

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c))
Emergency Order: PJM Interconnection) Order No. 202-25-17
And Constellation Energy)
)

Motion to Intervene and Request for Rehearing of
Natural Resources Defense Council, Citizens for Pennsylvania’s Future,
Environmental Defense Fund, Sierra Club and Public Citizen

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I. INTRODUCTION

Pursuant to section 313 of the Federal Power Act (“the Act”), 16 U.S.C. § 825*l*, Natural Resources Defense Council, Citizens for Pennsylvania’s Future, Environmental Defense Fund, Sierra Club, and Public Citizen (together “Public Interest Organizations”) request that the Department of Energy (“Department” or “DOE”) grant rehearing of Order No. 202-26-17 (February 23, 2026) (the “Current Renewal Order” or “Renewal Order”), which renews Order No. 202-25-4 (May 30, 2025) (the “Initial Order”) following subsequent renewal orders which have since expired (together, “the Orders”).¹ Acting on its own motion and without providing notice, the Department issued the Current Renewal Order on February 23, 2026, citing its emergency authority under section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c) (“Section 202(c)"). The Current Renewal Order instructs PJM Interconnection, LLC (“PJM”) and Constellation Energy Corporation (“Constellation”) to continue to “take all measures necessary to ensure that” Units 3 and 4 of the Eddystone Generating Station, in Eddystone, Pennsylvania, (“Eddystone” or the “Eddystone Units”), remain “available to operate” until May 24, 2026, and further directed PJM to “take every step to employ economic dispatch” during that time period.² Prior to the Department’s Initial Order, Constellation was

¹ The other renewal orders are Order Nos. 202-25-8 (August 27, 2025) (“First Renewed Order”) and 202-25-10 (November 25, 2025) (“Second Renewed Order”). A copy of the Initial Order is attached as Ex. 13. A copy of the First Renewed Order is attached as Ex. 20, a copy of the Second Renewed Order is attached as Ex. 23, and a copy of the Current Renewal Order is attached as Ex. 28.

² Ex. 28 at 8.

preparing to retire these two aging oil- and gas-burning units on May 31, 2025, with PJM's approval.

The Department should grant rehearing and rescind this costly, harmful, unnecessary, and unlawful Renewal Order. The PJM region had no energy emergency, as defined by Section 202(c), when the Initial Order was issued and there has continued to be no energy emergency in the short term. By its own terms, the Renewal Order aims to address "potential longer term resource adequacy" issues that may or may not come to pass and are already being addressed by the long-standing processes and procedures under PJM's tariff to ensure long-term resource adequacy and reliability.³ The Federal Power Act provides lawful means for states, grid operators, the Federal Energy Regulatory Commission ("FERC"), and the North American Electric Reliability Corporation ("NERC") to plan for ongoing system reliability, but command and control operation of the energy system by DOE and the President under the guise of a Section 202(c) emergency is not one of them.

The Eddystone Units were scheduled to deactivate only following analysis showing that their retirement would not cause any transmission instability and that replacement economic capacity resources were available. The Department's overreach represents an unprecedented interference with the regulation of grid resource adequacy, an area Congress reserved for other authorities,⁴ imposes

³ Ex. 28 at 3.

⁴ 16 U.S.C. § 824(b)(1).

unnecessary costs on already-overburdened ratepayers, and causes needless pollution emitted into Pennsylvania and neighboring states.

Like the Initial Order and subsequent renewal orders, the Current Renewal Order's emergency declaration fails to identify any error or insufficiency in the PJM resource adequacy plans that took account of retirement of the Eddystone Units, or to show that there would have been or will be any true "emergency" had the Eddystone Units retired in May 2025, as planned and approved. Similarly, the Department's invocation of Executive Order 14,156 (*Declaring a National Energy Emergency* ("Energy Emergency EO")) and Executive Order 14,262 (*Strengthening the Reliability and Security of the United States Electric Grid* ("Grid EO")) fail to supply any support for the Current Renewal Order. Neither executive order overrides the statutory limitations of the Department of Energy's authority under Section 202(c), and neither provides the specific information needed to support issuance of this Current Renewal Order or any other Section 202(c) order pertaining to the Eddystone units.⁵

Nor does the Department's July 7, 2025, Resource Adequacy Report ("RAR"),⁶ issued in response to the Grid EO, provide support for the Current Renewal Order. As detailed in the Public Interest Organizations' Request for Rehearing regarding

⁵ As the Department's own regulations emphasize, an "emergency," arises when there is an "*unexpected* inadequate supply of electric energy which may result from the *unexpected* outage or breakdown of facilities," due to weather, acts of God, "sudden" increases in demand, inability to obtain fuel, or a regulatory action prohibiting the use of certain facilities. 10 C.F.R. § 205.371 (emphasis added).

⁶ Attached as Ex. 17.

the Resource Adequacy Report, that report is devoid of evidence of conditions that would constitute an “emergency” within the meaning of Section 202(c) in the PJM region or elsewhere and, indeed, frankly acknowledges that the report is unsuitable to guide reliability interventions.⁷ The Department also now seeks to rely upon the 2025 Long Term Reliability Assessment recently issued by NERC, but that assessment neither purports to, nor actually establishes, an energy shortfall in the PJM region in the next several years.⁸

Even assuming there were an emergency under Section 202(c), the Current Renewal Order fails to demonstrate that continued operation of the Eddystone Units is the action that “best meet[s] the emergency and serve[s] the public interest.”⁹ The Renewal Order completely fails to address alternatives to continued operation of the Eddystone Units, including the alternatives Public Interest Organizations identified for the Department in response to the Initial Order and subsequent renewal orders. Nor does the Renewal Order provide sufficiently clear instructions for Constellation and PJM, both as to plant operations and economic dispatch. And compounding these failures, the Renewal Order continues to include no specific provisions to limit the environmental and public health harms that

⁷ Motion to Intervene and Request for Rehearing of the “Resource Adequacy Report, Evaluating the Reliability and Security of the United States Electric Grid,” Natural Resources Defense Council, Ecology Center, Environmental Defense Fund, Environmental Law & Policy Center, Public Citizen Inc., Sierra Club and Vote Solar (Aug. 6, 2025) (attached as Ex. 6).

⁸ *See infra*, Section V.B.3.a.iv.

⁹ 16 U.S.C. § 824a(c).

Eddystone imposes on the surrounding communities, despite explicit instruction from Congress to do so.

In short, the Current Renewal Order, like the Initial Order and subsequent renewal orders, is an unlawful abuse of the Department's emergency authority and should be rescinded. The Department has no authority to control long term grid planning and cannot get around that limitation through the guise of a manufactured "emergency" and serial 90-day orders that amount to a permanent edict. The statutory bases for issuing an order under Section 202(c) are not present; and even if they were, the Current Renewal Order would still be unlawful because it fails to comply with the substantive requirements of Section 202(c), resulting in a twofold blow to PJM ratepayers: higher rates and more pollution with no net benefit received. The Department is authorized only to use Section 202(c) for real emergencies, not to usurp authority for grid reliability planning and to prop up fossil fuel businesses.

Public Interest Organizations set forth below their opposition to the rationale and directives found in the Current Renewal Order. As the Current Renewal Order is largely a duplication of the preceding renewal orders, much of the discussion below is a duplication of the Public Interest Organizations' requests for rehearing of those orders. In addition to two new exhibits, Exs. 28-29, the primary area of the instant filing containing new discussion is Section V.B.

Public Interest Organizations thus respectfully request that the Department grant intervention; grant rehearing and rescind the Current Renewal Order (and any further renewals of it); and stay the Current Renewal Order.

II. STATEMENT OF ISSUES AND SPECIFICATION OF ERROR

The undersigned Public Interest Organizations move to intervene and request rehearing and a stay pursuant to section 313(a) of the Federal Power Act, 16 U.S.C. § 825A(a), and the applicable rules of practice and procedure,¹⁰ based upon the following errors and issues:

- The Current Renewal Order exceeds the Department’s authority because the Department has not, and cannot, demonstrate an unexpected emergency under Section 202(c) necessitating continued operation of Eddystone. 16 U.S.C. § 824a(c); H.R. Rep. No. 114-357 § 61002 (2015); *Pac. Gas & Elec. Co. v. FERC*, 113 F.4th 943, 947-48 (D.C. Cir. 2024); *Institutional S’holder Servs., Inc. v. Sec. & Exch. Comm’n*, 142 F.4th 757, 765-66 (D.C. Cir. 2025); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303 (1961); *Richmond Power & Light of City of Richmond, Ind. v. FERC*, 574 F.2d 610 (D.C. Cir. 1978); *State of New York v. Trump*, 25-cv-11221-PBS, ECF No. 234 (D. Mass. Dec. 8, 2025); 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); 16 U.S.C. § 824o; 70 Fed. Reg. 53,117; S. Rep. No. 109-78 (2005); *Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); 16 U.S.C. § 824o(c)-(d); 16 U.S.C. § 824o(a)(3); 16 U.S.C. § 824o(d)(2)-(4); 16 U.S.C. § 824o(e); 16 U.S.C. § 824o(i)-(j); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004); 10 C.F.R. § 205.371; 10 C.F.R. § 205.375; 46 Fed. Reg. 39,984; 5 U.S.C. § 553; *New England Power Generators Ass., Inc. v. FERC*, 881 F.3d 202, 210–12 (D.C. Cir. 2018); *Fox Television Stations, Inc.*,

¹⁰ See U.S. Dep’t of Energy, DOE 202(c) Order Rehearing Procedures, <https://www.energy.gov/ceser/doe-202c-order-rehearing-procedures> (last visited June 18, 2025) (attached as Ex. 1). This website was altered after June 18, 2025, and the procedures were removed. See also Email from Lot Cooke, U.S. Dep’t of Energy to Linda Alle-Murphy Re: Rehearing procedures for DOE Order No. 202-05-3 (December 28, 2005) (recommending that “a party seeking rehearing can look for procedural guidance to [Federal Energy Regulatory Commission’s] Rules of Practice and Procedure, 18 CFR Part 385.”) (attached as Ex. 2).

556 U.S. 502, 515 (2009); *Env't Integrity Project v. EPA*, 425 F.3d 992, 995 (D.C. Cir. 2005); *FTC v. Bunte Brothers, Inc.*, 312 U.S. 349 (1941); Department of Energy Order No. 202-22-4 (Dec. 24, 2022); Department of Energy Order 202-20-2 (Sept. 6, 2020).

- There is no factual basis supporting the Current Renewal Order. 16 U.S.C. § 824a; 16 U.S.C. § 824a(c); 16 U.S.C. § 824o-1; 16 U.S.C. § 809; Department of Energy Order No. 202-25-5 (June 24, 2025); Department of Energy Order No. 202-22-3 (Dec. 23, 2022); DOE Order No. 202-21-2 (Sept. 10, 2021); 10 C.F.R. 205.371; 10 C.F.R. § 205.375; 190 FERC ¶ 61,084; 190 FERC 61,083; S. Rep. No. 94-1168, 3 (1976); Executive Order 14,156, Declaring a National Energy Emergency, 90 Fed. Reg. 8,433 (Jan. 20, 2025); Executive Order 14,262, Strengthening the Reliability and Security of the United States Electric Grid, 90 Fed. Reg. 15,521 (Apr. 14, 2025); *Biden v. Nebraska*, 600 U.S. 477, 500-01 (2023); *Richmond Power & Light of City of Richmond, Ind. v. FERC*, 574 F.2d 610 (D.C. Cir. 1978); 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, 8363 (Jan. 29, 2025); Exec. Order No. 14,315, 90 Fed. Reg. 30821, 30821 (July 7, 2025); DOE Order Authorizing Electricity Exports to Canada, Order No. EA-182-F (Jan. 14, 2026).
- The Current Renewal Order will undermine competitive markets to the detriment of consumers and reliability. Executive Order 14,156, Declaring a National Energy Emergency, 90 Fed. Reg. 8,433 (Jan. 20, 2025); 16 U.S.C. § 824a(c); 16 U.S.C. § 824d; Pub. L. No. 102-486; Pub. L. No. 109-58; 16 U.S.C. § 824j(a); U.S. Dep't of Energy, Order Authorizing Electricity Exports to Canada, Order No. EA-479-A (Jul. 11, 2025); Order Terminating Rulemaking Proceeding, Initiating New Proceeding, And Establishing Additional Procedures, 162 FERC ¶ 61,012 (2018); Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996); Order No. 888-A, FERC Stats. & Regs. ¶ 31,048; Order No. 888-B, 81 FERC ¶ 61,248 (1997); Order No. 888-C, 82 FERC ¶ 61,046 (1998); *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000); *New York v. FERC*, 535 U.S. 1 (2002); Order No. 890, FERC Stats. & Regs. ¶ 31,241 (1997); Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999); Order 787, 145 FERC ¶ 61,134 (2013); Order 809, 151 FERC ¶ 61,049 (2015); Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators, 149 FERC ¶ 61,145 (2014); Order Approving Extreme Cold Weather Reliability Standards EOP-011-3 and EOP-012-1 and Directing Modification of Reliability Standard EOP-012-1, 182 FERC ¶ 61,094 (2023); Order Approving Extreme Cold Weather Reliability Standard EOP-012-2 and Directing Modification, 187 FERC ¶ 61,204 (2024); Order Accepting Tariff Revisions Subject to Condition, 186 FERC ¶ 61,080 (2024); Department of Energy Order No. 202-25-3 (May 23, 2025); Department of

Energy Order No. 202-25-7 (Aug. 20, 2025); Department of Energy Order No. 202-25-3B (Sept. 8, 2025).

- Even if there were a short-term need—there is not—the Current Renewal Order does not comply with the statutory command to set terms that best meet the purported emergency and serve the public interest. 16 U.S.C. § 824a(c)(1); *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009); *Sierra Club v. Env't. Prot. Agency*, 353 F.3d 976 (D.C. Cir. 2004); *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); *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200 (D.C. Cir. 2013); *Chamber of Com. of the U.S. v. Secs. & Exch. Comm'n*, 412 F.3d 133 (D.C. Cir. 2005); 10 C.F.R. § 205.370; 16 U.S.C. § 824a(c); 10 C.F.R. § 205.373; *Wabash Valley Power Ass'n*, 268 F.3d 1105 (D.C. Cir. 2001); *Gulf States Utils. Co. v. Fed. Power Comm'n*, 411 U.S. 747 (1973); *California v. Fed. Power Comm'n*, 369 U.S. 482, 484–86 (1962); *NAACP v. Fed. Power Comm'n*, 425 U.S. 662 (1976); *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973); *Pa. Water & Power Co. v. Fed. Power Comm'n*, 343 U.S. 414 (1952); 46 Fed. Reg. 39,985; Department of Energy Order No. 202-22-4 (Dec. 24, 2022).
- The terms of the Current Renewal Order exceed other limits on the Department's statutory jurisdiction. 16 U.S.C. §§ 824(b), 824a(c), 824d; 18 C.F.R. § 35.1(e); S. Rep. No. 74-621; S. 1725, Cong. Tit. II § 203(a); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 155 (2016); *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009); *New York v. FERC*, 535 U.S. 1 (2002); *Conn. Light & Power v. Fed. Power Comm'n*, 324 U.S. 515, 529 (1945); *Fed. Power Comm'n v. Fla. Power & Light Co.*, 404 U.S. 453, 454, 467 (1972); *Gallardo v. Marsteller*, 596 U.S. 420, 430 (2022); *Gomez-Perez v. Potter*, 553 U.S. 474, 486 (2008); *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260 (2016); *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021); *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973).
- The Current Renewal Order fails to provide the conditions necessary to override environmental standards under Section 202(c)(2). 16 U.S.C. § 824a(c)(2), 824a(c)(4); *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016) (discussing significance of the words “may” and “shall” in the same statutory provision); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372–73 (2000); *City of New Orleans v. FERC*, 67 F.3d 947 (D.C. Cir. 1995); *Fla. Power & Light Co. v. FERC*, 88 F.3d 1239 (D.C. Cir. 1996); 68 Fed. Reg. 1660; Department of Energy Order No. 202-22-4 (Dec. 24, 2022); Department of Energy Order No. 202-17-4 (Sept. 15, 2017); Department of Energy Order No. 202-24-1 (Oct. 9, 2024); Department of Energy Order No.

202-22-2 Amendment No. 1 (Sept. 4, 2022); Department of Energy Order No. 202-22-1 Amendment No. 2 (Sept. 2, 2022)

III. INTERVENORS' INTERESTS

As further discussed below, each of the Public Interest Organizations has interests that may be directly and substantially affected by the outcome of this proceeding. Each party may therefore intervene in this proceeding.¹¹

Each of the Public Interest Organizations also demonstrates a concrete injury arising from the Current Renewal Order that is redressable by a favorable outcome. Each organization is therefore aggrieved by the Current Renewal Order and may properly apply for rehearing.¹²

A. Natural Resources Defense Council

Natural Resources Defense Council (“NRDC”) is a national non-profit membership organization whose mission includes ensuring the rights of all people to clean air, clean water, and healthy communities. NRDC has a longstanding organizational commitment to protect the interests of its members and to reduce pollution caused by fossil fuel fired power plants such as Eddystone. NRDC works to achieve clean energy solutions that will lower consumer energy bills, meet greenhouse gas emission reduction goals, accelerate the use of energy efficiency and renewable energy, and ensure that clean energy is affordable and accessible to all.

¹¹ Ex. 1; *see also* 18 C.F.R. § 385.214.

¹² *See* 16 U.S.C. § 825A(a); *Wabash Valley Power Ass’n, Inc. v. FERC*, 268 F.3d 1105, 1112-13 (D.C. Cir. 2001); *NextEra Energy Res. v. ISO New Eng., Inc.*, 157 FERC ¶ 61,059, at P 5 (2016).

NRDC and its members are aggrieved by the Current Renewal Order. Tens of thousands of NRDC members reside in Pennsylvania, Delaware, Maryland, and New Jersey. Of these, over a thousand members reside within ten miles of the Eddystone Units. These NRDC members are harmed by DOE's orders to operate the Eddystone Units beyond their planned retirement date because their continued operation will subject NRDC members to air and water pollution in the areas where they live, work, and recreate. NRDC members are also exposed to the noise and visual impacts of the plant's operation. The impact of the Current Renewal Order on the health, aesthetic, and recreational interests of NRDC members is compounded by the Current Renewal Order's failure to address the Federal Power Act's requirements for environmental protection that apply even in true emergencies (discussed in section V.F. below). In addition, NRDC members are ratepayers in the PJM region who will be subject to higher electric bills as a result of the Current Renewal Order. NRDC also operates offices in Washington D.C. and Chicago, which are both in the PJM region. NRDC pays for the electricity used by its Washington D.C. and Chicago offices and will be subject to higher electric bills as a result of the Current Renewal Order. Moreover, NRDC has a sustainable operations plan with a goal of reducing net creation of greenhouse gas emissions derived from building operational activity to zero. NRDC and its members therefore have a strong interest in promoting actions that displace less cost-effective fossil generation with more cost-effective clean energy.

