

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.) via AskCR@hq.doe.gov

**MOTION TO INTERVENE AND REQUEST FOR REHEARING OF
THE ILLINOIS COMMERCE COMMISSION**

Pursuant to 16 U.S.C. § 825l,¹ the applicable rules of procedure,² and processes set forth by the U.S. Department of Energy (“DOE”),³ the Illinois Commerce Commission (“ICC”) respectfully submits this Motion to Intervene and Request for Rehearing of the DOE Order No. 202-25-13, issued December 23, 2025, pursuant to Section 202(c) of the Federal Power Act (the “Culley Order”), in the above-captioned proceeding. The Culley Order directs the Midcontinent Independent System Operator, Inc. (“MISO”) to continue operation of CenterPoint Energy (“CenterPoint”) F.B. Culley Generating Station Unit 2 (“Culley” or “Culley Unit 2”).⁴

I. STATEMENT OF INTEREST AND MOTION TO INTERVENE

The ICC is charged with the duty of effectively and comprehensively regulating public utilities to the “health, welfare and prosperity of all Illinois citizens” which requires “the provision of adequate, efficient, reliable, environmentally safe and least-cost public utility services at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens.”⁵ Therefore, the ICC has a direct and substantial interest in this proceeding as the Culley Order affects resource adequacy, state-jurisdictional planning and cost oversight (both cost

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

² 18 C.F.R. §§ 385.203, 385.214, 385.713.

³ 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).

⁴ U.S. Department of Energy, Order No. 202-25-13 (December 23, 2025 (“Culley Order”), [order-number-202-25-13-culley](#).

⁵ 220 ILCS 5/1-102.

allocation and cost recovery impacts), wholesale energy markets, grid operations, and system reliability in Illinois. The Culley Order’s implications for rate recovery, system planning, and federal-state coordination over resource decisions directly affect the jurisdiction and responsibilities of the ICC and its ratepayers. Accordingly, the ICC has interests that may be directly and substantially affected by the outcome of this proceeding and, therefore, may intervene in this proceeding.⁶ The ICC 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 located in Warrick County, Indiana. Culley is owned and operated by CenterPoint and consists of two coal-fired generation units, Unit 2 (103.7 megawatts (“MW”) and Unit 3 (265.2 MW), with a combined nameplate capacity of approximately 368.9 MW. This order requires Unit 2, which began commercial operations in the 1966 to remain open.⁷ Unit 2 was slated to retire in December 2025⁸ and is currently on maintenance outage.⁹ Unit 3 is planned to be converted to natural gas, however those plans are currently paused.¹⁰ The Culley Order was issued on December 23, 2025. It orders MISO and CenterPoint to take all measures necessary to ensure the Unit 2 is available to operate until March

⁶ 18 C.F.R. § 385.214.

⁷ Culley Order at 1, 5.

⁸ *Id.* at 1.

⁹ Complaint at 2.

¹⁰ CenterPoint, IRP: Executive Summary Non-Technical Summary (2025), at 3,

<https://www.centerpointenergy.com/en-us/Documents/Midwest/PUBLIC-CEIS-2025-IRP-Non-Technical-Summary.pdf>.

23, 2026.¹¹ By CenterPoint’s own account Culley Unit 2 is the most inefficient coal unit in their fleet.¹² The statute only allows for 90 days operations orders with the option to extend.¹³

III. REQUEST FOR REHEARING

Pursuant to 16 U.S.C. § 825l,¹⁴ the applicable rules of procedure,¹⁵ and processes set forth by the U.S. Department of Energy (“DOE”),¹⁶ the ICC requests rehearing of the Culley Order.

A. DOE’s Claims are Not Substantiated, and The Facts Do Not Justify the DOE’s Declaration of an Emergency.

DOE’s order rests on a claim of “emergency conditions” that are not supported by regional data, Midcontinent Independent System Operator (“MISO”) assessments, or state-reviewed 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 that warrants the continued operation of Culley Unit 2. The Culley Order references 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, as evidence for the existence of an emergency situation and the need for the continued operation of the Culley Unit 2.¹⁷ 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

¹¹ Culley Order at 4-5.

