, these on-going reports in addition to state and member initiatives have continued to indicate sufficiency (as grid operations have also shown) and these assessments and reports do *not* include the Campbell plant, which contributes to the excess capacity and energy.

[7] 2025 OMS-MISO Survey, Released June 6, 2025 – Slide 7; https://cdn.misoenergy.org/20250606OMSMISOSurveyResultsWorkshopPresentation702311.pdf

[8] U.S. Department of Energy, Order No. 202-25-3 (May 23, 2025).

As was with Campbell, the current record misapplies NERC assessments in light of regional energy and capacity outlooks, disregards state regulatory approvals of retirements and replacement resources, overlooks MISO's own reliability tools, and conflates energy-risk metrics with capacity-based planning frameworks. MISO conducted and approved the retirement of Culley Unit 2 through its normal reliability study process. No near-term reliability need was identified. The relevant state commissions reviewed CenterPoint's resource plans providing replacement capacity and transition timing consistent with the retirement date and found no concerns.

The Culley, Schahfer, and Campbell Orders together show a recurring pattern: DOE invokes emergency authority without demonstrating an energy emergency, misstates the basis for (non-energy) capacity need, and bypasses state jurisdiction over integrated resource planning (IRP), siting, and replacement-resource approval processes and therefore, creates a downstream, cost-causation framework that does not align with beneficiaries.

i. Violations of Law

- Federal Power Act § 202(c), 16 U.S.C. 824a(c) requiring that an emergency exists due to a sudden increase in demand, shortage of electricity, or other causes threatening adequacy of service.
- Arbitrary and Capricious Action under the Administrative Procedures Act (5 U.S.C. § 706) due to the reliance on the unverified and inconsistent NERC data, using it for a purpose unintended or applicable, failure to consider more accurate and recent regional data, no mechanisms to revisit the decision based on events or actions within the 90-day period, and no consideration of the Campbell units in this order or assessments used for the emergency declaration.

B. The Culley Order Violates the Federal Power Act and Does Not Respect State Jurisdiction

The Culley Order did not adequately consult with or incorporate the findings of MISO, Centerpoint Energy, the Indiana Commission, or other state regulatory bodies, who have primary jurisdiction over integrated resource planning, siting, and cost recovery for utilities operating in their states. Similarly, the Culley Order failed to consider MISO assessments in which Indiana, MISO, and other MISO-states use to coordinate and inform seasonal risks and operational concerns and reliability impacts. The Culley Order fails to disclose that MISO approved Culley Unit 2's retirement through its formal study process; that Centerpoint's IRP planned for the retirement of this unit; that projected multi-year deficits are planning-stage uncertainties rather than operational emergencies; and that ERAS timelines and supply-chain constraints are long-term planning concerns, not short-term reliability threats.

The Culley Order also imposes economic-dispatch-like obligations beyond DOE's statutory authority, creates cost-allocation inconsistencies similar to those in Campbell - where capacity costs approached $80 million and were socialized across Zones 1–7 - and injects regulatory uncertainty that undermines cooperative federalism by bypassing state-approved resource plans, MISO's validated resource adequacy processes, and state jurisdiction over siting, retirement, and replacement resources.

This failure undermines the federal-state regulatory balance, is a violation of the Federal Power Act, the cooperative federalism principles, and long-standing practices including the FERC Policy on State-Federal Collaboration.

i. Violations of Law

- Federal Power Act § 201(b), 16 U.S.C. § 824 reserves the authority over generation, siting, resource adequacy, and retail rates to the states; the Culley Order bypasses states-planning and decision-making authority and ratemaking.
- Cooperative Federalism Doctrine: DOE unilaterally intrudes into state authority without required consultation or respect for jurisdictional boundaries.

C. DOE's Insufficient Showing of Need Renders any Resulting Cost Allocation and Recovery Framework Unjust

The Culley Order explicitly recognizes FERC is responsible for cost recovery, while directly creating costs by requiring the continued operation of a costly and potentially uneconomic generating unit. This creates legal, jurisdictional, and equity concerns by assigning costs to those not causing the costs or receiving the benefits. Last, and new in the Culley and Schahfer Orders, DOE's approach here contradicts its own statements in its letter that initiated FERC's Large Load Advanced Notice of Proposed Rulemaking ("ANOPR"). In the letter, DOE identified data-center-driven load growth as a core driver of capacity concerns, yet DOE's emergency actions assign no cost responsibility to the load growth causing the supposed reliability need. This internal inconsistency is arbitrary and capricious under the Administrative Procedures Act.