B. Citizens for Pennsylvania's Future

Citizens for Pennsylvania's Future ("PennFuture") is a Pennsylvania-based statewide environmental organization dedicated to leading the transition to a clean energy economy in Pennsylvania and beyond. PennFuture has approximately 1,000 members across the state. PennFuture's mission is to protect our air, water, and land, and to empower citizens to build sustainable communities for future generations. One focus of PennFuture's work is to address the climate-warming pollution from Pennsylvania's power fleet. PennFuture also works to advance understanding and recognition of Pennsylvania's Environmental Rights Amendment, contained in Article 1, Section 27 of Pennsylvania's Constitution and to ensure that Commonwealth entities meet their obligations under the Amendment as trustees of Pennsylvania's public natural resources. To promote affordable and clean energy, PennFuture advocates before government entities, including local, state, and federal agencies such as FERC, on issues related to electricity markets, policies affecting the clean energy transition, and just and reasonable rates. This proceeding raises issues which are important to the environmental, public health, and affordability interests that PennFuture seeks to advance.

C. Environmental Defense Fund

The Environmental Defense Fund ("EDF") is a nonprofit membership organization with hundreds of thousands of members nationwide, including more than thirteen thousand members in Pennsylvania, whose mission is to build a vital Earth for everyone by preserving the natural systems on which all life depends.

Guided by expertise in science, economics, law, and business partnerships, EDF seeks practical and lasting solutions to address environmental problems and protect human health, including in particular by addressing pollution from the power sector. On behalf of its members, EDF works with partners across the private and public sectors to engage in utility regulatory forums at the federal level and throughout the United States to advocate for policies that will create an affordable, reliable, and low pollution energy system. The Current Renewal Order harms EDF members because it will result in increased pollution that will impact the health of people and nature and because it will increase energy costs for EDF members throughout the PJM region.

D. Sierra Club

Sierra Club and its members are aggrieved by the Order. Over 55,000 Sierra Club members reside in Pennsylvania and New Jersey; and over 4,000 of those members reside in one of the four counties most likely to be impacted by pollution from Eddystone. Sierra Club members are harmed by pollution produced by operating the Eddystone Units. The Current Renewal Order to operate the plant beyond its planned retirement date will subject Sierra Club members to additional air pollution in the areas where they live and recreate. The Current Renewal Order's impact on the health, aesthetic, and recreational interests of Sierra Club members is heightened by the Order's failure to address the Federal Power Act's requirements for environmental protection that apply even in true emergencies. In addition, Sierra Club operates multiple offices in the PJM region, and has well over

100,000 members living in the PJM region, all of whom will be subject to higher electric bills as a result of the Department's Current Renewal Order.

E. Public Citizen

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. Public Citizen has over 500,000 members and supporters across the United States, including in PJM and Pennsylvania. Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Public Citizen's interests in this proceeding are unique, and cannot be represented by any other party.

IV. BACKGROUND

A. Eddystone and the Initial Order

The history of the Eddystone Generating Station and the Initial Order is described in detail in the Public Interest Organization's Request for Rehearing on the Initial Order ("Initial RFR").¹³ In summary, Eddystone, which is owned and operated by Constellation, is a six-unit power plant located along the banks of the Delaware River in Eddystone, Pennsylvania, just south of Philadelphia and in the PJM regional transmission organization ("RTO").¹⁴ Units 3 and 4 are both steam boiler-turbine generator units that can run on either natural gas or distillate fuel

¹³ See Motion to Intervene and Request for Rehearing of Natural Resources Defense Council, Citizens for Pennsylvania's Future, Environmental Defense Fund, Sierra Club, and Public Citizen regarding Order No. 202-25-4 (attached as Ex. 12).

¹⁴ Constellation, Eddystone Generating Station, <https://perma.cc/5MJB-KLHZ> (last visited Dec. 22, 2025).

oil.¹⁵ These units are “peakers,” i.e., units that run only during periods of high demand due to their high operating costs.¹⁶ Sub-critical steam boiler-turbine units, such as Eddystone 3 and 4,¹⁷ typically have long start up times exceeding 12 hours.¹⁸ On December 1, 2023, Constellation notified PJM of its intent to deactivate Eddystone Units 3 and 4 effective May 31, 2025.¹⁹ In that letter, Constellation explained that it was “retiring Eddystone Units 3 and 4 because continued operation of these units is expected to be uneconomic.”²⁰ At the time Constellation submitted this notification, prices for capacity (a key revenue stream for peaking units) were low—only \$28.92 per megawatt-day.²¹ In July 2024, prices for capacity

¹⁵ The Current Renewal Order in one footnote refers to the Units as only “oil-fired,” removing mention of natural gas. Ex. 28 at 3 n.11.

¹⁶ U.S. Energy Information Administration, Electric generator dispatch depends on system demand and the relative cost of operation (Aug. 17, 2012), <https://perma.cc/5MWV-TWPV> (“Peaking generators typically have the highest variable operating costs, appearing on the far right of the supply curve, and are dispatched during the hours when demand for electricity is highest. Peaking unit technology includes diesel generators and, most commonly, combustion turbines (CTs) fueled by natural gas. Combustion turbines have been used for many years, and older units are inefficient.”).

¹⁷ Paul Gerke, Feds order Pennsylvania fossil-fuel plant to stay open another 90 days, Power Engineering (Aug. 28, 2025) <https://perma.cc/M6FV-M9ND>.

¹⁸ See U.S. Energy Information Administration, About 25% of U.S. power plants can start up within an hour (Nov. 19, 2020) <https://perma.cc/7B4N-CR52> (showing that 60% of gas-power steam turbine units have start up times greater than 12 hours).

¹⁹ Letter from Bryan Hanson, Constellation, to Michael Bryson, PJM (Dec. 1, 2023), <https://www.pjm.com/planning/service-requests/gen-deactivations/-/media/27DE42275392469B8C4A767796A86A72.ashx> (last visited Dec. 23, 2025).

²⁰ *Id.*

²¹ PJM, 2025/2026 Base Residual Auction Report (Jul. 30, 2024), <https://perma.cc/88RM-8DKX>, at Table 1.

rose to \$269.92 per megawatt-day.²² Nevertheless, Constellation did not withdraw its deactivation notice, despite its planned deactivation still being nearly a year in the future.

The Eddystone Units are located just outside of Chester, Pennsylvania, a community that faces one of the nation’s worst cases of environmental racism.²³ Whenever it is operating, Eddystone contributes to the pollution impacting this community. On a yearly basis, Eddystone emits thousands of tons of criteria air pollutants, *see* Table 2 below, and large amounts of water pollutants.²⁴ And when Eddystone operates on oil rather than natural gas, it emits higher levels of both criteria pollutants and hazardous air pollutants.²⁵ These air pollutants are linked to respiratory symptoms like asthma,²⁶ cancer, reproductive difficulties, and other health problems.²⁷

²² *Id.*

²³ *See* Chester Residents Concerned for Quality Living, <https://perma.cc/Y368-AMLE> (last visited Dec. 22, 2025); University of Pennsylvania, Perelman School of Medicine, Center of Excellence in Environmental Toxicology, *Chester*, <https://perma.cc/LJZ2-DX6Q> (last visited Dec. 22, 2025).

²⁴ EPA, Pollutant Loading Report, <https://perma.cc/2NKM-DVQZ> (last visited Dec. 22, 2025) (including over 2 million pounds of total suspended solids, and over 25,000 pounds of ammonia, as well as 1,617 pounds of copper and 564 pounds of lead, in 2024 alone).

²⁵ Ex. 5 (Eddystone Title V Permit) at 28, 50 (noting sulfur content of oil and higher NOx emissions from oil-fired generation); 68 Fed. Reg. 1660,1678 (Jan. 13, 2003) (noting that switching from oil to natural gas “would reduce mercury, metallic [toxics], and inorganic” hazardous air pollutant emissions).

²⁶ EPA, Effects of NO₂, Health Effects, <https://perma.cc/EVG5-Q57C> (last visited Dec. 22, 2025).

²⁷ EPA, Health and Environmental Effects of Hazardous Air Pollutants, <https://perma.cc/ZM52-GZ6J> (last visited Dec. 22, 2025).

Table 2						
Annual Emissions	2020	2021	2022	2023	2024	Cumulative Emissions
<i>CO2 (tons)</i>	11,167	14,943	18,636	28,332	58,566	131,644
<i>NOx (lbs)</i>	11,918	15,488	20,506	29,606	59,232	136,750
<i>SO2 (lbs)</i>	128	176	234	322	704	1,564
Source: EPA, <i>Annual Emissions Data for Eddystone Generating Station, 2020–2024</i> , available at CAMPD, https://campd.epa.gov/ (accessed June 20, 2025).						

On May 30, 2025, the Department issued the Initial Order based on its “determin[ation] that an emergency exists in portions of the electricity grid operated by PJM due to a shortage of facilities for the generation of electric energy, resource adequacy concerns, and other causes.”²⁸ Based on this determination, the Department ordered Constellation to take all measures necessary to ensure that the Eddystone Units are available to operate and ordered PJM to take steps to employ economic dispatch for the Units.²⁹

B. Subsequent Renewal Orders

1. First Renewed Order

On August 27, 2025, the Department issued Order No. 202-25-8, the First Renewed Order. As detailed in Public Interest Organization’s request for rehearing on the First Renewed Order (“First Renewed RFR”),³⁰ the Department merely reiterated the reasons it had issued the Initial Order—none of which focused on resource adequacy concerns over the pendency of either the Initial or First Renewed

²⁸ Ex. 6 at 1.

²⁹ *Id.*

³⁰ Motion to Intervene and Request for Rehearing of Natural Resources Defense Council, Citizens for Pennsylvania’s Future, Environmental Defense Fund, Sierra Club, and Public Citizen regarding Order No. 202-25-4, (available at <https://perma.cc/HX3X-H3ZA>).

Orders. The First Renewed Order then asserted that the “emergency conditions that led to the issuance of [the Initial Order] continue, both in the near and long term.”³¹ The First Renewed Order proffered essentially post hoc rationale for the Initial Order, explaining in a cursory fashion how much the Eddystone Units ran in June and July but providing no information on what else was occurring in PJM during these periods. The First Renewed Order then attempted to extrapolate from the claimed summer emergency conditions evidence that “the Eddystone Units will continue to be critical to maintaining reliability in PJM” through November.³² The vast majority of the First Renewed Order, however, focused on “a *potential* longer term resource adequacy emergency in the PJM region,”³³ relying on PJM’s 2023 Energy Transition in PJM report, PJM President Manu Asthana’s March 2025 congressional testimony, the results of PJM’s FERC-approved Reliability Resource Initiative, the North American Electric Reliability Corporation’s (“NERC’s”) 2024 Long-Term Resource Assessment, Executive Orders, and the Department’s July 2025 Resource Adequacy Report. Thus, the First Renewed Order mandated that the Eddystone Units remain in operation until November 26, 2025.

As part of that mandate, the Department ordered PJM and Constellation to “take all measures necessary to ensure that the Eddystone Units are available to operate.”³⁴ PJM was further ordered “to take every step to employ economic

³¹ Ex. 9 at 2.

³² *Id.* at 2-3.

³³ *Id.* at 3 (emphasis added).

³⁴ *Id.* at 6.

dispatch of the Eddystone Units to minimize cost to ratepayers,” however, the First Renewed Order also explained that “[b]ecause this Order is predicated on the shortage of facilities for generation of electric energy and other causes, the Eddystone Units shall not be considered capacity resources.”³⁵ The First Renewed Order also included various reporting requirements and instructed PJM and Constellation to file tariff revisions or waivers necessary to effectuate the order.

2. The Second Renewed Order

On November 25, 2025, the Department issued Order No. 202-25-10, the Second Renewed Order. The Second Renewed Order reiterated almost word for word the First Renewed Order and applies the same facts and reasoning to extending the Order for another 90 days. The Second Renewed Order provided three new pieces of information related to: (1) PJM’s winter demand,³⁶ (discussed *infra* Section V.B.2.d.) (2) the Department’s consultation with “the primary Federal agency with expertise in the environmental interests,”³⁷ (discussed *infra* Section V.F.2.c.), and (3) a footnote that “that it likely would be difficult for the oil-fired units to resume operations once retired”³⁸ (discussed *infra* Section V.A.).

³⁵ *Id.* at 6, 7.

³⁶ Ex. 23 at 3.

³⁷ *Id.* at 7.

³⁸ *Id.* at 2 n. 8.

3. The Current Renewal Order

On February 23, 2026, the Department issued Order No. 202-26-17, which renews Order No. 202-25-4 and subsequent renewal orders.³⁹ As with all the other renewal orders, the Department repeats its earlier legal and factual justification with almost no new facts pertaining to any energy emergency during the period the latest order will be in effect: February 24 to May 24, 2026. The sole new information in the Current Renewal Order is a brief, unexamined reference to NERC's 2025 Long-Term Reliability Assessment, published in January 2026, as well as operational conditions in the PJM region that occurred during a winter storm that ended on February 2, 2026 (discussed *infra* Sections V.B.2.d and V.B.3.iv).

C. Eddystone Operation and Cost Recovery

Since the Initial Order was issued on May 30, 2025, there has been no indication that the parade of renewals will end, nor has there been any public disclosure of analysis on actual need or viability of the Eddystone Units. The Initial Order and subsequent renewal orders directed PJM to employ economic dispatch of the Eddystone Units.⁴⁰ PJM has not provided complete information to its members or the public about the extent of Eddystone's operation to verify whether this is what is being done. PJM has published letters to DOE indicating the days on which

³⁹ The other renewal orders are Order Nos. 202-25-8 (August 27, 2025) ("First Renewed Order") and 202-25-10 (November 25, 2025) ("Second Renewed Order"). A copy of the Initial Order is attached as Ex. 13. A copy of the First Renewed Order is attached as Ex. 20, a copy of the Second Renewed Order is attached as Ex. 23, and a copy of the Current Renewal Order is attached as Ex. 28.

⁴⁰ E.g. Ex. 13 at 3; Ex. 28 at 9.

one or both Eddystone Units have operated. However, the information in these letters is limited to the number of hours that the Units may have run, and any operational issues encountered; the letters do not state the level at which the Units have run, the particular reasons for them running (except in cases where they have run for “testing”), or the type of fuel burned.⁴¹

In the Initial Order, as well as in the subsequent renewal orders,⁴² DOE referred rate issues to FERC and required that PJM “file with [FERC] any tariff revisions or waivers necessary to effectuate this order,” with “[r]ate recovery . . . available pursuant to [Section 202(c)].”⁴³ The costs of maintaining and operating the Eddystone Units pursuant to the Current Renewal Order will be allocated to consumers pursuant to PJM tariff revisions approved by FERC on December 5, 2025.⁴⁴ Under the approved tariff revisions, so long as “a DOE Order is directed at a resource to maintain operations for resource adequacy purposes for the PJM

⁴¹ *See, e.g.*, PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (Dec. 11, 2025) (available at <https://perma.cc/A3HC-6RNZ>); PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (Jan. 27, 2026) (available at <https://www.pjm.com/-/media/DotCom/documents/ferc/filings/2026/20260127-order-202-25-10-compliance-report.pdf>); PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (Jan. 28, 2026) (available at <https://perma.cc/VM3V-H6XA>); PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (Jan. 29, 2026) (available at <https://perma.cc/ERW6-R7LD>); PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (Jan. 30, 2026) (available at <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260130-doe-order-no-202-25-10-eddytone-daily-reporting.pdf>).

⁴² *See, e.g.* Ex. 9 at 8; Ex. 23 at 7; Ex. 28 at 10.

⁴³ Ex. 6 at 3; *see also* U.S. Dep’t of Energy, Referral to the Federal Energy Regulatory Commission, Docket No. AD25-15-000 (filed June 17, 2025).

⁴⁴ PJM Interconnection, LLC, 193 FERC ¶ 61,192 (2025).

Region and is not expressly limited to resolve resource adequacy issues in specific Locational Deliverability Areas or Zones; and (2) the owner of such resource and PJM agree to a rate for compensation that is based on the existing Deactivation Avoidable Cost Credit (DACC) as set forth under Part V of PJM’s Tariff,” each load-serving entity (LSE) in the region “will be assessed a charge based on the LSE’s pro rata share of the total Daily Unforced Capacity Obligations across all Zones in the PJM Region for all days within each calendar month covered by such DOE order.”⁴⁵ PJM stated in that proceeding that this cost allocation methodology will apply to the time period covered by the previous renewal orders,⁴⁶ and so far as the undersigned organizations are aware, it will apply to the costs incurred under the Current Renewal Order as well.

D. The Department’s Resource Adequacy Report

The Department issued the Resource Adequacy Report (“RAR”) on July 7, 2025, in response to the Grid EO. The RAR purports to be a “uniform methodology to identify at-risk region(s) and guide reliability interventions” as directed by the Grid EO.⁴⁷ Several Public Interest Organizations, including many of the undersigned, as well as the Maryland Office of People’s Counsel; the Attorney Generals of Maryland, Washington, Illinois, Michigan, Minnesota, Arizona, Colorado, Connecticut, and New York; and the American Clean Power Association,

⁴⁵ *Id.* ¶ 8.

⁴⁶ *Id.* ¶ 10.

⁴⁷ Ex. 17 at vi.

Advanced Energy United, and American Council on Renewable Energy, submitted requests for rehearing on the RAR.⁴⁸

As detailed in the Public Interest Organizations' Request for Rehearing on the RAR, the RAR does not support a finding of any emergency within the meaning of Section 202(c). The Department finds in the RAR that, under the current system, only ERCOT fails to achieve DOE's selected resource adequacy targets.⁴⁹ The Department's findings in the RAR conflict with its claims in the Orders of an emergency in PJM; rather, the conclusions of the RAR agree with Public Interest Organizations that there is no short-term emergency. While DOE concludes in the RAR that there will be broader resource adequacy issues in 2030, this conclusion relies on overstated assumptions about demand growth and likely retirements and understated assumptions about likely new entry, building into the RAR an inherent bias toward a finding of inadequate resource adequacy.⁵⁰ More fundamentally, the RAR acknowledges that DOE lacked the type of data and local, in-depth engineering assessments that form the necessary bases for issuance of 202(c) orders, rendering the report useless for any practical purpose.⁵¹ DOE responded to the requests for rehearing on September 5, 2025, clarifying that the "RAR is simply a report" that "contains no directives" and imposes no "legal duties," and as such, it is not an "order" by which the parties are "aggrieved," as is required to seek

⁴⁸ Ex. 6.