¹² CenterPoint, IRP: Executive Summary Non-Technical Summary (2025), at 5, <https://www.centerpointenergy.com/en-us/Documents/Midwest/PUBLIC-CEIS-2025-IRP-Non-Technical-Summary.pdf>.

¹³ 16 U.S.C. § 824a(c)(4)(A).

¹⁴ Section 313(a) of the Federal Power Act, 16 U.S.C. § 825l(a).

¹⁵ 18 C.F.R. §§ 385.203, 385.214, 385.713.

¹⁶ 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).

¹⁷ Culley Order at 1-3.

do not indicate a regional reliability emergency, shortfall, or an unmet reliability criterion that justifies reversal of a planned and approved resource retirement.¹⁸

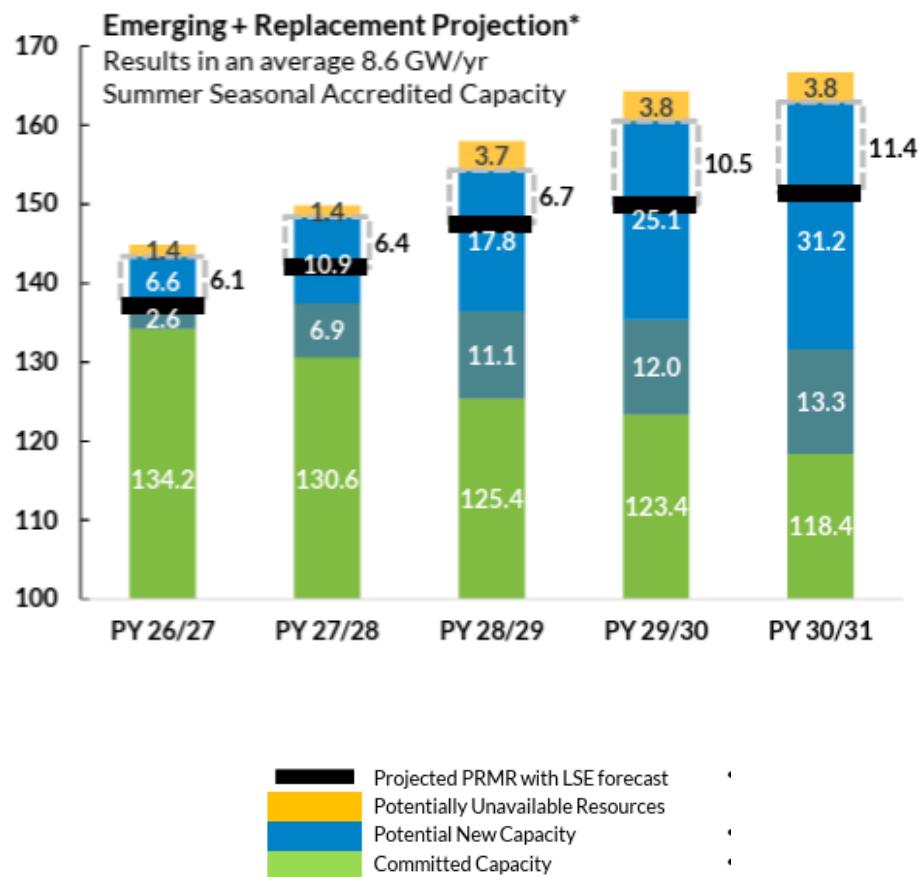
The OMS-MISO Survey in Table 1 below depicts MISO's member-planned resource addition outlook. This view shows how MISO members expect to meet their future capacity needs through 2031, and not just 'getting by' – but with 11.4 gigawatts ("GW") of excess capacity and another 3.8 GW of potential resources; for a total of a 15.2 GW *excess* capacity beyond seasonal reliability targets.¹⁹ The data used by the DOE²⁰ as a basis for its emergency order only shows that the capacity surplus in the MISO region 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 than now) – in lieu of looking forward at what is actually planned by the utilities in MISO and these utilities' obligations to serve load reliability. And even if the net decrease in capacity identified by the DOE were true, DOE's finding of an emergency is still flawed because there is no "emergency" related to resource adequacy because MISO continues to have *excess* capacity throughout its territory.