The Culley Order compounds the cost impacts of prior Section 202(c) orders by requiring continued operation of aging (and *still on forced outage and unusable*), high-cost units without any cap, transparency, or defined endpoint rejecting and dismissing all considerations of 'need' of the generating resource that are historically made at the state level during the routine and standard review processes of IRPs including: evaluation of size of unit compared to need, type of fuel source and costs, timing to align with system need, and cost of unit compared to alternatives to ensure ratepayer protection and value. Finally, these costs will ultimately be recovered through state cost-

recovery mechanisms, such as fuel clauses, that are subject to limited state prudence review and due to the need established here, and FERC's decisions in Campbell, will be distributed across a broad base of ratepayers (MISO Zones 1-7) rendering the cumulative and ongoing nature of the costs less visible.

i. Violations of Law

- Federal Power Act Sections 205, 206 require rates must be just and reasonable and not unduly discriminatory or preferential; as the need for the facility does not exist, no cost allocation mechanism meeting these standards is possible.
- Arbitrary and Capricious Action under the Administrative Procedures Act (5 U.S.C. § 706)
- Cost Causation and Beneficiary Pays Principles upheld by courts

D. Use of Section 202(c) Here Is Unduly Broad and Further Conflates Resource Adequacy and Operational Reliability

The Culley Order relies on an overly broad and speculative interpretation of what constitutes an "emergency" under Section 202(c), invoking federal authority absent any immediate or demonstrated reliability shortfall, and here, begins to reframe the ability to declare an emergency through non-immediate events that are likely to continue in subsequent years. Both the Culley and Schahfer Orders venture much further into the clearly-state jurisdictional planning time horizon, allowing sufficient time to identify, manage, and mitigate any new 'longer-term' capacity risks. This expansive use of emergency powers sets a troubling precedent, enabling intervention in routine, state-approved planning decisions without an actual crisis; and risks establishing its use to circumvent normal utility, RTO, and states processes, and exposes ratepayers to costs that should not be borne. Such preemptive action risks undermining the credibility of future emergency orders, distorting market signals, and eroding the statutory balance between federal and state authority.

i. Violations of Law

- Federal Power Act Section 202 is intended for temporary emergency orders, in response to immediate reliability threats – severe storms such as hurricanes, extreme heat or cold, or other short-term, short-duration events. Here, the Culley Order extends to a non-emergency for the full term authorized by the section, without substantiation for the need for the facility nor measures that could self-terminate the Culley Order, as is typically the case.
- Violation of the Administrative Procedures Act (5 U.S.C. § 706) in misusing a statutory authority beyond its intended scope and in doing so, encroaching on established state jurisdiction as provided for in the Federal Power Act.

For these reasons, DOE's findings are arbitrary and capricious, exceed statutory authority, and cannot lawfully support continued operation of Culley Unit 2.

IV. REQUEST FOR STAY

OMS respectfully requests that the Culley Order be stayed unless or until a demonstrable reliability need is established through an objective, transparent, and evidence-based process.

V. CONCLUSION

For the reasons set forth above, OMS respectfully requests that DOE grant this Motion to Intervene, Request for Rehearing, and Request of Stay of the Culley Order. OMS submits this filing because a majority of OMS members that participated in the vote on this filing supported this Motion to Intervene, Request for Rehearing, and Request for Stay. This should not be construed to mean that all OMS members agree with all comments above. Each OMS member reserves the right to file separate comments. In recognition of such, the following members voted in support of this filing:

Illinois Commerce Commission

Iowa Utilities Commission

Michigan Public Service Commission

Minnesota Public Utilities Commission

Montana Public Service Commission

New Orleans City Council

Public Service Commission of Wisconsin

The Arkansas Public Service Commission, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Louisiana Public Service Commission, the Mississippi Public Service Commission, the Missouri Public Service Commission, the North Dakota Public Service Commission, the South Dakota Public Utilities Commission, and the Public Utility Commission of Texas abstained from the vote on this filing. The Manitoba Public Utilities Board and the did not participate in the vote on this filing.

Respectfully submitted,

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Dated: January 22, 2026