⁴⁹ Ex. 17 at 7.

⁵⁰ Ex. 18 at 37-43.

⁵¹ *Id.* at i.

rehearing under section 313 of the Federal Power Act.⁵² DOE provided no substantive response to the requests for rehearing.

V. REQUEST FOR REHEARING

Section 202(c) confers an extraordinary power; it permits the Department to command action from market participants and to do so freed from core procedural safeguards, jurisdictional boundaries, and substantive limitations that undergird the rest of the Federal Power Act.⁵³ It comes as no surprise, then, that when Congress granted this power, Congress narrowly tailored its use to extraordinary circumstances—namely, emergencies. The Current Renewal Order exceeds the Department’s authority because this is not one of those extraordinary circumstances. There is no emergency within the meaning of Section 202(c).

The Current Renewal Order fails to meet the standards of Section 202(c) both because the resource adequacy concerns the Department does describe are long-term concerns outside the legal bounds of Section 202(c) and the Department does not demonstrate that any emergency currently exists. DOE has not even asserted, much less provided a credible projection, that resource adequacy concerns will ripen into actual supply shortages that could not be met through PJM’s capacity markets, or pre-existing contingency planning processes. As a command and control order, the Current Renewal Order will also undermine competitive markets, thereby undercutting the Department’s purported goals of increased long-term energy

⁵² Letter from DOE to Caroline Reiser, et al. dated Sept. 5, 2025 Re: August 8 Submission (attached as Ex. 21).

⁵³ See 16 U.S.C. § 824a(c).

generation. The terms of the Current Renewal Order do not meet the claimed emergency or serve the public interest, do not fall within other limits on the Department's jurisdiction, and do not specify the requisite environmental conditions. For all of these reasons, the Department should withdraw the Current Renewal Order.

A. The Current Renewal Order is Contrary to Law

Section 202(c) only authorizes the Department to respond to specific, imminent, unexpected, and temporary emergencies, not to mandate generation based on longer-term reliability concerns. The plain language and structure of Section 202(c), the legislative history for the provision, the Federal Power Act overall, as well as case law interpreting Section 202(c), the Department's regulations, and its historic use of Section 202(c) all establish that an "emergency" under Section 202(c) must be sudden, unexpected, imminent, and specific. By issuing the Current Renewal Order based in large part on long-term concerns, the Department is acting outside the bounds of the best interpretation of Section 202(c).⁵⁴

⁵⁴ *Pac. Gas & Elec. Co. v. FERC*, 113 F.4th 943, 947-48 (D.C. Cir. 2024) (statutes are interpreted "based on the traditional tools of statutory construction' . . . [courts] need not and under the [Administrative Procedure Act] may not defer to an agency interpretation of the law . . .") (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)).

1. Section 202's Text and Structure Establish that Emergency Authority Can Only Be Invoked to Address Imminent, Certain Supply Shortfalls Requiring Immediate Response.

Section 202(c)'s text and context confirm that it provides authority for the limited purpose of addressing imminent, near-term, and concrete electricity supply shortfalls requiring immediate response; it does not permit the Department to act based merely on concerns over long-term reliability or vague and unsubstantiated short-term concerns. Had Congress intended to vest regulatory authority over long-term reliability or non-specific short-term reliability concerns in Section 202(c), it would have stated so clearly. But it did not.⁵⁵ That it may be more difficult to restart a mothballed or dismantled plant is not a justification that can override the limits of the Department's narrow emergency authority as established under Section 202(c)'s text and structure.⁵⁶

The statute's text empowers the Department to act only upon an "emergency."⁵⁷ The statute itself does not define "emergency." At the time Congress enacted Section 202(c), Webster's New International Dictionary of the English Language (1930) defined "emergency" as a "*sudden or unexpected* appearance or occurrence... An *unforeseen* occurrence or combination of

⁵⁵ Congress amended Section 202(c) in 2015, but it did not alter the description of conditions that trigger the Department's grant of authority to issue emergency orders; it only addressed occasions on which a Department order might produce a conflict with other laws. *See* H.R. Rep. No. 114-357 § 61002 (2015).

⁵⁶ *See Institutional S'holder Servs., Inc. v. Sec. & Exch. Comm'n*, 142 F.4th 757, 765-66 (D.C. Cir. 2025) (explaining an agency cannot use an overbroad reading to expand its statutory authority).

⁵⁷ 16 U.S.C. § 824a(c).

circumstances which calls for *immediate* action or remedy; *pressing* necessity; exigency.”⁵⁸ Contemporary dictionaries similarly define “emergency” as demanding imminence: an emergency is “an *unforeseen* combination of circumstances or the resulting state that calls for *immediate* action.”⁵⁹

The remainder of Section 202(c) underscores the exigency inherent in the governing term “emergency”: the authority granted by Section 202(c) is, in the first instance, a wartime power.⁶⁰ An “emergency” under the statute is limited to circumstances of similar urgency: “a *sudden* increase in the demand for electric energy,” for example.⁶¹

The text’s use of the present tense also underscores that focus on imminent and certain shortfalls: it empowers the Department to act only where “an

⁵⁸ See also 3 Oxford English Dictionary 119 (1st ed. 1913) (defining emergency similarly as “a state of things *unexpectedly* arising, and urgently demanding *immediate* action” (emphasis added)).

⁵⁹ *Emergency*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/emergency> (last visited Dec. 22, 2025) (emphasis added); 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”).

⁶⁰ 16 U.S.C. § 824a(c) (beginning with “[d]uring the continuance of any war in which the United States is engaged”); see *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) (noting that statutory terms should be interpreted in the context of nearby parallel terms “in order to avoid the giving of unintended breadth to the Acts of Congress”).

⁶¹ 16 U.S.C. § 824a(c) (emphasis added); see *Richmond Power & Light of City of Richmond, Ind. v. FERC*, 574 F.2d 610, 615 (D.C. Cir. 1978) (holding that Section 202(c) “speaks of ‘temporary’ emergencies, epitomized by wartime disturbances”); S. Rep. No. 74-621, at 49 (1935) (explaining that Section 202(c) provides “temporary power designed to avoid a repetition of the conditions during the last war, when a serious power shortage arose”).

emergency *exists*.”⁶² That near-term focus, along with the statute’s strictly “temporary” authority,⁶³ precludes use of Section 202(c) to pursue long-term policy goals, such as a preference for a particular fuel source, or to redress uncertain, vague, short-term concerns.⁶⁴ The Administration’s self-contradictory actions—declaring an energy emergency while illegally blocking the development of other sources⁶⁵—lays bare that promoting a particular preferred fuel source over others is exactly what is occurring here.⁶⁶

Section 202’s overall structure further highlights Section 202(c)’s emphasis on imminent, concrete, near-term concerns. The preceding subsections 202(a) and (b) together define and limit the tools by which the federal government may pursue

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

⁶³ *Id.*

⁶⁴ *Richmond Power & Light*, 574 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.”).

⁶⁵ *See* Mem. Op. and Order, *State of New York v. Trump*, 25-cv-11221-PBS, ECF No. 234 (D. Mass. Dec. 8, 2025) (declaring executive order placing moratorium on all wind power-related permitting unlawful under 5 U.S.C. § 706(2) and vacating the order in its entirety).

⁶⁶ *Compare* Energy Emergency EO *with* Nichola Groom, Reuters, A timeline of Trump’s moves to dismantle the US wind and solar energy industries (Aug. 27, 2025), <https://www.reuters.com/sustainability/boards-policy-regulation/timeline-trumps-moves-dismantle-us-wind-solar-energy-industries-2025-08-26/#:~:text=The%20Interior%20Department%20said%20it,energy%20to%20low%2Dincome%20communities>. Diana DiGangi, UtilityDive, *Revolution Wind to resume construction after judge grants injunction* (Sept. 23, 2025) <https://perma.cc/NC83-63TD>; *Revolution Wind, LLC v. Douglas J. Burgum*, D.D.C. No. 1:25-cv-02999-RCL.

“abundant” energy supplies in the normal course.⁶⁷ 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.”⁶⁸

That tiered structure—relying on voluntary action for quotidian energy planning, specifying limited authority where that voluntary system fails, and allowing for “temporary” central command-and-control only in case of “emergency”—requires that Section 202(c) remain narrowly bounded to instances of an immediate and unavoidable “break-down in electric supply,”⁶⁹ rather than mere want of more abundant supply in the future.⁷⁰ Interpreting Section 202(c)’s “emergency” powers to encompass longer-term concerns—e.g., potential shortfalls

⁶⁷ 16 U.S.C. § 824a(a) (seeking “abundant supply of electric energy” by directing the federal government to “divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy”) & § 824a(b) (allowing the federal government to order “physical connection . . . to sell energy or to exchange energy” upon application, and after an opportunity for hearing).

⁶⁸ S. Rep. No. 74-621 at 49 (1935).

⁶⁹ *Id.*

⁷⁰ *cf.* Ex. 23 at 2 (imposing responsibility on PJM “to ensure maximum reliability on its system”).

years into the future—would unwind the careful balance of voluntary, market-driven action and federal power set out in subsections 202(a) and 202(b).⁷¹ Such an interpretation cannot be squared with the statutory text and structure.⁷²

2. Congress’ Enactment of a Specific, Cabined Scheme to Address Reliability Concerns Confirms that Section 202(c) Cannot be Expanded to Impose Requirements Related to Long-Term Reliability.

That Section 202(c) cannot be used to enforce the Department’s view of long-term reliability needs is confirmed by Section 215 of the Federal Power Act—which specifically and directly delineates the scope of federal power to enforce mandatory long-term reliability requirements.⁷³ Congress added Section 215 to the Federal Power Act in 2005 precisely because the Act as it then existed—including Section 202(c)—did not provide the federal government with the power to enforce measures designed to ensure broad, long-term reliability.⁷⁴

⁷¹ See *infra*, Section V.C.

⁷² See *Otter Tail Power Co. v. Fed. Power Comm.*, 429 F.2d 232, 233-34 (8th Cir. 1970) (holding that Section 202(c) “enables the Commission to react to a war or national disaster,” while Section 202(b) “applies to a crisis which is likely to develop in the foreseeable future”).

⁷³ 16 U.S.C. § 824o (“Section 215”).

⁷⁴ See 70 Fed. Reg. 53,117, 53,118 (“In 2001, President Bush proposed making electric Reliability Standards mandatory and enforceable,” leading to enactment of Section 215 in 2005); Report of the National Energy Policy Development Group (May 2001) at p. 7-6, Available at <https://www.nrc.gov/docs/ml0428/ml042800056.pdf> (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 at 48 (2005) (Section 215

By enacting Section 215, Congress provided a comprehensive and carefully circumscribed scheme to empower FERC to enforce 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.”⁷⁵ FERC may approve or remand those standards (but not replace them with its own) and is required to “give due weight” to NERC’s “technical expertise” while independently assessing effects on “competition.”⁷⁶ Section 215 provides specified enforcement mechanisms and procedures for reliability standards.⁷⁷ And it carefully preserves state authority over “the construction of additional generation” and in-state resource adequacy, establishing regional advisory boards to ensure appropriate state input on the administration of reliability standards.⁷⁸ FERC has employed this authority in recent years to ensure adequate generation during stressed grid events. For instance, following Winter

“changes our current voluntary rules system to a mandatory rules system” for long-term reliability). *See also 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”).

⁷⁵ 16 U.S.C. § 824o(c)-(d). *See also id.* § 824o(a)(3) (defining reliability standards as “a requirement . . . to provide for reliable operation of the bulk-power system”).

⁷⁶ *Id.* § 824o(d)(2)-(4).

⁷⁷ *Id.* § 824o(e).

⁷⁸ *Id.* § 824o(i)-(j).

Storm Uri, which caused unprecedented power outages in the South Central United States, FERC directed NERC to develop cold weather reliability standards to address freezing issues that cause outages at thermal generators during winter storms.⁷⁹ FERC approved NERC’s standards in 2023 and directed further action.

Interpreting Section 202(c) to permit the Department to mandate generation based on its declaration that non-imminent 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. Such a bypass would impermissibly “contradict Congress’ clear intent as expressed in its more recent,” reliability-specific “legislation,” enacted “with the clear understanding” that the Department had “no authority” to address long-term reliability through Section 202(c).⁸⁰ Congress has, in Section 215, directly established the mechanisms (and limitations) by which the federal government may compel action to ensure long-term electric-system reliability. In so doing, it has confirmed that the word “emergency,” in Section 202(c), does not extend to long-term reliability concerns.

⁷⁹ See FERC Approves Extreme Cold Weather Reliability Standards, Directs Improvements (Feb. 16, 2023) <https://www.ferc.gov/news-events/news/ferc-approves-extreme-cold-weather-reliability-standards-directs-improvements>.

⁸⁰ See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 142 & 149 (2000); see also *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 401–02 (D.C. Cir. 2004) (“Congress’s specific and limited enumeration of [agency] power” over a particular matter in one section of the Federal Power Act “is strong evidence that [a separate section] confers no such authority on [agency].”).

3. Regulations Similarly Establish that Section 202(c) Emergency Authority Can Only Be Invoked to Address Imminent, Certain Supply Shortfalls Requiring Immediate Response.

The Department’s regulations demonstrate its own long-standing understanding that Section 202(c)’s authority is confined to imminent and unavoidable resource shortages, rather than long-term reliability concerns. The regulations define an emergency as “an *unexpected* inadequate supply of electric energy which may result from the *unexpected* outage or breakdown” of generating or transmission facilities—not a means of planning against distant expectations or risks.⁸¹ Emergencies “may result” from a number of events including an “unexpected outage, “weather conditions,” or a “sudden increase in customer demand.”⁸² The use of the verb “result,” defined as “a rise as a consequence, effect, or conclusion,⁸³ suggests that the event triggering the emergency has already happened rather than that there is a speculation that it could occur. Moreover, the events are characterized by those produced by “weather conditions, acts of God, or *unforeseen* occurrences not reasonably within the power of the affected ‘entity’ to prevent,”⁸⁴ not an event that can be planned for because there is a forecasted risk. Where the culprit is increased demand, it must be “a *sudden* increase in customer demand” producing a “*specific* inadequate power supply situation,”⁸⁵ rather than

⁸¹ 10 C.F.R. § 205.371 (emphasis added).

⁸² *Id.*

⁸³ *Result*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/result> (last visited Dec. 22, 2025).

⁸⁴ 10 C.F.R. § 205.371 (emphasis added).

⁸⁵ *Id.* (emphasis added).

long-term demand projections producing general reliability concerns. The need for both specificity and certainty 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 customers.”⁸⁶

And while the regulations suggest that “inadequate planning or the failure to construct necessary facilities *can result* in an emergency,” they recognize that the Department may not utilize a “continuing emergency order” to mandate long-term system planning.⁸⁷ An emergency may exist where past planning failures produce an immediate, present-tense shortfall (i.e., where a shortfall *results* from insufficient planning); the Department has no authority to commandeer long-term planning merely because it deems current plans inadequate to meet far-distant needs.⁸⁸ As the Department stated when it promulgated those regulations, the statute allows the Department to provide “assistance [to a utility] during a period of

⁸⁶ 10 C.F.R. § 205.375 (emphasis added).

⁸⁷ 10 C.F.R. § 205.371 (also recognizing that “where a shortage of electricity is projected due solely to the failure of parties to agree to terms, conditions, or other economic factors” there is no emergency “unless the inability to supply electric service is *imminent*”) (emphasis added).

⁸⁸ *See* 10 C.F.R. § 205.375 (requiring present inability to meet demand to demonstrate inadequate energy supply).

unexpected inadequate supply of electricity,” but does not empower it to “solve long-term problems.”⁸⁹

The Department cannot simply depart from its regulations without conducting new notice and comment rulemaking and providing reasonable basis for the change.⁹⁰

4. Courts Have Uniformly Held that Section 202(c) Can Be Invoked Only in Immediate Crises.

Two courts have addressed the scope of authority under Section 202(c), and both determined that this Section applies only when there is a sudden, unexpected, imminent, and specific emergency.

Richmond Power and Light of City of Richmond, Indiana v. FERC arose out of the 1973 oil embargo.⁹¹ The Federal Power Commission (“Commission”) needed to decide how to respond to oil shortages, and decided to call for the voluntary transfer of electricity from non-oil power plants to areas of the country that relied heavily on oil, such as New England.⁹² The New England Power Pool was not convinced that

⁸⁹ 46 Fed. Reg. 39,984, 39,985–86 (Aug. 6, 1981).

⁹⁰ *See* 5 U.S.C. § 553; *New England Power Generators Ass., Inc. v. FERC*, 881 F.3d 202, 210–12 (D.C. Cir. 2018) (“It is textbook administrative law that an agency must provide[] a reasoned explanation for departing from precedent or treating similar situations differently.”) (quoting *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014)); *Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Env’t Integrity Project v. EPA*, 425 F.3d 992, 995 (D.C. Cir. 2005) (“[A]n 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.”) (internal citations omitted).

⁹¹ 574 F.2d 610 (D.C. Cir. 1978).

⁹² *Id.* at 613.

the voluntary program would work and petitioned the Commission for a 202(c) order.⁹³ The Commission instead facilitated an agreement between state commissions and supplying utilities, which satisfied the New England Power Pool and it withdrew its petition.⁹⁴ A dissatisfied utility sought judicial review of the Commission's decision to allow the withdrawal of the Section 202(c) petition.⁹⁵

The court easily upheld the Commission's decision not to invoke Section 202(c).⁹⁶ Though the oil embargo had ended, the utility argued that the "high cost and uncertain supply of imported oil" justified an emergency order.⁹⁷ The Commission countered that the voluntary program had worked, the New England Power Pool never interrupted service, and there was no need for a Section 202(c) order.⁹⁸ The court agreed with the Commission.⁹⁹

Trying another tactic, the utility argued that "dependence on imported oil leaves this country with a *continuing* emergency."¹⁰⁰ The court observed that Section 202(c) "speaks of 'temporary' emergencies, epitomized by wartime disturbances."¹⁰¹ Interpreting this statutory language, the court upheld the

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 614.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 615.

⁹⁹ *Id.*

¹⁰⁰ *Id.* (emphasis added).

¹⁰¹ *Id.*

Commission’s view that Section 202(c) cannot be used when “supply is adequate but a means of fueling its production is in disfavor.”¹⁰² Section 202(c) is not an appropriate means to implement long-term national policy to switch fuels. It is only a temporary fix for a temporary problem.