¹⁸ 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>; CenterPoint continued to plan for Unit 2 closure in 2025. See CenterPoint, IRP: Executive Summary Non-Technical Summary (2025), at 3, <https://www.centerpointenergy.com/en-us/Documents/Midwest/PUBLIC-CEIS-2025-IRP-Non-Technical-Summary.pdf>.

¹⁹ OMS & MISO, 2025 OMS-MISO Survey Results (June 6, 2025), <https://cdn.misoenergy.org/20250606%20OMS%20MISO%20Survey%20Results%20Workshop%20Presentation702311.pdf>, at slide 7.

²⁰ Culley Order at 1-3.

Table 1: 2025 OMS-MISO Survey: Member Planned Additions, Summer Resource Adequacy Outlook²¹



In the DOE’s November 19, 2025 Order No. 202-25-9 (“Campbell Order”) relating to the J.H. Campbell Generating Plant (“Campbell Plant”) in Michigan, the DOE utilized similar and equally flawed reasoning as it does here.²² Despite continuing to operate and add capacity, the Campbell Plant’s additional capacity cannot be counted in any assessment for capacity. Thus, it

²¹ OMS & MISO, 2025 OMS-MISO Survey Results (June 6, 2025), https://cdn.misoenergy.org/20250606%20OMS%20MISO%20Survey%20Results%20Workshop%20Presentation7_02311.pdf, at slide 7.

²² U.S. Dept. Of Energy Order No. 202-25-9 (Nov. 18, 2025), <https://www.energy.gov/sites/default/files/2025-11/Order%20No%20202-25-9.pdf>.

is adding capacity, and the MISO Central region is paying for that capacity, but the market supply and prices are not able to reflect that excess capacity.

As in the proceeding related to the Campbell Plant, the current record misapplies NERC's assessments in light of regional energy and capacity outlooks, disregards state regulatory monitoring 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.²³ No near-term reliability need was identified. The relevant state agencies reviewed CenterPoint's resource plans providing replacement capacity and transition timing consistent with the retirement date and found no concerns.

The Culley and Campbell Orders and others including Schahfer²⁴ and Craig²⁵ demonstrate a recurring pattern; DOE invokes emergency authority without demonstrating an emergency.

B. The Culley Order Violates the Federal Power Act and Tramples on State Jurisdiction.

With section 201 of the Federal Power Act, Congress gave authority over resource adequacy to the states.²⁶ While section 202(c) permits the declaration of an emergency, it is the Commission that is authorized by Congress to declare it. Section 202 (c) states:

... 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, **the Commission shall have authority**, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or

²³ CenterPoint Energy, 2025 Integrated Resource Plan Volume 1 of 2 (2005), https://www.in.gov/iurc/files/CEIS_2025_IRP_Volume_1_of_2.pdf

²⁴ U.S. Department of Energy, Order No. 202-25-12 (December 23, 2025) ("Schahfer Order"). <https://www.energy.gov/ceser/federal-power-act-section-202c-schahfer-order-no-202-25-12>.

²⁵ U.S. Dept. Of Energy Order No. 202-25-14 (Dec 30, 2025); ("Craig Order") <https://www.energy.gov/documents/federal-power-act-section-202c-craig-order-no-202-25-14>.

²⁶ 16 U.S.C. 824(a)(b).

transmission of electric energy as in its judgment will best meet the emergency and serve the public interest.

16 U.S.C. § 824a(c) (emphasis added). The Commission has not undertaken such an investigation or determination. Moreover, the DOE in its Culley Order omits relevant material information and fails to adequately incorporate the findings of MISO, CenterPoint, the Indiana Utility Regulatory 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 which Indiana, MISO, and other MISO-states use to coordinate and inform seasonal risks as well as operational concerns and reliability impacts. Annually, MISO hosts summer and winter readiness workshops, which examine weather forecasts, generation estimates, and transmission issues for the season ahead.²⁷ These workshops evaluate expected conditions, identify potential limitations and develop plans to address them, and allow MISO to coordinate with its members.²⁸ DOE failed to consider that MISO approved the retirement of Culley Unit 2 through its formal study process²⁹ or that CenterPoint's IRP planned for this retirement.³⁰ CenterPoint in their submitted IRP shows, that there was due diligence in evaluating existing sites, Culley 2 interconnection replacement was also explored in this IRP with three power

²⁷ MISO, Seasonal Readiness Webpage, <https://www.misoenergy.org/engage/committees/seasonal-readiness/>; 2025-26 Winter Readiness Workshop (Oct 29, 2025), <https://cdn.misoenergy.org/20251029%20Winter%20Readiness%20Workshop%20Presentation723831.pdf>.