The Eighth Circuit has similarly held that Section 202(c) can only be used to respond to immediate crises. In *Otter Tail Power Co. v. Federal Power Commission*, a utility insisted that the only way for the Commission to properly order the utility to connect to a municipal power provider was to issue a Section 202(c) order.¹⁰³ Demand for electricity in the city had increased, and the peak load of the municipal power provider was getting to be so high that both of its two generators would likely need to be used simultaneously in the near future, “causing a possible loss of service should one malfunction during a peak period.”¹⁰⁴ To avoid this possible loss of service, the Commission issued a Section 202(b) order, requiring the utility to connect the municipal power provider.¹⁰⁵ The utility argued that the Commission used the wrong section and should have used Section 202(c) instead.¹⁰⁶

The court explained that Section 202(c) “enables the Commission to react to a war or national disaster” by ordering “immediate” interconnection during an

¹⁰² *Id.*

¹⁰³ 429 F.2d 232, 234 (8th Cir. 1970).

¹⁰⁴ *Id.* at 233-34.

¹⁰⁵ *Id.* at 234.

¹⁰⁶ *Id.*

“emergency.”¹⁰⁷ For non-emergency situations, “[o]n the other hand, § 202(b) applies,” including when there is a “crisis which is likely to develop in the foreseeable future but which does not necessitate immediate action on the part of the Commission.”¹⁰⁸ The court upheld the Commission’s use of Section 202(b) instead of Section 202(c) because there was no immediate emergency.

The case law uniformly supports the interpretation that Section 202(c) can only be used in acute, short-term, urgent emergencies.

5. The Department’s Prior Orders Recognize that Section 202(c) Does Not Confer Plenary Authority Over Long-Term Resource Adequacy.

The Department’s consistent application of Section 202(c) further corroborates the urgency of the conditions necessary to invoke the provision.¹⁰⁹ The Department has historically only used Section 202(c) to address specific, imminent, and unexpected shortages—never to address longer-term reliability concerns or demand forecasts.¹¹⁰ The Department has also narrowly tailored the remedies in Section 202(c) orders to ensure that the orders only address the stated emergency,

¹⁰⁷ *Id.* (citing 16 U.S.C. § 824a(c)).

¹⁰⁸ *Id.*

¹⁰⁹ See *FTC v. Bunte Brothers, Inc.*, 312 U.S. 349, 352 (1941) (“[J]ust as 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.”).

¹¹⁰ See, e.g., Ex. 8, DOE Order No. 202-22-4 (Dec. 24, 2022) (responding to ongoing severe winter storm producing immediate and “unusually high peak load” between December 23 and December 26); Ex. 5, DOE Order 202-20-2 (Sept. 6, 2020) at 10-2 (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).

to limit the order to the minimum period necessary, and to mitigate violations of environmental requirements and impacts to the environment.¹¹¹

Public Interest Organizations are not aware of any instance before 2025 in which the Department has utilized Section 202(c) to mandate generation the Department views as necessary to ensure long-term resource sufficiency, or to retain fuel sources that the Department believes beneficial,¹¹²—and for good reason.

B. There Is No Factual Basis Supporting the Department’s Order

The Department asserts that the Current Renewal Order is justified by the continued “emergency conditions” cited in the Initial Order and subsequent renewal orders (collectively, “Previous Orders”), “both in the near and long-term.”¹¹³ However, as with the Previous Orders, the Department fails to demonstrate that there is an emergency under Section 202(c). The Department’s citations to Executive Orders do not save it. A broad, generic, Presidential declaration of a national emergency is not sufficient on its own to justify the use of emergency powers under a statute with specific requirements. And the specific statutory requirements have not been met here. The Department offers no plausible evidence that a shortfall in energy will occur in PJM in the next 90 days. The Department

¹¹¹ *See, e.g.*, Ex. 8 at 4-7 (limiting order to the 3 days of peak load, directing PJM to exhaust all available resources beforehand, requiring detailed environmental reporting, notice to affected communities, and calculation of net revenue associated with actions violating environmental laws); Ex. 5 at 3-4 (limiting order to the 7 days of peak load, directing CAISO to exhaust all available resources beforehand, requiring detailed environmental reporting).

¹¹² *Richmond Power and Light*, 574 F.2d at 616.

¹¹³ Ex. 28 at 2.

misrepresents the capacity outlook for spring, and cannot reasonably rely on the very limited, nonessential running of the Eddystone Units in winter conditions as evidence of need for the Units over the next 90 days. Any attempt to bolster the Previous Orders with this information is both impermissible post hoc rationale and relies upon a misrepresentation of the PJM alert system. Further, the Department's reiteration of stale, overly general, or otherwise inapposite evidence it relied upon in the Previous Orders continues to fail to establish that an emergency exists pursuant to Section 202(c). The evidence offered cannot counter the fact that PJM procured an adequate amount of capacity to meet the region's Reliability Requirement through the 2026-2027 delivery year (which will begin on June 1, 2026 and end May 30, 2027). The Department has not and cannot establish a factual basis to support the Current Renewal Order.

1. Neither the Energy Emergency Executive Order Nor the Grid Executive Order Evinces an Emergency Redressable By Section 202(c).

The Department notes that the Initial Order was preceded by two executive orders “underscor[ing] the dire energy challenges facing the Nation,” citing the Energy Emergency EO and the Grid EO.¹¹⁴

These Executive Orders do not provide a valid basis for an emergency under Section 202(c). Even if these declarations were accurate and reasonable, which they are not, presidential declarations of an emergency do not unlock unlimited

¹¹⁴ Ex. 13 at 5.

powers.¹¹⁵ President Trump issued the Energy Emergency EO pursuant to authority from the National Emergencies Act (and provided no statutory basis for the Grid EO).¹¹⁶ Congress explained that the National Emergencies Act “is not intended to enlarge or add to Executive power. Rather, the statute is an effort by Congress to establish clear procedures and safeguards for the exercise by the President of emergency powers *conferred on him by other statutes*.”¹¹⁷ Congress sometimes ties emergency authority to a president’s declaration of a national emergency and sometimes to a determination by the head of an agency. The Federal Power Act contains both types of emergency authority: two provisions of the Federal Power Act provide the President with emergency authority (sections 215A and 212, 16 U.S.C. § 824o-1 and 16 U.S.C. § 809), but Section 202(c) requires that “the *Commission* determine[] that an emergency exists.”¹¹⁸ Thus, the burden is on the Department to demonstrate that there is an emergency pursuant to the narrow

¹¹⁵ See *Biden v. Nebraska*, 600 U.S. 477, 500-01 (2023) (presidential declaration of national emergency does not change the limitations on agency’s emergency authority as written into statute).

¹¹⁶ Under the National Emergencies Act, no emergency powers unlocked by a Presidential declaration of a national emergency “shall be exercised unless and until the President *specifies the provisions of law* under which he proposes that he, or other officers will act.” 50 U.S.C. § 1631 (emphasis added). The Energy Emergency EO does not adhere to this requirement. EO 14,156 (Jan. 20, 2025) (generically directing agencies to “identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they may possess, to facilitate the ... generation of domestic energy resources.”).

¹¹⁷ S. Rep. No. 94-1168, 3 (1976) (emphasis added).

¹¹⁸ 16 U.S.C. § 824a (emphasis added). The Department has exercised certain powers under Section 202(c) since the DOE Organization Act of 1977, 42 U.S.C. § 7172.

language of Section 202(c); simply pointing to Executive Orders without determining for itself that an emergency exists results in an arbitrary and capricious order.

Additionally, neither the Energy Emergency nor the Grid EO contain any facts or sources that support the determination of an emergency under Section 202(c). The Energy Emergency EO generically claims “[t]he energy ... generation capacity of the United States [is] far too inadequate to meet our Nation’s needs.” The Grid EO 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. These vague statements on nationwide energy needs lack the specificity needed to justify a 202(c) order.¹¹⁹ The Executive Orders provide no evidence in support of their claims of inadequate nationwide generation, let alone in Pennsylvania specifically.¹²⁰ An emergency under Section 202(c) also must be imminent.¹²¹ But the Energy Emergency EO only gestures to a “deteriorat[ion] in *the near future*” and the Grid EO offers no projection for the timing or location of the expected increased demand from “rapid

¹¹⁹ See 10 C.F.R. 205.371 (defining an emergency under Section 202(c) as “a *specific* inadequate power supply situation”) (emphasis added).

¹²⁰ Indeed, at the time of the orders, U.S. energy production and exports were at an all-time high. See U.S. Energy Information Administration, U.S. primary energy production, consumption, and exports increased in 2024 (Jun. 20, 2025), <https://perma.cc/5SX9-MFZV>.

¹²¹ See *supra*, Section V.A.

technological advancements.” As we demonstrate *infra*, Section V.B.3, there is sufficient generation for the claimed “emergency” period in Pennsylvania.

Moreover, these Executive Orders, which emphasize the need for more energy, are contradicted by other Executive Orders, which constrain the energy supply. By Executive Order, the President attempted to temporarily withdraw land to prevent “renewed wind energy leasing for the purposes of generation of electricity,” although not for oil and gas mining.¹²² Another Executive Order declares that there is no need to subsidize “energy sources like wind and solar.”¹²³ Other federal agencies have taken several actions, pursuant to these Executive Orders, to stop wind and solar development.¹²⁴ If there is a national energy

¹²² 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, 8363 (Jan. 29, 2025).

¹²³ Exec. Order No. 14,315, 90 Fed. Reg. 30821, 30821 (July 7, 2025).

¹²⁴ *See* Department of Interior Memo on Departmental Review Procedures for Decisions, Actions, Consultations, and Other Undertakings Related to Wind and Solar Energy Facilities (July 15, 2025); Department of Interior Secretary Order 3437: Ending Preferential Treatment for Unreliable, Foreign Controlled Energy Sources in Department Decision-Making (July 29, 2025); Department of Interior Secretary Order 3438: Managing Federal Energy Resources and Protecting the Environment (August 1, 2025); BOEM, BOEM Rescinds Designated Wind Energy Areas on the Outer Continental Shelf (July 30, 2025), <https://perma.cc/48AE-XDRW>; BOEM, BOEM Rescinds Offshore Renewable Energy Leasing Schedule (August 4, 2025), <https://perma.cc/PF2T-G89A>; Department of Interior, Interior Department Moves to Cancel Reckless Biden-era Approval of Lava Ridge Wind Project (Aug. 6, 2025), <https://perma.cc/V4U3-NFX6>; BOEM, Director’s Order (Aug. 22, 2025) (Revolution Wind Stop Work Order), <https://perma.cc/H7KD-Y3WJ>; BOEM, Director’s Order (Apr. 16, 2025) (Empire Wind Stop Work Order), <https://perma.cc/3J6V-36RD>.

emergency, why is the Administration preventing the development of shovel-ready and economical energy projects?

The Orders, like the two Executive Orders they cite, support fossil fuels. The Grid EO was issued at the same time as three other executive actions aimed at supporting the coal industry, and was announced at a White House political event focused on promoting coal.¹²⁵ But a preference for one type of fuel over another does not constitute an emergency.¹²⁶ And the Administration cannot manufacture an emergency by eliminating new sources of energy in order to extend the life of old, dirty, unreliable plants.

2. There is No Near-Term Emergency.

The Current Renewal Order gestures at the possibility of electricity shortfalls in the “near” term but offers no plausible evidence of such shortfalls. That to one side, the generalized, the speculative risks described by the Current Renewal Order are neither specific nor certain enough to qualify as an “emergency” within the meaning of Section 202(c).¹²⁷

¹²⁵ See Lisa Friedman and Brad Plumer, Five Takeaways From Trump’s Plan to Rescue Coal, N.Y. Times (Apr. 9, 2025), https://www.nytimes.com/2025/04/09/climate/trump-executive-orders-coal.html?unlocked_article_code=1.oU8.ykUp.ZFaHwmWlt5nX&smid=url-share (attached as Ex. 10).

¹²⁶ *Richmond Power and Light*, 574 F.2d at 610 (Section 202(c) cannot be used when “supply is adequate but a means of fueling its production is in disfavor.”).

¹²⁷ 16 U.S.C. § 824a(c).

a. The Department's finding of an emergency contradicts its recent orders authorizing the export of electricity under Section 202(e)

The Department's assertion in the Current Renewal Order that an emergency exists in the PJM region is contradicted by its own recent findings, pursuant to Federal Power Act Section 202(e), that multiple proposed exports of electricity do not impair the sufficiency of electric supply within the United States.¹²⁸ Section 202(e) obligates DOE to grant requests for export authorization unless it finds that the proposed export would negatively impact either: (i) the sufficiency of electric supply; or (ii) the coordination of the electric grid. 16 U.S.C. § 824a(e). As DOE previously explained, it interprets the first exception criterion to mean that "sufficient generating capacity and electric energy must exist such that the export could be made without compromising the energy needs of the exporting region, including serving all load obligations in the region while maintaining appropriate reserve levels."¹²⁹

As one example, on January 14, 2026, the Department authorized H.Q. Energy Services (US) Inc. ("HQUS") to export electricity to Canada for a five-year period, based on its conclusions that from both economic and reliability perspectives, there was adequate supply to do so. The Department found that

¹²⁸ Dozens of active Department orders authorize the export of electricity from the United States over the coming decade. See DOE Grid Deployment Office's Export Authorization Library, available at <https://www.energy.gov/gdo/export-authorization-library>.

¹²⁹ DOE, Order Authorizing Electricity Exports to Canada, Order No. EA-182-F (Jan. 14, 2026) at 4, https://www.energy.gov/sites/default/files/2026-02/EA-182-F_HQEnergyServicesUSInc_Order.pdf (<https://perma.cc/7J9D-HYPN>).

“wholesale energy markets are sufficiently robust to make supplies available to exporters and other market participants serving United States regions along the Canadian and Mexican borders,”¹³⁰ and “that NERC’s FERC-approved comprehensive enforcement mechanism ensures that bulk-power system owners, operators, and users have a strong incentive both to maintain system resources and to prevent reliability problems that could result from movement of electric supplies through export.”¹³¹ As a result, the Department concluded that “the sufficiency of supply is not impaired by HQUS’ proposed export authorization.”¹³² The Department’s findings in the order are not specific to any geographic region of the country, but stated in general terms.

The Department’s continued authorizations of such exports in recent months contradicts its determination in the Current Renewal Order that an emergency exists in PJM (and in other areas of the country that border Canada, including the Midcontinent Independent System Operator and Washington State). The Department cannot find both that sufficient energy exists in the United States such that exporting it will not threaten reliability here, and also that an energy emergency exists—doing so is the height of arbitrary and capricious decision-making. The Department’s reasoning in the HQUS authorization, which is echoed in most of its other Section 202(e) orders, is that the economic incentives created by

¹³⁰ *Id.*

¹³¹ *Id.* at 6.

¹³² *Id.*

wholesale energy markets and existing regulatory systems to ensure reliability can be relied upon to ensure an adequate supply. Yet the Department ignores such factors in the Current Renewal Order, ignoring the role of PJM's energy and capacity markets in incentivizing and committing resources to meet demand in the region. The Current Renewal Order fails to address how the Department could almost simultaneously issue opposite determinations regarding the sufficiency of supply, removing any doubt that the Current Renewal Order is invalid and must be withdrawn.

b. The Current Renewal Order fails to establish that an energy emergency exists in the PJM region in the next 90 days

While the Current Renewal Order focuses primarily on longer-term risks to reliability in the PJM region, which are legally irrelevant as described *supra*, it also half-heartedly attempts to establish a near-term energy emergency. The Current Renewal Order repeats verbatim language from the Second Renewal Order.¹³³ PIOs addressed each of these arguments in our Request for Rehearing of that order and address these arguments again below. To the extent the Department does attempt to establish an imminent emergency, it does so based on the PJM system's risk factors during the winter—and thus this evidence is irrelevant to the Current Renewal Order, which will require the Eddystone units to be available primarily during the spring months (February 24–May 24).

Spring is a very low-risk time on PJM's system. According to PJM's loss of load analysis for 2025-2026, the 90 days in which this Order will be in effect

¹³³ Current Renewal Order at 4.

encompass only 2.5% of PJM’s modeled annual loss of load risk.¹³⁴ The Department offers no evidence to establish that the period covered by the Current Renewal Order presents resource adequacy risks in PJM that rise to the level of an “emergency” within the meaning of Section 202(c). PJM’s Reliability Pricing Model (commonly known as the capacity auction) aims to procure an amount of electricity supply adequate to meet its highest-risk times of year, with a substantial reserve margin. For the Reliability Pricing Model delivery year encompassing the time period covered by the Current Renewal Order (June 1, 2025-May 31, 2026), PJM’s capacity auction cleared more than sufficient capacity to meet PJM’s target procurement level (the “reliability requirement”), which reflects PJM’s consideration of the risks the system faces during all hours of the year.¹³⁵ Specifically, the auction cleared 135,684 MW of unforced capacity, representing a 18.6% reserve margin—0.7 percentage points higher than the target reserve margin of 17.8%.¹³⁶ Furthermore those auction clearing results understated the amount of

¹³⁴ PJM calculates loss of load probability by running many scenarios modeling each hour of the delivery year. The scenarios cover variability in weather conditions, generator reliability, and demand for electricity. PJM publishes a list of which hours in which scenario experience blackouts. See PJM Interconnection, LLC, 2025/2026 3IA Data Files/Info for Loss of Load Hours (Feb. 27, 2025), <https://www.pjm.com/planning/resource-adequacy-planning/effective-load-carrying-capability>. Across all their scenarios, PJM found 13,106 hours with blackouts for the year starting June 1, 2025. Of those, 323 were between February 24, 2026 and May 24, 2026, inclusive. The ratio of those two numbers is 2.5%, which reflects the portion of the blackout risk for the entire year lies in that date range.

¹³⁵ See PJM, 2025/2026 Base Residual Auction Report, at 3 (July 30, 2024) <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.pdf>.

¹³⁶ *Id.*

available capacity resources because they excluded two large reliability-must-run units in Maryland and 1,600 MW of accredited wind, solar and storage capacity.¹³⁷

The capacity from Eddystone Units 3 and 4 was not offered into the auction for the ongoing delivery year, and nevertheless the auction cleared sufficient capacity to meet the “reliability requirement. Given that winter is the highest-risk time of year on PJM’s system, and PJM has sufficient capacity to meet that demand, there is scant chance of any energy shortfall during the spring. DOE does not even try to argue that there is such a risk, instead it is simply regurgitating what it said in an order issued to cover winter months.

c. PJM winter 2026 operating conditions are not evidence of a near-term emergency

Continuing its misguided approach to establishing an emergency for the spring by citing to overall winter risk levels on PJM’s system, the Department attempts to establish an emergency by describing several actions PJM took during Winter Storm Fern, which affected the PJM region from January 24 to February 2. The Department notes that during this time “PJM operated under a cold weather alert and declared conservative operations” and on January 27, “declared a Maximum Generation Emergency/ Load Management Alert and an EEA 1.”¹³⁸

Aside from the fact that a past winter storm does not establish an emergency for the upcoming spring, the Department dramatically overstates the significance of

¹³⁷ See Motion to Intervene and Request for Rehearing of Natural Resources Defense Council, Citizens for Pennsylvania’s Future, Environmental Defense Fund, Sierra Club, and Public Citizen regarding Order No. 202-25-4, at 57-58 (attached as Ex. 14).

¹³⁸ Current Renewal Order at 3.

these PJM operational developments. In PJM, a “cold weather alert” does not signify an emergency, but reflects a series of precautionary steps “to prepare personnel and facilities for expected extreme cold weather conditions.”¹³⁹ For example, PJM dispatch will recall or cancel non-critical generator maintenance outages, and generation operators are required to ensure that their units’ operating parameters (e.g., start-up times, availability of alternative fuels) are updated in PJM’s dispatch information system.¹⁴⁰ “Conservative operations” is likewise not indicative of an emergency—it is an operational state in which PJM enhances coordination procedures (e.g., conference calls with asset owners for readiness), has increased authority to adjust power transfers across the region, and refrains from updating software systems.”¹⁴¹ “Cold weather alerts” and “conservative operations” are what they sound like – routine operational preparedness steps to prevent an emergency during potentially stressful weather conditions for the grid.

Nor are the Maximum Generation Emergency / Load Management Alert and EEA 1 notices issued on January 27, 2026 indicative of any emergency, as DOE passingly suggests. The purpose of Maximum Generation Alerts “is to provide an early alert that system conditions may require the use of the PJM emergency

¹³⁹ PJM, PJM Manual 13: Emergency Operations, at § 3.3.2 (Nov. 20, 2025), <https://perma.cc/ZEG7-K5F8>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* § 3.2.

procedures. It is implemented when Maximum Emergency generation is called into the operating capacity or if Demand Response is projected to be implemented.”¹⁴²

A Maximum Generation Alert is a type of “Advanced Notice Emergency Procedures” in PJM operational practices, which is “issued one or more days in advance of the operating day for elevated awareness and to give time for advanced preparations.”¹⁴³ These alerts are intended to head off real-time emergency procedures such as “warnings,” which are “issued real-time, typically preceding, and with an estimated time/window for a potential future Action” and “actions,” which are “issued real-time and requires PJM and/or Member response.” *Id.* Two other alerts, Primary Reserve and Voltage Reduction, follow Maximum Generation, even before the first “warning” emergency step.¹⁴⁴ Before shedding any load, PJM’s first “action” is to require curtailment service providers to deploy demand response resources with 30-, 60-, or 120-minute lead times via a Pre-Emergency Load Management Reduction Action.¹⁴⁵ The next step is Emergency Load Management Reduction Action, which further reduces load through PJM controllable load management reduction programs.¹⁴⁶ After further warnings, PJM may issue a Maximum Emergency Generation Action (which is different from the Maximum Generation Alert), the purpose of which is “to increase the PJM RTO generation

¹⁴² PJM, PJM Manual 13: Emergency Operations, at 23 (Nov. 20, 2025), <https://perma.cc/ZEG7-K5F8> (emphasis added).

¹⁴³ PJM, PJM Manual 13: Emergency Operations, at 21 (Nov. 20, 2025), <https://perma.cc/ZEG7-K5F8>.

¹⁴⁴ *Id.* at Ex. 1.

¹⁴⁵ *Id.* at 31.

¹⁴⁶ *Id.* at 31-33.

above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.”¹⁴⁷ In this step, PJM takes actions such as determining the feasibility of recalling off-system capacity sales. Based on Emergency Bids submitted by generation resources internal to PJM and from neighboring Control Areas, PJM will incrementally load new generation resources as needed.¹⁴⁸ Following the Maximum Generation Emergency Action, PJM would take actions to deploy Voluntary Demand Response, and issue requests to curtail non-essential building load. Only after these steps would PJM issue the “Deploy All Resources” action, which requires generation owners to start up any offline resources and ramp to full output.¹⁴⁹ The next step is to reduce voltage on the system to reduce demand. Only after all these steps are taken would PJM shed firm load.¹⁵⁰

This timeline makes clear that the issuance of Cold Weather Alerts, Conservative Operations, and Maximum Generation/Load Management Alerts are many steps removed from the type of emergency contemplated by Section 202(c). These alerts are issued before demand response resources are dispatched, before PJM ceases exports to neighboring regions, before all generators are required to ramp up to their maximum output, and before all offline generators are even required to start up. These alerts are part of PJM’s preparedness for possibly tight

¹⁴⁷ *Id.* at 34-37.

¹⁴⁸ *Id.* at 37.

¹⁴⁹ *Id.* at 40-41.

¹⁵⁰ *Id.* at 41-48.

grid conditions, not indicators that something is awry with PJM's system or that it has inadequate resources. This winter event demonstrates that PJM has the tools to maintain reliable service, and that those tools are working.

Similarly, the NERC Energy Emergency Alert (EEA) Level 1 that PJM issued on January 27, 2026 is not indicative of an emergency. The Department has never previously recognized EEA Level 1 as an emergency under Section 202(c); rather, the Department's practice demonstrates that an EEA Level 2 is the minimum trigger for a Section 202(c) order.¹⁵¹ The Department provides no reason for altering its long practice now. EEA1 does not involve inadequate power supplies within the meaning of Section 202(c) as this condition does not even involve use of a basic operational tool in the PJM's repertoire – the use demand response or other demand-side management. EEA Level 1 reflects that all available generation resources are used, including generation resources committed as reserves (i.e., those standing by ready to ramp up should there be a contingency on the system), but there is no shortfall in available energy to meet demand.¹⁵² In contrast, EEA Level 2 reflects that load management is in effect – meaning voluntary demand reductions – but that the operator is still able to maintain contingency reserve

¹⁵¹ See, e.g., DOE Order No. 202-25-5 at 4 (June 24, 2025); DOE Order No. 202-22-3 at 4 (Dec. 23, 2022); DOE Order No. 202-21-2 at 5 (Sept. 10, 2021).

¹⁵² See North American Electric Reliability Corp., Energy Operating Procedure Standard EOP-011-4, at p. 13, <https://www.nerc.com/globalassets/standards/reliability-standards/eop/eop-011-4.pdf>

requirements.¹⁵³ It is not until EEA Level 3 that firm load reductions are imminent or in progress. An EEA Level 1 does not support an emergency.

Winter Storm Fern was not an emergency as defined by Section 202(c) because it did not produce a “specific inadequate power supply situation.”¹⁵⁴ And Department regulations define an inadequate energy supply as when “the projected energy deficiency . . . will cause the [utility] to be unable to meet its normal peak load requirements based upon use of all of its otherwise available resources.”¹⁵⁵ For this event, PJM’s instantaneous peak load during Fern was 140,049 MW,¹⁵⁶ well below its anticipated winter peak load of 145,700 MW.¹⁵⁷ Contrary to DOE’s characterization, Winter Storm Fern demonstrated that PJM’s forecasting has been accurate, its standard operating procedures worked to manage load as it approached the forecast peak, PJM had sufficient capacity resources for winter 2025-2026, and continues to have sufficient resource adequacy to meet near-term needs.

¹⁵³ *Id.* at 13-14.

¹⁵⁴ 10 C.F.R. § 205.371.

¹⁵⁵ 10 C.F.R. § 205.375.

¹⁵⁶ PJM, January Cold Weather Operations (February 5, 2026), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/oc/2026/20260205/20260205-item-03---cold-weather-update.pdf>, at slide 17.

¹⁵⁷ PJM Inside Lines, PJM Winter Outlook: Adequate Power Supplies Available to Serve Growing Demand Under Expected Conditions (Nov. 3, 2025), <https://insidelines.pjm.com/pjm-winter-outlook-adequate-power-supplies-available-to-serve-growing-demand-under-expected-conditions/>.

Likewise, Winter Storm Fern did not involve the utilization of “all of its otherwise available resources.”¹⁵⁸ At no time during Winter Storm Fern, and specifically during the times when the Eddystone Units were operated, did PJM declare a capacity emergency that would trigger a Performance Assessment Interval for committed capacity units.¹⁵⁹ In other words, PJM never reached the threshold it deems necessary to enforce performance by resources that have been committed through its Reliability Pricing Mechanism and paid to provide capacity during grid stress events. Absent such penalties, committed capacity resources may find it economically advantageous not to perform, for example, if they would incur high costs to acquire just-in-time fuel. As explained above, inadequate energy supply for the purposes of Section 202(c), according to Department regulations, involves a situation where “the projected energy deficiency . . . will cause the [utility] to be *unable* to meet its normal peak load requirements based upon use of *all of its otherwise available resources*.”¹⁶⁰ A situation in which capacity that consumers have already paid to be available is not even required to be available is not a situation in which “all . . . otherwise available resources” have been deployed.

Furthermore, PJM has provided incomplete public information regarding the level of output produced by either of the two units on two of the four days they ran

¹⁵⁸ 10 C.F.R. § 205.375.

¹⁵⁹ *See* PJM Interconnection, LLC, 184 FERC ¶ 61,058 P 2 (July 28, 2023) (describing the purpose of PJM’s Performance Assessment Intervals in the course of approving PJM’s proposed changes to the triggering conditions for these intervals).

¹⁶⁰ 10 C.F.R. § 205.375 (emphasis added).

during the storm, creating a gap in the record on how much electricity either unit actually produced during the times when PJM invoked various pre-emergency planning procedures during Winter Storm Fern.¹⁶¹ Nor has PJM produced any explanation of why the units ran (i.e., for which purported reliability purpose in its Operational Memorandum). Without such information, which the Current Renewal Order fails to provide, there is no basis for asserting that the Eddystone Units were needed during the times they were operating.

d. PJM's request for a different short-term Section 202(c) order during Winter Storm Fern doesn't establish an emergency for the next 90 days, much less one that Eddystone 3 and 4 are best situated to resolve

DOE also cites PJM's request for, and its own issuance of, a separate Section 202(c) order providing authorization for additional specified generation units to operate at levels that may exceed air quality or other permit limitations.¹⁶² PJM's January 24, 2026 request was based on conditions it anticipated during Winter Storm Fern, which brought extended cold temperatures to the PJM region in late January and early February 2026.

Yet PJM's request was for declaration of a short-term emergency, lasting only until the extant winter storm abated. Even if PJM faced emergency conditions during Winter Storm Fern, that does not indicate an emergency during the upcoming spring—the time period covered by the instant Order. PJM's assertion that an emergency existed was limited to the time period of the winter storm's

¹⁶¹ See PJM Compliance Reports, *supra* Section IV.C.

¹⁶² Current Renewal Order at 3.

occurrence – not a broader assertion that the region suffers from an ongoing emergency. DOE issued the Current Renewal Order over 20 days after the severe winter weather it cites as establishing a near-term emergency occurred, in other words, after any such emergency (even by the terms of its own order) had long ended. DOE offers no explanation for why a past winter severe weather event establishes a long-term emergency that extends into the spring months.

Additionally, PJM’s request during Winter Storm Fern was predicated in part on possible resource adequacy shortfalls in neighboring regions; PJM’s submission notes: “Further, today PJM has been asked to provide emergency energy (in some cases up to 3,000 MW) to neighbors who have already been in an Energy Emergency Alert (EEA) Level 2 during the onset of the storm.”¹⁶³ Insofar as the request reflected PJM’s preference or obligation to run generating units on its system above permit limits during a specific extreme weather event in order to address resource adequacy issues *outside* the PJM region, this is not evidence of a resource adequacy problem *within* PJM, as DOE asserts.

Next, PJM’s ability to obtain Section 202(c) orders to allow additional operation from its existing generation fleet during extreme weather events (which has occurred on multiple prior occasions¹⁶⁴), suggests that DOE has other, more

¹⁶³ PJM, Re: Request for Emergency Order Under Federal Power Act, Section 202(c) (Jan. 24, 2026), <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260124-pjm-202c-request-exhibit-a.pdf>, at page 2.

¹⁶⁴ See, e.g., Dep’t of Energy, Order 202-22-4 (issued to PJM in December 2024 during Winter Storm Elliott), at <https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-december-2022>.

targeted, and potentially less costly tools available to mitigate imminent emergencies when they do arise, as compared to preventing the economic retirement of an aging thermal plant. Indeed, Eddystone Units 3 and 4 ran relatively little during PJM’s cold weather operations that extended from January 23 to February 2.¹⁶⁵ Two of the four days the units ran at all, they ran only at the units’ minimum possible level.¹⁶⁶ PJM experienced its instantaneous peak load for this event at around 8 a.m. on January 29, 2026¹⁶⁷ – at that time both Eddystone units were operating at “min load,” rather than ramping up to help meet this demand. In contrast, 21 units that PJM operated pursuant to DOE Order 202-26-2

¹⁶⁵ See PJM, January Cold Weather Operations (Feb. 5, 2026) at 4, 17, <https://www.pjm.com/-/media/DotCom/committees-groups/committees/oc/2026/20260205/20260205-item-03---cold-weather-update.pdf>

¹⁶⁶ See Daily Compliance Report for January 28, [https://go.pjm.com/l/678183/2026-01-29/lm85j/678183/17697116528MCBTmFI/Eddystone Report Jan292026 daily compliance report.pdf](https://go.pjm.com/l/678183/2026-01-29/lm85j/678183/17697116528MCBTmFI/Eddystone%20Report%20Jan292026%20daily%20compliance%20report.pdf) (noting that on January 28, Units 3 and 4 operated all 24 hours at “min load”); Daily Compliance Report for January 29, <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260130-doe-order-no-202-25-10-eddystone-daily-reporting.pdf> (noting that Units 3 and 4 operated on January 29, for hours ending 1-12, i.e., from midnight to noon, at “min load”). On January 26, Unit 3 operated for 16 hours, and Unit 4 for 12 hours “at varying ranges between the operational min and max,” <https://www.pjm.com/-/media/DotCom/documents/ferc/filings/2026/20260127-order-202-25-10-compliance-report.pdf>. On January 27, Units 3 and 4 operated “at varying ranges between the operational min & max,” <https://www.pjm.com/-/media/DotCom/documents/ferc/filings/2026/20260128-eddystone-daily-compliance-report.pdf>.

¹⁶⁷ PJM, January Cold Weather Operations (Feb. 5, 2026), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/oc/2026/20260205/20260205-item-03---cold-weather-update.pdf>, at slide 17.

did operate for all or part of the day on January 29,¹⁶⁸ which strongly suggests that the Eddystone units were incapable of meeting demand due to fuel supply limitations, forced outage, or transmission constraints.

On January 29, PJM sought an extension of Order 202-26-2 through February 2, based on forecasted continuation of especially cold weather. Despite the cold weather event extending for four more days, Eddystone Units 3 and 4 did not run at all after noon on January 29.¹⁶⁹ In contrast, the additional units covered by Order 202-26-2A did run from January 30 to February 2.¹⁷⁰ This strongly suggests that Eddystone Units 3 and 4 were unavailable as the winter event wore on. Winter risk in PJM is driven by high forced outage rates among thermal generators, due to both mechanical issues in cold weather and fuel supply

¹⁶⁸ See PJM, Daily Compliance Report for Prior Day Operations (January 29, 2026) DOE Order No. 202-26-2, <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260130-pjm-daily-compliance-report-doe-order-no-202-26-2-v4.pdf>.

¹⁶⁹ See Daily Compliance Report for January 29, <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260130-doe-order-no-202-25-10-eddystone-daily-reporting.pdf>.

¹⁷⁰ PJM Daily Compliance Report (Jan. 31, 2026), <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260131-pjm-daily-compliance-report-doe-order-no-202-26-2-v5.pdf> (listing 20 resources operating on January 30); PJM Daily Compliance Report (Feb. 1, 2026), <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260201-pjm-daily-compliance-report-doe-order-no-202-26-2-v6.pdf> (listing 16 resources running on January 31); PJM Daily Compliance Report (Feb. 2, 2026), <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260202-pjm-daily-compliance-report-doe-order-no-202-26-2-v7.pdf> (listing 10 resources operating on February 1); PJM Daily Compliance Report (Feb. 3, 2026), <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20260203-pjm-daily-compliance-report-doe-order-no-202-26-2-v8.pdf> (listing 7 resources operating on February 2, 2026)

limitations.¹⁷¹ Older units, such as the Eddystone Units, are most prone to mechanical issues or limited operating availability during cold weather. As the U.S. Energy Information Administration explains, steam turbine technology like that used at the nearly 60-year-old Eddystone Units¹⁷² requires hours to start up, and need additional time to adjust output once online.¹⁷³ Indeed, the Eddystone units have already shown their age during the course of the Department's Orders: Unit 4 suffered an outage of unknown provenance on June 23 2025,¹⁷⁴ and on July 28, 2025 failed to start up at all due to a tube leak.¹⁷⁵

¹⁷¹ *See, e.g.*, Affidavit of Adam Keech on behalf of PJM Interconnection LLC, Attachment C to PJM Transmittal Letter, Docket No. ER24-99 (filed Oct. 13, 2023), at p. 619 ¶ 9, <https://www.pjm.com/pjmfiles/directory/etariff/FercDockets/7657/20231013-er24-99-000.pdf> (noting that the shift toward winter being a higher-risk season in PJM is driven by poor fleet performance and high levels of generator correlated outages); *id.* at 13 (noting how PJM's increased dependence on natural gas resources increases vulnerability to common-mode failures, such as fuel supply limitations or pipeline outages, that were factors during the 2014 Polar Vortex and Winter Storm Elliott); PJM, Winter Storm Elliott: Event Analysis and Recommendation Report 2 (attached as Ex. 26) (noting that gas plants accounted for 70% of the extremely high forced outage rates that drove PJM into tight conditions, due to both equipment failure in the cold weather and gas supply problems).

¹⁷² Constellation Energy, Eddystone Generation Station, (available at <https://perma.cc/27DG-UXX2>) (“These units were installed between 1967 and 1970”).

¹⁷³ U.S. Energy Information Administration, “About 25% of U.S. power plants can start up within an hour,” (November 19, 2020) (available at <https://perma.cc/NWG3-YKLV>).

¹⁷⁴ PJM Interconnection LLC, Compliance Report re: Eddystone Units 3 and 4 (June 24, 2025) (available at <https://perma.cc/S4U9-ER7P>).

¹⁷⁵ PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (July 29, 2025) (available at <https://perma.cc/6Q6D-Y2LX>).

Alternatively, PJM may have found the flexibility or locations of the other units better suited than the Eddystone units to meet the particular emergency conditions. PJM's mere request for an additional emergency order to address a specific extreme weather event for a time period that has now passed, which relied in part on emergency shortfalls *external* to PJM, and during which PJM did not find it necessary or possible to run the Eddystone units, does not establish an imminent emergency for the 90-day period covered by the Current Renewal Order.