²⁸ 2025-26 Winter Readiness Workshop (Oct 29, 2025), <https://cdn.misoenergy.org/20251029%20Winter%20Readiness%20Workshop%20Presentation723831.pdf>, at slide 25.

²⁹ In planning to retire the Culley Unit 2, CenterPoint submitted Attachment Y to MISO for review. Under some study scenarios, the Culley retirement necessitated moderate transmission upgrades but no reliability concerns. See CenterPoint, 2025 Integrated Resource Plan, p. 52, 130, https://www.in.gov/iurc/files/CEIS_2025_IRP_Volume_1_of_2.pdf

³⁰ CenterPoint, 2025 Integrated Resource Plan Volume 1 of 2 (2025) at 30, 139-40, https://www.in.gov/iurc/files/CEIS_2025_IRP_Volume_1_of_2.pdf.

generation technologies were evaluated: reciprocating engines, aeroderivative engines, and storage.³¹ These were not taken into account when DOE prematurely declared an emergency.

DOE also fails to distinguish between planning uncertainties and concerns versus operational emergencies. For example, the DOE order points to the supply constraints for gas turbines,³² which impacts new gas generation that was not planned for and thus supplies only recently or not yet ordered.³³ These delays are not impacting predictions in the next year of what comes online, because these plants were not intended to come online in the next year. Further reviewing the article DOE cites, it underscores the importance of planning uncertainties and why the market needs time to adjust. The article states there is wide variability of when supplies are promised from 1 to 7 years,³⁴ and this does not account for how the market might respond to increased demand for more gas turbines by increasing supply. This type of uncertainty is a good example of why longer assessments are needed of resource adequacy, energy, and even supply constraints, but taking emergency actions, like the one DOE orders here, based on such assessments are a poor fit for the uncertainties raised in a long-term planning outlook.

The Culley Order also imposes economic-dispatch-like obligations,³⁵ creates cost-allocation inconsistencies similar to those in Campbell - where capacity costs approached \$80 million so far and were socialized across Zones 1–7 – and injects regulatory uncertainty that undermines cooperative federalism by bypassing state resource plans process, MISO’s validated

³¹ *CEIS 2025 Integrated Resource Plan (IRP), Vol. 1 of 2* at 105 (Ind. Util. Regulatory Comm’n Dec. 5, 2025), https://www.in.gov/iurc/files/CEIS_2025_IRP_Volume_1_of_2.pdf

³² Culley Order at 3.

³³ See generally, S&P Global, US Gas-Fired Turbine Wait Times as Much as Seven Years; Costs Up Sharply (May 2025), <https://www.spglobal.com/commodity-insights/en/news-research/latest-news/electric-power/052025-us-gas-firedturbine-wait-times-as-much-as-seven-years-costs-up-sharply>.

³⁴ *Id.*

³⁵ Culley Order at 5.

resource adequacy processes, and state jurisdiction over siting, retirement, and replacement resources.

The Culley Order omits key information, neglects to provide for a Commission determination or assessment of whether an emergency actually exists as required by the FPA, ignores states' rights to regulate generation, and tramples the principles of cooperative federalism, and long-standing cooperative practices including the 2024, FERC Policy on State-Federal Collaboration, undermining the federal-state regulatory balance.³⁶

C. DOE's Insufficient and Unsubstantiated Declaration of Need, as well as its Arbitrary and Capricious Conflicting Justifications for Doing So, Renders any Resulting Cost Allocation and Recovery Framework Unjust and Unreasonable in Violation of the Federal Power Act.

While the DOE Culley Order provides that “[r]ate recovery is available. . .,”³⁷ it expressly avoids details and punts the question of cost-recovery and allocation to the Commission, directing CenterPoint to file with FERC.³⁸ DOE's approach contradicts its own statements in its letter that initiated FERC's Large Load Advanced Notice of Proposed Rulemaking (“ANOPR”).³⁹ 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.⁴⁰ This internal inconsistency is arbitrary and capricious under the Administrative Procedures Act.⁴¹

³⁶ See Federal Energy Regulatory Commission, Order Establishing the Federal and State Current Issues Collaborative, 186 FERC ¶ 61,189 Docket No. AD24-7-000 (Mar. 21, 2024).