3. DOE offers no substantial evidence of a longer-term emergency in PJM and ignores recent developments addressing longer-term risks.

- a. DOE rehashes evidence from its Previous Orders that does not establish an emergency*

The Current Renewal Order asserts that “[t]he evidence also indicates that there is a *potential longer term* resource adequacy emergency in the PJM region.”¹⁷⁶ Putting aside that Section 202(c) does not provide the Department with the statutory authority to address long term resource adequacy concerns, *supra* Section V.A., the evidence DOE cites is stale, overly general, or otherwise inapposite, including PJM's 2023 Energy Transition in PJM report (“2023 R4 Report”),¹⁷⁷ former PJM President Manu Asthana's March 2025 congressional testimony, the results of PJM's FERC-approved Reliability Resource Initiative (“RRI”), and the Department's summer 2025 Resource Adequacy Report. In Public Interest

¹⁷⁶ Ex. 28 at 3 (emphasis added).

¹⁷⁷ PJM, Energy Transition in PJM: Resource Retirements, Replacements & Risks (Feb. 24, 2023), <https://perma.cc/M4H6-UMKY>.

Organizations' previous RFRs, we explained why these references do not establish that an emergency within the meaning of that term in Section 202(c) exists.

As Public Interest Organizations previously noted, and DOE still has not addressed, PJM's Reliability Pricing Mechanism ("RPM") is the FERC-approved mechanism to ensure resource adequacy in the PJM Interconnection service territory.¹⁷⁸

For the RPM delivery year encompassing the time period covered by each of the Orders, the auction cleared sufficient capacity.¹⁷⁹ As noted above, the auction for the 2025-2026 delivery year cleared enough capacity to produce a 18.6% reserve margin—0.8 percentage points higher than the target reserve margin of 17.8%.

Furthermore, in July 2025, PJM's RPM again procured sufficient capacity to meet the region's Reliability Requirement for the 2026-2027 delivery year (which will begin on June 1, 2026).¹⁸⁰ This auction again cleared at high prices and included a 2,699 MW increase in new generation and generation uprates, which reversed a three-auction downward trend in the amount of new generation and generation uprates.¹⁸¹ This demonstrates that FERC's approved mechanism for ensuring resource adequacy in PJM is working as designed to send price signals when capacity levels tighten to retain existing capacity resources and encourage the

¹⁷⁸ See Ex. 12 at 17-21.

¹⁷⁹ See PJM, 2025/2026 Base Residual Auction Report, at 3 (July 30, 2024) <https://perma.cc/88RM-8DKX>.

¹⁸⁰ See PJM, 2026/2027 Base Residual Auction Report (July 22, 2025), (available at <https://perma.cc/T8WF-DFR5>).

¹⁸¹ *Id.* at 3.

entry of new resources. Both the 2025/2026 and 2026/2027 auctions procured adequate capacity without the Eddystone Units, indicating that these units are surplus beyond what PJM proposed and FERC approved, as the level needed to maintain resource adequacy. The Current Renewal Order continues DOE's failure to mention these critical facts, which undermines its case for an emergency, and reflects arbitrary agency decision-making.

i. PJM 2023 R4 Report

Public Interest Organizations explained in the prior RFRs why the stale 2023 R4 Report does not support that there is a Section 202(c) emergency.¹⁸² Further, some of the quotes the Department relies on from the 2023 R4 Report contradict its claim that there is a Section 202(c) emergency.

As Public Interest Organizations explained in the Initial RFR, the 2023 R4 Report describes only “increasing risk of reliability risk” over a period of seven years.¹⁸³ This falls far short of an emergency within the meaning of Section 202(c), which must be imminent and certain. Moreover, the 2023 R4 Report's assessment of risk was flawed, primarily for its failure to account for the operation of PJM's capacity market in ensuring resource adequacy by assuming that capacity prices would remain at their then-recent low levels even as reserve margins shrunk. The

¹⁸² *See e.g.* Ex. 12 at 42-63.

¹⁸³ Ex. 12 at 49.

last two PJM capacity auctions, with historically high capacity prices convincing certain resources to not retire, have proven how flawed that assumption was.¹⁸⁴

The rate of new entry PJM forecasted in its 2023 R4 Report was conceptually invalid, as explained by economist James Wilson in a 2023 critique of that report, because it rested on an assumption that “capacity prices would remain at recent low levels even while reserve margins decline due to the fast pace of retirements and slow pace of new entry.”¹⁸⁵ Mr. Wilson opined that “[t]hese assumptions—a fast pace of retirements, a slow pace of new entry, low reserve margins and low capacity prices—are simply contradictory and ignore the basic market dynamic that ensures resource adequacy in the PJM region.”¹⁸⁶ Indeed, for Delivery Year 2026-27, when PJM’s report predicted reserve margins would fall to 15%,¹⁸⁷ the Base Residual Auction cleared at around a 19% reserve margin with prices at \$329 per MW-day (nearly ten times the price artificially frozen in flawed analysis in the 2023 R4 Report).¹⁸⁸ Consistent with the economic theory that higher prices attract new

¹⁸⁴ See Ex. 12 at 56-59.

¹⁸⁵ James F. Wilson, Maintaining the PJM Region’s Robust Reserve Margins, at 8 (May 2023), <https://perma.cc/7SZN-CRGY>.

¹⁸⁶ *Id.*

¹⁸⁷ See PJM, Energy Transition in PJM: Resource Retirements, Replacements & Risks 16, Table 1 (Feb. 24, 2023), <https://perma.cc/M4H6-UMKY>.

¹⁸⁸ Compare PJM, 2026/2027 Base Residual Auction Report, at 3, 5 tbl. 2, (July 22, 2025), <https://perma.cc/T8WF-DFR5>; with 2023 R4 Report at 10 (noting use throughout study period of 2023/2024 Base Residual Auction prices); see also PJM, 2023/2024 Base Residual Auction Results, at 1, <https://perma.cc/LQJ5-K5EA> (reporting prices in the unconstrained portions of PJM of approximately \$34 per megawatt-day).

entrants to the market—a dynamic ignored by PJM’s 2023 R4 Report—the Base Residual Auction for 2026-2027 cleared 2,669 MW of new generation and generation updates, which was higher than the prior auction and “reversed a three-[Base Residual Auction] downward trend in the amount of new generation and generation updates.”¹⁸⁹ This increase in prices, and the related increase in new entry, demonstrates the flaw in PJM’s 2023 R4 Report, which inexplicably ignored how its own capacity market is designed to incentivize the entry of new resources, when needed, through higher prices.¹⁹⁰

The Current Renewal Order also contradicts DOE’s claims that the situation in PJM has been unexpected by noting how “PJM has indeed voiced these concerns *for years*.”¹⁹¹ A concern that has been discussed for more than two years is not unexpected. Finally, the Current Renewal Order also contradicts its claims that the alleged emergency is imminent by explaining how the 2023 R4 Report “determined that the pace of new capacity additions ‘would be insufficient to keep up with expected retirements and demand growth *by 2030*.’”¹⁹² Simply, the stale and flawed 2023 R4 Report does not provide evidence that there is an emergency pursuant to Section 202(c).

ii. March 2025 Asthana Testimony

¹⁸⁹ PJM, 2026/2027 Base Residual Auction Report, at 3 (July 22, 2025), <https://perma.cc/T8WF-DFR5>.

¹⁹⁰ James F. Wilson, Maintaining the PJM Region’s Robust Reserve Margins, at 8 (May 2023), <https://perma.cc/7SZN-CRGY>.

¹⁹¹ Ex. 28 at 4 (emphasis added).

¹⁹² Ex. 28 at 3 (emphasis added).

As Public Interest Organizations explained in the prior RFRs, the primary focus of President Asthana’s testimony was on how PJM has been preparing to meet resource adequacy challenges that PJM forecasts may emerge later in the decade. A full review of the testimony demonstrates the inappropriateness of Section 202(c) emergency action based on resource adequacy shortfalls that may arise in future years because PJM is already taking action through the standard processes.

The fact that Mr. Asthana posited supply conditions within PJM may be tightening is not evidence that an emergency under Section 202(c) currently exists; in fact, it suggests the opposite—that the supply conditions currently meet the demand now. Mr. Asthana’s statement regarding the existing market structure’s success also points to the need to continue to let markets work as they are designed—retaining some units and encouraging new units to come online, rather than interfering through a command-and-control mandate. As explained in Section V.C, below, the Department’s misuse of its emergency authority under Section 202(c) will disrupt the competitive market processes that FERC and PJM have determined will best promote resource adequacy in the region.

iii. Resource Reliability Initiative

PJM’s statements about resource adequacy described in the December 2024 Resource Reliability Initiative (“RRI”) filing also do not support a finding of an imminent emergency. As Public Interest Organizations explained in the prior RFRs, the “possibility of a resource adequacy shortfall” identified in the RRI would

only come to pass well after the 90-day period relevant to the Initial Order.¹⁹³ This remains true—the possibility identified in the RRI still will not come to pass in the 90 days relevant to the Current Renewal Order, or even until June 2027 at the earliest based on the adequate capacity PJM has procured in its RPM.

That the RRI may not result in the addition of any new generation capacity in the next few years is of no concern. First, we repeat, PJM’s RPM procured an adequate amount of capacity to meet the region’s Reliability Requirement for the 2025-2026 and the 2026-2027 delivery years—meaning that through at least June 2027 PJM has adequate capacity without the Eddystone Units. Further, PJM explained that the RRI will bring significant amounts of capacity “to the PJM markets before 2028, when PJM anticipates the resource adequacy issues will become more severe, and in advance of the 2030/31 delivery year, when PJM anticipates demand could begin outstripping supply.”¹⁹⁴ PJM designed the RRI to address the projections it has made about potential capacity shortfalls a few years from now because there is no imminent potential shortfall. As Public Interest Organizations explained in the prior RFRs, the Department’s citation of an approved solution to a problem that would otherwise arise in several years does not constitute evidence of an imminent emergency as required for a Section 202(c) order. Finally, in approving the RRI, FERC found “that the proposal reasonably addresses the possibility of a resource adequacy shortfall driven by significant load

¹⁹³ *See e.g.* Ex. 12 at 48-49.

¹⁹⁴ 190 FERC ¶ 61,084, at P 20 (citing PJM filing at 22).

growth, premature retirements, and delayed new entry.”¹⁹⁵ The Department offers nothing to call into question FERC’s conclusion.

Further, PJM staff Donald Bielak’s December 2024 affidavit characterizing rapid forecasted load growth in the PJM region in part convinced FERC to adopt the changes advocated by PJM, which PJM announced last spring would bring more than 9 GW of new capacity to PJM’s system around the end of the decade.¹⁹⁶ The facts that Mr. Bielak’s testimony depended upon have materially changed, which the Current Renewal Order fails to address.

iv. *NERC 2025 Long-Term Reliability Assessment*

DOE seeks to bolster the outdated and superseded references it cited in prior orders to support its assertion of long-term resource adequacy problems in PJM¹⁹⁷ by referring to the North American Electric Reliability Corporation (NERC) 2025 Long-Term Reliability Assessment (LTRA), released in January 2026. DOE asserts that “NERC observes that the PJM region is at high risk of energy shortfalls over the next five years.”¹⁹⁸ DOE’s reliance on the NERC LTRA is misguided for two reasons: (1) DOE fails to accurately state NERC’s LTRA findings regarding PJM; (2) DOE fails to address the limitations of NERC’s analysis, which NERC admits

¹⁹⁵ 190 FERC ¶ 61,084, at P 14.

¹⁹⁶ PJM Chooses 51 Generation Resource Projects To Address Near-Term Electricity Demand Growth, PJM Inside Lines (May 2, 2025), <https://perma.cc/9R8U-9EN9>.

¹⁹⁷ PIOs have explained why DOE’s reliance on various reports and assertions by PJM from 2023 through 2024 do not support DOE’s present assertions of an emergency in prior Requests for Rehearing, and in Section V.B.2, *supra*.

¹⁹⁸ Current Renewal Order at 6.

excludes resources likely to enter service and ignores other recent regulatory developments.

First, DOE's summary of NERC's findings obscures critical detail in NERC's assessment, which clearly states its finding that the "anticipated resource margin [for PJM] falls below the Reference Margin Level starting in 2029."¹⁹⁹ Until then, NERC assesses the region is under only Elevated Risk, which means that it meets established resource adequacy targets, but not "more stringent thresholds of unserved energy and load loss that provide for reliability in more extreme weather conditions."²⁰⁰ In other words, Elevated Risk regions meet all regulatory and system operator requirements for resource adequacy. NERC also explains that "[r]ecently approved new generation projects for expedited interconnection under the PJM Reliability Resource Initiative were not far enough along to include in the LTRA risk analysis."²⁰¹ In other words, NERC is forthcoming that its analysis does not include other planned resource additions in the PJM region that could ameliorate the reserve margin shortfall this analysis anticipates.²⁰² NERC also explains that PJM has "prepared [a] revised load forecast[] since the 2025 LTRA data collection period that, due to timing, is not used in this LTRA;" and that this revised forecast "indicate[s] that some large-load projects have slowed or failed to

¹⁹⁹ NERC 2025 LTRA at 8, https://www.nerc.com/globalassets/our-work/assessments/nerc_ltra_2025.pdf (emphasis added).

²⁰⁰ *Id.* at 13.

²⁰¹ *Id.* at 8.

²⁰² *See also id.* at 5 (noting that NERC's analysis is based on information supplied in July 2025)

materialize within the shorter-term horizon, while interconnection requests for later years continue to increase.” *Id.* at 9.²⁰³ Thus, NERC recognizes that its 2025 LTRA both undercounts new generation additions and overcounts new load additions.

NERC’s finding that PJM falls into the high-risk category beginning in 2029 reflects assumptions that demand forecasts will continue to climb at currently projected rates, generators with planned retirement dates do not delay those deactivations, and that commercial operation dates for resources being developed to meet demand towards the end of the decade are not quite as certain as those projected to come online in the next year or two.²⁰⁴ All of these conditions could change, and indeed relevant regulatory authorities, generation developers, and PJM itself are working to mitigate the problems as described in Section V.B.3.c, below. NERC officials have cautioned against over-interpretation or reliance upon the LTRA findings based on the analytical limitations of that assessment. On February 12, NERC’s Director of Reliability Assessment and System Analysis, John Moura, emphasized the report is “not a prediction of outages [or] a forecast of impending blackouts.”²⁰⁵ Instead, the NERC LTRA is intended to provide information about

²⁰³ *See also id.* (“Load forecasts that are revised downward can shrink the energy shortfalls that are projected in this LTRA.”)

²⁰⁴ *See* LTRA at 17.

²⁰⁵ RTO Insider, NERC Staff Outline Growing LTRA Challenges, <https://www.rtoinsider.com/125865-nerc-staff-outline-growing-ltra-challenges/> (published Feb. 16, 2026). *See also* Amanda Durish Cook, NERC to OMS: Long-Term Assessment Not a Predictor of Risk, RTO Insider (Feb. 10, 2026), <https://www.rtoinsider.com/125429-nerc-oms-long-term-assessment-not-predictor->

long-term risks along with recommendations to ameliorate the risks described, which included suggestions for state regulators and regional transmission organizations to address resource retirements, but notably, no similar recommendation for Section 202(c) to be employed. Thus, it is arbitrary for DOE to rely upon the NERC LTRA's identification of risks that are three years away to declare an emergency sufficient to trigger its authority under Section 202(c).

While the limitations of NERC's analysis are in many cases apparent on the face of the LTRA itself, there are further reasons to be skeptical of NERC's conclusions regarding PJM's reliability state in 2029. The consulting firm Grid Strategies LLC recently published an analysis of the NERC 2025 LTRA, which describes several overly conservative assumptions that worsen the apparent resource adequacy outlook in PJM among other regions.²⁰⁶ Grid Strategies compares NERC's input data and assumptions to other sources, and finds that NERC overstates the severity of risk. They find that NERC underestimates likely-to-connect power resources by only considering new resources with executed interconnection agreements. Grid Strategies corrected for this assumption by using "historic region-specific and phase-specific withdrawal rates" to interconnection queue data compiled by DOE's Lawrence Berkeley National Lab, "to estimate how

[risk/](#) (quoting NERC Chief Executive Officer James Robb at February 9, 2026 board meeting of OMS); NERC 2025 LTRA at 15 (noting that the report is merely a "point-in-time snapshot of risk based on the data available during the time of this year's analysis.").

²⁰⁶ Adria E. Brooks, Michael Goggin, John D. Wilson, Grid Strategies LLC, Review of NERC's 2025 Long-Term Reliability Assessment (Mar. 5, 2026), <https://gridstrategiesllc.com/review-of-nercs-2025-ltra/> (Attached as Exhibit 29).

much may connect to the grid by 2030.” *Id.* at 10-12. “Power resources in advanced development stages are projected to provide enough capacity to resolve the majority of shortfalls identified in the LTRA.” *Id.* at 4. They also conclude that NERC underestimates imports from one region to another by looking only at firm interregional capacity transfers, and ignoring that “[a]t levels seen historically during extreme events, [non-firm transfers] are sufficient to further alleviate resource inadequacy.” *Id.* at 4, 15-16. Finally, they note that the LTRA may overstate load growth because NERC merely rolled up utility data that does not necessarily consider supply chain barriers and financial constraints on development of new data centers, as well as commercial and regulatory trends toward data center flexibility, including through the use of on-site generation and batteries. This is in addition to the report’s not including PJM’s revised load forecast described above. Grid Strategies finds that “[c]onsideration of these potential reductions in data center load growth enables all regions to meet their 2030 peak summer load and reserve needs.” *Id.* at 24.

b. Possible load growth in the next five years does not constitute a near-term emergency

Yet again, the Department’s July 2025 RAR’s discussion of long-term load growth does not constitute a near-term emergency. The RAR explains “[a]bsent decisive intervention, the Nation’s power grid will be unable to meet projected demand for manufacturing, re-industrialization, and data centers driving artificial

intelligence (AI) innovation.”²⁰⁷ According to the Order, recent investor updates by major PJM utilities and the Department’s own findings in the RAR that projected load growth, along with 17,000 MW of modeled thermal resource retirements, are projected to result in “approximately 430.3 loss of load hours in an average weather year,” and under the worst weather year assumptions, an estimated “1,052 loss of load hours and a max unserved load hours of approximately 21.335 GW.”²⁰⁸ However, the Current Renewal Order’s discussion regarding load growth is irrelevant and unsubstantiated for three reasons.

First, the Current Renewal Order does not state that any of this unexpected load growth or projected loss of load will occur during the 90-day period of the Current Renewal Order—its analysis is specifically about what might happen by 2030. Section 202(c) does not give DOE the authority to retain generation units for possible conditions that might arise in five years.²⁰⁹ Authority to address longer-term threats to resource adequacy rests with FERC and states—all of whom are intensely focused on these issues and working productively with PJM to resolve them.²¹⁰ This includes not only working to accelerate interconnection and otherwise

²⁰⁷ Ex. 17 at 1.

²⁰⁸ *Id.* Ex. 17- at 27-28.

²⁰⁹ *See supra*, Section V.A.

²¹⁰ *See, e.g.*, Meeting the Challenge of Resource Adequacy in RTO/ISO Regions, FERC Docket No. AD25-7-000 (Feb. 20, 2025) <https://www.ferc.gov/media/notice-ad25-7-000-tech-conf> (notice of two-day technical conference followed by voluminous public comments); New Jersey Board of Public Utilities, Notice of Technical Conference on Resource Adequacy (July 31, 2025) <https://www.nj.gov/bpu/newsroom/2025/approved/202507731.html>; Notice of Multi-

expedite new entry, but also to impose reasonable constraints on the load growth associated with data centers, in order to protect consumers.

Second, while the Current Renewal Order recites the RAR's estimates of loss of load hours and quantities for PJM under specific circumstances, it omits the Department's own acknowledgement in that same report that grid operators won't shed load under these circumstances. The RAR states that its analysis "is not an indication that reliability coordinators would allow this level of load growth to jeopardize the reliability of the system."²¹¹ Its numbers are, rather, "indicators to determine where it may be beneficial to encourage increased generation and transmission capacity to meet an expected need."²¹² The benefits of encouraging increased generation to meet projected future needs do not justify invocation of the Department's emergency powers under Section 202(c). And the Department's mandates to maintain old resources under Section 202(c) are likely to interfere with rather than encourage new generation by muddying market signals and congesting transmission access.²¹³

Third, the RAR's projections of loss of load in PJM in 2030 reflect inaccurate or unrealistic assumptions, such as unreasonably high resource retirement forecasts and unreasonably low rates of new entry of generation resources. Public Interest

State Technical Conference, In the Matter of State Participation in PJM Interconnection and Governance Reform, <https://perma.cc/3WXM-W655>.

²¹¹ Ex. 17 at 7.

²¹² *Id.*

²¹³ *See infra*, Section V.C.

Organizations detailed these shortcomings in a Request for Rehearing of the RAR, filed with the Department on August 6, 2025.²¹⁴ In brief, the RAR acknowledges that its own resource adequacy analysis “could benefit greatly from the in-depth engineering assessments which occur at the regional and utility level.”²¹⁵ DOE further explains that “[h]istorically, the nation’s power system planners would have shared electric reliability information with DOE through mechanisms such as EIA-411, which has been discontinued.”²¹⁶ These analytical and informational gaps, along with an apparent lack of internal peer review, raises fundamental questions about the extent to which any result or conclusion in the RAR can be relied upon. As experts from GridLab and NYU’s Institute for Policy Integrity have highlighted,²¹⁷ DOE’s resource retirement forecasts are inconsistent with and exceed their own long-standing and heavily vetted data sources, and ignore recent economic trends that would tend to defer the retirement of existing resources. Put simply, it is illogical to assume that generation resource retirement decisions projected in one regulatory and economic environment will occur in a radically different environment where demand for generation is high and regulatory burdens are low.

The RAR exacerbates this problem by underestimating the amount of new resource entry. The RAR assumes that “only [generation] projects that are very

²¹⁴ Ex. 6.

²¹⁵ Ex. 17 at i.

²¹⁶ *Id.*

²¹⁷ *See* Ex. 12 and Ex. 17.

mature in the pipeline (such as those with a signed interconnection agreement) will be built” by 2030.²¹⁸ DOE constrains the RAR’s analysis to include only projects designated as Tier 1 in the NERC 2024 Long Term Resource Assessment. Because Tier 1 includes only resources that are already under construction, have signed construction service agreements, or have similar characteristics,²¹⁹ this assumption “results in minimal capacity additions beyond 2026.”²²⁰ As experts at GridLab observe, the assumption that “no projects are built post 2026, [] is not realistic for a report forecasting to 2030.”²²¹ This is especially true given rising energy prices due to increased demand, which is attracting more investment to the market and driving new construction of generation resources. Researchers at Institute for Policy Integrity concluded that DOE departed from best practice in declining to include any resources classified by NERC as “Tier 2” resources in the overall resource adequacy analysis for 2030, even those at advanced stages of the interconnection process.²²²

c. DOE ignores recent developments that reduce long-term reliability risks

Just as DOE has failed to acknowledge the RRI and other significant steps PJM has taken to address barriers to new entry when citing the outdated Bielak testimony, it fails to address how those resources bear on NERC’s findings

²¹⁸ Ex. 17 at 12.

²¹⁹ See Ex. 17 at n.155 (citing NERC 2024 LTRA).

²²⁰ Ex. 17 at A-5.

²²¹ Ex. 12 at 3.

²²² See Ex. 17 at 23.

regarding problems that might begin in 2029. DOE does not even attempt to address—despite the issue arising in numerous requests for rehearing of prior Eddystone orders—why it is justified in completely ignoring the steps that other relevant regulatory authorities (including state public utility commissions and FERC) and entities responsible for reliability (PJM) are taking to address the potential problems that could arise toward the end of the decade. In just the two months preceding the issuance of the Current Renewal Order, PJM took the following actions to ameliorate potential resource adequacy problems anticipated toward the end of the decade:

- On January 14, PJM issued an updated long-term load forecast that is lower in the near-term than its 2025 long-term load forecast.²²³ The updated forecast shows 2027 summer peak loads that are 2.3% lower than forecasted in 2025, and winter peak loads that are 2.8% lower. The reductions are similar for 2028 and 2029. A significant contributor to the decline is that PJM adopted more realistic assumptions around additions of large loads such as data centers, to exclude loads from the forecast that do not yet have firm commitments to begin operation. *Id.*
- On January 16, the PJM Board of Managers issued a plan to address reliability impacts of load growth from large loads.²²⁴ The plan calls for further improvements to load forecasting processes to ensure that speculative large load additions are excluded from the forecast, ensuring the PJM's capacity auctions and resource adequacy assessments reflect only realistic load growth rather than inflated estimates. *Id.* at 2-3 & Appendix B. It also states that PJM will

²²³ PJM Inside Lines, PJM's Updated 20-Year Forecast Continues To See Significant Long-Term Load Growth Demand for Near-Term Years Adjusted Slightly Downward (Jan. 14, 2026), <https://insidelines.pjm.com/pjms-updated-20-year-forecast-continues-to-see-significant-long-term-load-growth/>.

²²⁴ PJM, Board Decisional Letter on Critical Issue Fast Path – Large Load Additions (Jan. 16, 2026), <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2026/20260116-pjm-board-letter-re-results-of-the-cifp-process-large-load-additions.pdf>.

immediately initiate a reliability backstop procurement to ensure that adequate capacity is procured for future delivery years. *Id.* at 5-6.

PJM states are also taking significant actions to address resource adequacy tightness caused by data center load growth, by imposing financial requirements to deter speculative projects and requiring data center developers to procure generation or energy storage to meet their own demand. For example, in October 2025, American Electric Power Ohio (“AEP Ohio”) announced a more than 50% reduction in its projected data center demand – reducing its forecasts from 30 GW to 13 GW.²²⁵ This reduction followed approval by the Ohio Public Utilities Commission of a tariff that imposes stringent financial commitments on data center developers. AEP Ohio anticipates that the current “number may reduce further—and become more accurate—as AEP Ohio continues the data center tariff process by presenting binding contracts for data centers to sign.”²²⁶

In November 2025, Virginia state regulators also approved a new rate class for large load customers—one that will require such customers to agree to pay for a specific level of energy costs for 14 years, even if the project isn’t developed, among other requirements to ensure that data centers don’t shift costs to others on the

²²⁵ Zachary Skidmore, AEP Ohio slashes data center pipeline by more than half – report (October 1, 2025), Data Center Dynamics, <https://www.datacenterdynamics.com/en/news/aep-ohio-slashes-data-center-pipeline-by-more-than-half-report/>.

²²⁶ *Id.*

system.²²⁷ Given that Dominion Energy in Virginia is an epicenter of data center development in PJM, any reductions in speculative projects currently included in PJM's load forecast could be significant. Illinois Governor Pritzker has proposed suspending the state's tax incentives for data centers for two years, and legislation introduced in the state legislature would effectively require new data centers to self-supply 80% of their own demand.²²⁸ These state actions, which are spreading throughout the PJM region, will help to address the longer-term risks upon which DOE unlawfully relies to support the Current Renewal Order.

Finally and perhaps most consequentially for purposes of understanding data center load growth, on October 23, 2025 the Department directed FERC to initiate a rulemaking concerning interconnection for data centers and other large loads.²²⁹ In that letter, the Department proposes that a FERC-jurisdictional load interconnection process should (1) subject entrants to study deposits and withdrawal penalties to deter speculative projects; (2) provide incentives for co-

²²⁷ Zachary Skidmore, Virginia regulators approve new rate class for data centers and other large loads (Nov. 27, 2025), Data Center Dynamics, <https://www.datacenterdynamics.com/en/news/virginia-regulators-approve-new-rate-class-for-data-centers-and-other-large-loads/>.

²²⁸ Nick Robins-Early, Illinois Governor Proposes Cancelling Tax Breaks for Data Centers (Feb. 18, 2026), <https://www.theguardian.com/technology/2026/feb/18/illinois-pritzker-tax-breaks-data-centers>; Kari Lydersen, Illinois to data centers: Bring your own renewables and skip the line (Mar. 12, 2026), <https://www.canarymedia.com/articles/data-centers/illinois-to-data-centers-byo-renewables>.

²²⁹ Department of Energy, 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 (October 23, 2025), <https://perma.cc/EN6M-D9CK>.

location of large loads with new generation facilities; and (3) expedite the interconnection of large loads that agree to be curtailable.²³⁰ The Department has requested that FERC take final action in response to its letter by April 2026. *Id.* at 2. A well-managed, centralized load interconnection queue that deters speculative and redundant projects, while incentivizing data center curtailment and simultaneous construction of generation, has the potential to significantly reduce the need for additional electric supply.

FERC has acted ahead of DOE's deadline to address key components of DOE's proposal for the PJM region. On December 18, FERC issued a significant order under Federal Power Act section 206 directing PJM to file tariff revisions creating non-firm transmission service offerings for large loads that co-locate with existing or new generation.²³¹ FERC also directed PJM to file within 30 days changes to its rules for generator interconnection to allow new generation co-located with load to seek authorization to inject to the grid only a portion of its output, reserving the rest for onsite load.²³² Such a pathway will significantly expedite the interconnection of new generation in PJM, because the cost and delays associated with transmission network upgrades needed to accommodate a large generator's full output are among the most significant barriers to entry for new resources.²³³

²³⁰ *Id.* at 11-12.

²³¹ *PJM Interconnection, LLC*, 193 FERC ¶ 61,217 ¶¶ 175-180, 200-220 (Dec. 18, 2025).

²³² *Id.* ¶¶ 231-236.

²³³ *Id.*; *see also* Comm'r Rosner, concurring, at ¶ 8.

FERC's action in this proceeding, approved unanimously by all five commissioners, imposes tight deadlines on PJM to issue two new transmission services, an interim service, and new interconnection rules to address the needs of new large loads. Together, these reforms will lower barriers for new generation co-located with large load to come online and reduce the burdens of such large loads at times the grid is stressed. These rules will considerably incentivize and speed new generation and transmission upgrades while reducing the impact of those new large loads on PJM's load forecast—thus improving grid reliability and lowering the need for additional generation in the region.

While it is too early to tell the results and impacts of DOE's broader proposed rulemaking, the exercise of DOE's authority under Section 403 of the Federal Power Act and FERC's preliminary actions in furtherance of that request represent appropriate steps by both agencies to address the potential data center load growth issues foreseen in the PJM region. The Department should rely upon such steps that support, rather than interfere with, the actions of other federal and state regulators that have the lawful authority, and are better equipped, to address longer-term resource adequacy needs.

The Current Renewal Order fundamentally errs in relying upon potential data center load growth in the PJM region over the next five years to justify invoking emergency powers that Congress intended for imminent energy shortfalls. Even if such longer-term circumstances could justify a Section 202(c) order, the Department's tenuous claim of longer-term shortfalls relies upon the NERC 2025

LTRA, which acknowledges that the ability of the grid to accommodate data center load growth does not implicate reliability but instead the growth of this new economic sector. Furthermore, the Department's assessment of long-term risks fails to acknowledge recent trends that will reduce the load growth forecasts it relies upon to assert an emergency.

C. The Current Renewal Order Will Undermine Competitive Markets to the Detriment of Consumers and Reliability

When viewed together with the Energy Emergency EO,²³⁴ Grid EO, and the Department's nearly identical 202(c) orders regarding the Campbell coal plant,²³⁵ the Department advances an unlawful command-and-control energy policy that effectively overrides the capacity and energy markets to force a private entity to continue operating an uneconomic unit they wished to decommission and for ratepayers to pick up the tab. Congress delegated to FERC the authority to regulate wholesale energy markets and interstate transmission and granted the Department only a narrow, backstop authority through Section 202(c).²³⁶ If left to stand, the Department's overbroad Current Renewal Order will continue to erode

²³⁴ Exec. Order No. 14,156 Declaring a National Energy Emergency, 90 Fed. Reg. 8,433 (Jan, 20, 2025).

²³⁵ Ex. 12 at 1-2, DOE Order No. 202-25-3 (May 23, 2025) (directing dispatch of the Campbell plant, which was scheduled to cease operations the following week); Ex. 17, DOE Order No. 202-25-7 (Aug. 20, 2025); Ex. 6, DOE Order No. 202-25-3B (Sept. 8, 2025).

²³⁶ 16 U.S.C. § 824a(c).

competitive energy markets, leading to a system that will deliver less reliability to consumers at greater cost.²³⁷

1. Competitive Markets Have a Long History of Success.

Congress has consistently acted to foster the development of competitive wholesale energy markets. The Energy Policy Act of 1992 encouraged FERC to enable such competition through open access to transmission facilities.²³⁸ The Energy Policy Act of 2005 directed FERC to develop numerous rules to facilitate competition, including through the development of reliability standards and electricity market transparency rules, and established an interagency task force to evaluate competition in wholesale energy markets.²³⁹ As DOE has recognized elsewhere, these laws “reaffirmed the Government’s commitment to competition in wholesale energy markets as national policy.”²⁴⁰

For nearly a century, FERC’s core responsibility under the Federal Power Act has been to ensure that rates, terms, and conditions employed by utilities for wholesale energy sales and transmission are just, reasonable, and not unduly discriminatory.²⁴¹ While the initial utility structure was vertically integrated such that generation, transmission, and distribution resources were all held by the same

²³⁷ See, e.g., Michael Giberson, *DOE “Zombies” Are Eating Competitive Power Markets*, R Street Institute (Nov. 13, 2025), <https://perma.cc/6SEE-RM6P>.

²³⁸ Pub. L. No. 102-486; see 16 U.S.C § 824j(a).

²³⁹ Pub. L. No. 109-58.

²⁴⁰ U.S. Dep’t of Energy, Order Authorizing Electricity Exports to Canada, Order No. EA-479-A, at 7 (Jul. 11, 2025), <https://perma.cc/V69W-SNS3>.

²⁴¹ 16 U.S.C. § 824d (“Section 205”).

entity, advances in technology and statutory changes led to the development of energy markets and merchant generation.²⁴² Further regulation by FERC in the 1990s with Order Nos. 888, 890, and 2000 fostered the establishment of several independently operated RTOs, which set up competitive markets that determine the prices for energy, capacity, and ancillary services based on procurement and dispatch of least-cost resources.²⁴³ As RTO markets expanded, many states deregulated their utility monopolies and required them to join RTOs. Generating resources in competitive RTOs are built and retired by private investors in response to market price signals designed to encourage new investment when supply is tight and to encourage the retirement of facilities that are no longer competitive when capacity is plentiful. RTOs now account for approximately 2/3 of all electricity sales in the United States and have saved consumers billions of dollars, increased reliability, and reduced environmental harm.²⁴⁴

²⁴² See, e.g., *Order Terminating Rulemaking Proceeding, Initiating New Proceeding, And Establishing Additional Procedures*, 162 FERC ¶ 61,012, PP 7-11 (2018); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,639-31,645 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²⁴³ Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 638-41 (1996), Order No. 890, FERC Stats. & Regs. ¶ 31,241, at 124-352 (1997), Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 99-130 (1999).

²⁴⁴ See, e.g., Judy Chang et al., *The Brattle Group, Potential Benefits of a Regional Wholesale Power Market to North Carolina's Electricity Customers*, 1, 3-7 (April 2019), <https://perma.cc/AYY7-YW9U> (discussing billions of dollars in

As explained by FERC, its “support of competitive wholesale electricity markets has been grounded in the substantial and well-documented economic benefits that these markets provide to consumers.”²⁴⁵ In addition to billions of dollars of consumer savings, FERC found that competitive markets protect consumers by “providing more supply options, encouraging new entry and innovation, spurring deployment of new technologies, promoting demand response and energy efficiency, improving operating performance, exerting downward pressure on costs, and shifting risk away from consumers.”²⁴⁶

As part of its role in regulating markets, FERC has implemented Congressional mandates to ensure system reliability, including working with NERC to set industry standards for grid reliability;²⁴⁷ coordination requirements for the natural gas and electricity market scheduling;²⁴⁸ investigation and improvements

estimated cost saving); Jennifer Chen & Devin Hartman, *Why wholesale market benefits are not always apparent in customer bills*, R Street (Nov. 10, 2021), <https://perma.cc/UC58-4F83> (same); Jeff St. John, *A Western US energy market would boost clean energy. Will it happen?*, Canary Media (Jun. 10, 2024), <https://perma.cc/5DRY-FJJM>; John Tsoukalis et al., *Assessment of Potential Market Reforms for South Carolina’s Electricity Sector*, at 6, 46, 77-78 (Apr. 27, 2019), <https://perma.cc/3MUZ-ZNU7> (discussing cost savings across regional wholesale markets).

²⁴⁵ Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012, P 11 (2018).

²⁴⁶ *Id.* (citation omitted).

²⁴⁷ PJM, NERC and Reliability (Jan. 5, 2025), <https://perma.cc/6D5J-ENSY>. *See also* PJM, PJM Ensures a Reliable Grid (Jan. 29, 2025), <https://perma.cc/4BKX-9G45>.