³⁷ Culley Order at 6.

³⁸ *Id.*

³⁹ Letter from Chris Wright, Secretary of Energy, to David Rosner et. al, FERC Chairman and Commissioners, Oct. 23, 2026, Secretary of Energy's Direction that the Federal Energy Regulatory Commission Initiate Rulemaking Procedures and Proposal Regarding the Interconnection of Large Loads Pursuant to the Secretary's Authority Under Section 403 of the Department of Energy Organization Act (DOE Large Load Letter),

⁴⁰ DOE Large Load Letter at 2.

⁴¹ See 5 U.S.C. § 706 (the Administrative Procedure Act prohibits agency actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”).

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’ that are historically made at the state during the routine and standard review processes 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.⁴² Finally, these costs will ultimately be recovered through state cost-recovery mechanisms, such as fuel clauses, that are subject to limited state prudence review. Due to the alleged need that would be established here, and FERC’s order in Campbell,⁴³ will be distributed across a broad base of ratepayers (MISO Zones 1-7) rendering the cumulative and ongoing nature of the costs less visible. This becomes yet another cost shift to consumers who end up subsidizing the not-so-hidden-anymore costs of accommodating the needs of the big tech data companies.

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

The Culley Order relies on an overly broad and baseless interpretation of what constitutes an “emergency” under FPA 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 based on assessments that forecast over multiple years that are meant help MISO, states, and developers plan over a longer time frame. In the Culley Order, it is unclear when the emergency begins and what and when might end it.⁴⁴ Such preemptive action risks undermining the credibility of future emergency orders, distorting market signals, and eroding the statutory balance between federal and state authority. In the Culley Order, the DOE

⁴² 16 U.S.C. § 824a(b) (2023).

⁴³ *Consumers Energy Co. vs. Midcontinent Independent System Operator*, 192 FERC ¶61,158, (2025).

⁴⁴ See generally Culley Order.

ventures into what is clearly state jurisdictional planning time horizon, that is meant to allow sufficient time to identify, manage, and mitigate any new ‘longer-term’ capacity risks. The planning for the Culley unit’s closure is a good example of the regulatory coordination, between MISO, states, especially Indiana, and the generator’s owner CenterPoint. The DOE failed to recognize the new generation replacing capacity of the Culley Unit 2. CenterPoint plans include replacing the retiring Culley 2 unit with a 90 MW battery storage resource at the same interconnection point, as well as converting natural gas combustion turbines to a more efficient combined cycle gas turbines at another facility, adding 100 more MW of storage, and utilizing demand-side resources, demand response and energy efficiency.⁴⁵ Importantly, CenterPoint emphasizes this plan was low cost and provides flexibility and optionality in an uncertain future.⁴⁶ DOE misstates the basis for (non-energy) capacity need and bypasses state jurisdiction over IRPs, siting, and replacement-resource approval processes thereby unduly burdens the entire region with unnecessary costs. This expansive use of emergency powers sets a troubling precedent, enabling intervention in routine, state planning decisions without an actual crisis; and risks establishing its use to circumvent normal utility, regional transmission organizations, and states processes, and exposes ratepayers to costs that should not exist.

For these reasons, DOE’s findings are arbitrary and capricious, exceed statutory authority, and cannot lawfully support continued operation of Culley Unit 2 or the arbitrary recovery of the related costs without the process being properly vetted.

⁴⁵ CenterPoint, 2025 Integrated Resource Plan Volume 1 of 2, p. 4, 19, 165, https://www.in.gov/iurc/files/CEIS_2025_IRP_Volume_1_of_2.pdf

⁴⁶ *Id.* at 165.

IV. CONCLUSION

For the reasons set forth above, the Commission respectfully requests that DOE grant this ICC Motion to Intervene and the ICC Request for Rehearing of the Culley Order.

Respectfully submitted,

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ILLINOIS COMMERCE COMMISSION

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