²⁴⁸ PJM, PJM Promotes Gas/Electricity Industry Coordination (Jan. 29, 2025), <https://perma.cc/6CCX-LMDS>. *See also*, Order 787, 145 FERC ¶ 61,134 (2013); Order 809, 151 FERC ¶ 61,049 (2015).

required in light of the grid's response to extreme weather events;²⁴⁹ and reviewing capacity accreditation processes to ensure that capacity markets generate reliable results.²⁵⁰

2. Command and Control Orders Run Counter to Federal Power Act Requirements and Fundamental Market Principles.

Despite the decades of evidence that competitive energy markets deliver reliable energy at least cost to consumers, as well as the extensive and constant oversight of these markets by FERC, the Current Renewal Order operates under the implicit assumption that capacity market results are not reliable, and that market-driven generator retirement is cause for alarm. This is not the first time this President has sought to require preferential treatment for retiring resources he preferred for grid reliability.²⁵¹ When the Department proposed to have a rule that

²⁴⁹ See, e.g., *Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators*, 149 FERC ¶ 61,145 (2014) (order addressing technical conferences on, among other things, the 2014 Polar Vortex); *Order Approving Extreme Cold Weather Reliability Standards EOP-011-3 and EOP-012-1 and Directing Modification of Reliability Standard EOP-012-1*, 182 FERC ¶ 61,094 (2023); *Order Approving Extreme Cold Weather Reliability Standard EOP-012-2 and Directing Modification*, 187 FERC ¶ 61,204 (2024). See also, FERC, NERC and Regional Staff, *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott* (Oct. 2023), <https://perma.cc/U6NG-GDAY>; FERC, NERC and Regional Staff, *The February 2021 Cold Weather Outages in Texas and the South Central United States* (Nov. 2021), <https://perma.cc/7RAG-4VKQ>; PJM, *Winter Storm Elliott Event Analysis and Recommendation Report* (2023), <https://perma.cc/TM8M-Y3UL>.

²⁵⁰ *Id.*; see also *Order Accepting Tariff Revisions Subject to Condition*, 186 FERC ¶ 61,080 (2024).

²⁵¹ See, e.g., Casey Roberts, *FERC Rejects DOE's Dangerous Proposal to Shield Coal and Nuclear From Clean Energy Competition*, Sierra Club (Jan. 9, 2018), <https://perma.cc/XY8A-4N5X>.

would require tariff provisions designed to prevent the retirement of preferred resources, FERC rejected the proposal unanimously.²⁵² FERC found that the allegations that potential retirements of particular resources would lead to grid reliability problems did not demonstrate that existing rules were unjust and unreasonable.²⁵³ Nor was there evidence from the RTOs that any particular generator retirement would be a threat to grid resilience.²⁵⁴ Moreover, FERC found that the proposal to pay cost-of-service rates for only certain types of resources “regardless of need or cost to the system” would not be just and reasonable, or not unduly discriminatory.²⁵⁵

Similar to this prior effort, the Current Renewal Order proposes to force the Eddystone Units to run regardless of need or cost to the system. The Current Renewal Order demands that PJM “take every step to employ economic dispatch,” which it fails to define.²⁵⁶ As discussed in Public Interest Organization’s Initial RFR,²⁵⁷ PJM dispatches generators based on the lowest marginal price, respecting transmission constraints. The low historic utilization of Eddystone reflects that its costs to operate are so much higher than alternative resources that it isn’t being dispatched enough of the time—even during times of peak load—to warrant keeping

²⁵² Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012 (2018).

²⁵³ *Id.* at PP 15-16.

²⁵⁴ *Id.*

²⁵⁵ *Id.* at P 16.

²⁵⁶ Ex. 28 at 8.

²⁵⁷ Ex. 12, section IV.

the unit online.²⁵⁸ Constellation was well aware of PJM's load forecasts and the related high capacity prices when it opted to retire the Eddystone Units. This indicates that Constellation either didn't see Eddystone becoming economic even in future scenarios and/or that it felt it could make more money by retiring the Eddystone Units and investing in other options that offered the ability to dispatch more frequently and earn a greater return on investment. Moreover, Constellation had a year and a half between announcing the planned retirement of Eddystone and the planned retirement date to change its mind. The fact that Constellation remained committed to retiring Eddystone regardless of the increasing capacity prices over that time is even stronger evidence of Constellation's conclusion that keeping Eddystone online would not be worth it. By forcing Eddystone to stay on the system despite this, the Department will raise prices for consumers by forcing them to pay for a resource that is unnecessary to meet PJM's Reliability Requirement for the current delivery year. Keeping Eddystone online also forces Constellation to continue to invest its money in an aging and expensive unit instead of investing in newer, more profitable units.

Should the Current Renewal Order continue to be extended, as the Department suggests it will be, the consequences will become further reaching. Mandating that Eddystone remain online over a longer timeline forces PJM and Constellation to tie up the transmission capacity rights owned by the Eddystone Units that could otherwise be repurposed by Constellation for a new unit at the

²⁵⁸ *See supra*, Section IV.A.

Eddystone site or put back into the system for allotment to new, cheaper, more efficient and reliable resources waiting in PJM’s infamously years-delayed interconnection queue.²⁵⁹ In other words, the Order forces Constellation to tie up an incredibly valuable transmission resource by maintaining that transmission headroom for a resource that is no longer useful and is unlikely to actually need to be used. As such, this decision is the very opposite of the bedrock principle of utility law that asset expenditures must be used and useful.²⁶⁰ Moreover, it defeats the Administration’s alleged concern that there are more retirements than new resources coming on the system.²⁶¹ As mentioned above, PJM has instituted new procedures for allowing resources needed for reliability to advance to the front of the interconnection queue. By tying up transmission capacity at the Eddystone Units, it also prevents new, more affordable and reliable resources already waiting to replace it from doing so.

Finally, the longer-term impacts of the Department’s strategy send signals that will disrupt market stability. Markets ultimately still depend on private

²⁵⁹ Joseph Rand et. al., *Queued Up: 2024 Edition*, *Lawrence Berkeley National Laboratory* (April 2024) at 35, <https://perma.cc/HF35-YM67> (showing that PJM has the longest queue processing timelines in the U.S.); Synapse Energy Economics, Inc., Sabine Chavin et al., *Tackling the PJM Electricity Cost Crisis* (Apr. 2025), <https://perma.cc/BUE5-BUR6>; Grid Strategies, *Generator Interconnection Scorecard* (Feb. 2024) <https://perma.cc/DTZ3-UJEK> (scoring PJM’s overall interconnection a D-).

²⁶⁰ *See* FERC, *Energy Primer*, at 55 (2024), <https://perma.cc/UBX2-HUD2>; Jim Lazar, *Electricity Regulation in the US: A Guide*, Second Edition, at 91 (2016), <https://perma.cc/X5RW-PDPX>.

²⁶¹ Ex. 28 at 1.

investors, who will be less likely to invest billions of dollars in an energy system run according to personal whim rather than on market forces. The need for market stability across administrations and department heads is why Congress deliberately placed the authority for utility regulation—a matter so fundamentally central to the entire economy and well-being of the nation—in the hands of independent regulators with specialized expertise and only allowed the Department to intervene in true emergencies.²⁶² As noted by former FERC Commissioner Brownell, to do otherwise would “have a chilling effect on markets because investors will be unlikely to risk hundreds of billions of dollars on investments regulated by politically influenced non-transparent decisions.”²⁶³ In usurping the role of FERC and RTO markets to regulate the energy markets so that the Department can prioritize resources it favors and thwart the development of those it dislikes, the ultimate message is for private investors not to invest.

²⁶² See generally, Patrick M. Corrigan & Richard L. Revesz, *The Genesis of Independent Agencies*, 92 N.Y.U. L. Rev. 637 (2017).

²⁶³ Herman K. Trabish, *Trump executive order threatens transmission, interconnection initiatives: former FERC commissioners*, Utility Dive (Mar. 26, 2025), <https://perma.cc/ZEF4-38EE>. See also Oskar Dye-Furstenberg, *The Hollow Energy Agenda of Trump’s First Four Months*, Roosevelt Institute (May 29, 2025), <https://perma.cc/VN4W-LRXE>.

D. The Terms of the Current Renewal Order Do Not Best Meet the Claimed Emergency or Serve the Public Interest

1. Section 202(c)(1) Only Authorizes the Department to Require Generation that Best Meets the Emergency and Serves the Public Interest.

Even if there were a Section 202(c) emergency, Section 202(c)(1) requires the Department only impose requirements that (i) “best” (ii) “meet the emergency and” (iii) “serve the public interest.”²⁶⁴ The Department therefore must consider alternatives and choose the alternative that is most advantageous to meeting the emergency and serving the public interest as defined by the Federal Power Act.

The term “best” demands a comparative judgment that there are no better alternatives. The word “best” is inherently a comparative term and means “that which is ‘most advantageous.’”²⁶⁵ Consequently, the Department must, at minimum, consider alternatives and evaluate whether and to what extent a given alternative addresses the alleged emergency and serves the public interest, including deficiencies associated with each option.

Moreover, the Department must consider alternatives as part of exercising reasoned decision-making. It need not consider every conceivable alternative, but it

²⁶⁴ 16 U.S.C. § 824a(c)(1).

²⁶⁵ *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 218 (2009) (quoting Webster’s New International Dictionary 258 (2d ed.1953)); *cf. Sierra Club v. Env’t. Prot. Agency*, 353 F.3d 976, 980, 983–84 (D.C. Cir. 2004) (explaining that statutory “best available control technology” requirement demands sources in a category clean up emissions to the level that peers have shown can be achieved).

must consider alternatives within the ambit of the existing policy as well as alternatives which are significant and viable or obvious.²⁶⁶

Public Interest Organizations introduced several alternatives in their prior RFRs,²⁶⁷ and the Department had no excuse not to address these alternatives in its Current Renewal Order.²⁶⁸ The Department has had ample time to consider alternatives in the months since it issued the Initial Order. There was no period of mere hours that would have permitted a more abbreviated consideration of alternatives.²⁶⁹ The Department in fact suggested in the Initial Order that it planned to “further evaluate” Eddystone.²⁷⁰ But the Current Renewal Order provides no evidence that any such analysis or evaluation of any additional alternatives was conducted since issuance of the Initial Order.

Moreover, some alternatives that the Department could have considered are listed in the Department’s own regulations and past orders. The regulations specify

²⁶⁶ See *Dep’t of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 30 (2020) (failure to consider alternative was arbitrary and capricious); *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983) (must consider alternatives “within the ambit of the existing standard”); *Nat’l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013) (“agency must consider and explain its rejection of reasonably obvious alternatives” (cleaned up)).

²⁶⁷ See e.g. Ex. 12 at 74-76.

²⁶⁸ See, e.g., *Chamber of Com. of the U.S. v. Secs. & Exch. Comm’n*, 412 F.3d 133, 144 (D.C. Cir. 2005) (holding that agency’s failure to consider the disclosure alternative raised by dissenting Commissioners and introduced by commenters violated the Administrative Procedure Act); cf. 10 C.F.R. § 205.370 (stating the Department’s right “to cancel, modify, or otherwise change” an order).

²⁶⁹ 16 U.S.C. § 824a(c) (directing the Department to exercise its judgment).

²⁷⁰ Ex. 6 at 2.

information the Department shall consider in deciding to issue an order under Section 202(c), and require an applicant for a 202(c) order to provide the information.²⁷¹ The specified information includes “conservation or load reduction actions,” “efforts . . . to obtain additional power through voluntary means,”²⁷² and “available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions.”²⁷³

The statutory command to take only measures that serve the public interest further constrains the Department’s authority. The public interest element demands that the Department advance, or at least consider, the various policies of the Federal Power Act.²⁷⁴ Primary policies of the Federal Power Act include protecting consumers against excessive prices; maintaining competition to the maximum extent possible consistent with the public interest; and encouraging the orderly development of plentiful supplies of electricity at reasonable prices.²⁷⁵ And

²⁷¹ 10 C.F.R. § 205.373.

²⁷² 10 C.F.R. § 205.373(g)–(h).

²⁷³ Ex. 8 at 4.

²⁷⁴ *Cf. Wabash Valley Power Ass’n*, 268 F.3d at 1115 (interpreting the “consistent with the public interest” standard in Section 203 of the Federal Power Act); *see Gulf States Utils. Co. v. Fed. Power Comm’n*, 411 U.S. 747, 759 (1973) (discussing “public interest” standard in other provisions); *California v. Fed. Power Comm’n*, 369 U.S. 482, 484–86, 488 (1962).

²⁷⁵ *NAACP v. Fed. Power Comm’n*, 425 U.S. 662, 670 (1976) (orderly development); *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973) (maintaining competition); *Pa. Water & Power Co. v. Fed. Power Comm’n*, 343 U.S. 414, 418 (1952) (excessive prices).

because Section 202(c) expressly protects environmental considerations, these are part of the public interest element too.²⁷⁶

2. The Current Renewal Order Does Not Contain a Reasoned Basis that Eddystone Best Meets the Claimed Emergency and Serves the Public Interest.

Even if the scenario the Current Renewal Order lays out were an emergency pursuant to Section 202(c), the Department has not explained why ordering the Eddystone Units to be available to operate is the best means to meet that scenario.

The operational status of Eddystone indicates that it is unable to meet purported emergencies. Although a spokesperson for Constellation indicated back in June 2025 that the units were in “ready” status, that statement also indicated a need to take steps to “retain necessary staff and perform necessary maintenance to allow for safe and reliable operations.”²⁷⁷ And while the Eddystone Units have run occasionally, Unit 4 “went offline” on June 23, 2025²⁷⁸ and on July 28, 2025 “was dispatched but unable to operate due to a tube leak.”²⁷⁹ These problems indicate how these old, ready-to-retire Units are themselves unlikely to be reliable.

²⁷⁶ See *NAACP*, 425 U.S. at 669 (“[T]he words ‘public interest’ . . . take meaning from the purposes of the regulatory legislation.”).

²⁷⁷ Jon Hurdle, *Aging Pennsylvania power plant to keep running after Trump order on eve of shutdown*, Pennsylvania Capital-Star (June 9, 2025), <https://penncapital-star.com/energy-environment/aging-pennsylvania-power-plant-to-keep-running-after-trump-order-on-eve-of-shutdown/>.

²⁷⁸ PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (June 24, 2025) (available at <https://perma.cc/6VX9-CCDG>).

²⁷⁹ PJM Interconnection, LLC, Compliance Report re: Eddystone Units 3 and 4 (July 29, 2025) (available at <https://perma.cc/6Q6D-Y2LX>).

Moreover, the Current Renewal Order also does not address readily available and obvious alternatives which, in point of fact, would better compensate for the supposed “resource adequacy issues” inaccurately asserted by the Current Renewal Order, and which Public Interest Organizations identified in their Initial RFR.²⁸⁰ PJM’s own summer outlook predicted that even in the case of an all-time peak load, PJM would be able to meet its required reserve needs through its existing programs.²⁸¹ PJM has already contracted demand response programs—a lower cost means to address grid reliability concerns—that can meet even a record-high summer demand peak this year and will continue to be available, and even expanded, in the coming years.²⁸² Additionally, Public Interest Organizations highlighted in the Initial RFR the robust transmission connectivity between PJM and neighboring regions, which PJM has accessed on a regular basis to support the stability of its grid.²⁸³ Failing to consider this option is inconsistent with the Department’s long-standing recognition that power pools and utility coordination

²⁸⁰ Ex. 12 at 74-76.

²⁸¹ *See* PJM Summer Outlook 2025: Adequate Resources Available for Summer Amid Growing Risk, PJM Inside Lines (May 9, 2025), <https://perma.cc/S5K5-NM52>.

²⁸² *Id.* Commissioner Chang commended PJM’s use of demand response in the June 23-26 heatwave. FERC Commission Meeting, June 2025 Open Meeting, https://youtu.be/eAHyYMKI_Yg (“In particular, I do want to highlight the PJM’s use of nearly 4,000 MW of demand response to reduce the peak load, their peak load, on Tuesday from what would have been the third highest peak load experienced on the PJM system. I see load flexibility as a key tool for grid operators to meet the challenges that we face and I commend PJM for the successful use of demand response during the system strain.”).

²⁸³ *See* Ex. 12, Section IV.B.

“are a basic element in resolving electric energy shortages.”²⁸⁴ The Department offers no reasonable basis to question the availability of resources from neighboring regions. But even if there were some barrier to transmission from those regions, the Department has not (and likely could not) explain why the Current Renewal Order provides a better means of ensuring resource sufficiency than addressing those barriers directly through its power to require “interchange” and “transmission” of electric energy from those neighboring regions.

The Current Renewal Order failed to include any consideration of these other alternatives. And the Order contains no reasoning demonstrating why Eddystone is the best alternative, or a better alternative than other options. As such, the Order is unlawful.

E. The Terms of the Renewed Order Exceed Other Limits on the Department’s Statutory Jurisdiction

1. The Department Lacks Jurisdiction to Impose Availability Requirements.

In directing PJM and Constellation Energy to take “all measures” to ensure that Eddystone is “available to operate,”²⁸⁵ without establishing a Section 202(c) emergency exists, the Department exceeded its authority under Section 202(c) of the Federal Power Act and impermissibly intruded on the authority over generating facilities that Section 201(b) of the statute reserves to the states.²⁸⁶ The sweeping language in the Department’s Current Renewal Order would encompass physical

²⁸⁴ 46 Fed. Reg. at 39,985–86.

²⁸⁵ Ex. 28 at 8.

²⁸⁶ 16 U.S.C. §§ 824(b)(1), 824a(c)(1).

and all other changes necessary to revive a generating plant undergoing closure pursuant to a state-approved retirement process. The Federal Power Act’s language, structure, legislative history, and interpretation by the courts all confirm that the Current Renewal Order is unlawful.

The structure and language of the Federal Power Act reflect Congress’s deliberate choices to preserve the states’ traditional authority over generating facilities and to circumscribe the Department’s emergency authority in light of the states’ role. The first sentence of the Federal Power Act declares that federal regulation extends “only to those matters which are not subject to regulation by the States.”²⁸⁷ Section 201(b)(1) states that, except as otherwise “specifically” provided, federal jurisdiction does not attach to “facilities used for the generation of electric energy.”²⁸⁸ The courts have held that Section 201(b)(1) reserves to the states authority over electric generating facilities.²⁸⁹ 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.”²⁹⁰

²⁸⁷ *Id.* § 824a.

²⁸⁸ *Id.* § 824b(1).

²⁸⁹ *See, e.g., Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 155 (2016); *Conn. Dep’t of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009) (under Section 201(b), 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.”).

²⁹⁰ 16 U.S.C. § 824a(b).

There is a clear distinction between authority to regulate generation facilities and the Department’s authority under Section 202(c) to require generation of electric energy. Electric energy is an electromagnetic wave, and its “generation, delivery, interchange, and transmission” is the creation and propagation of that wave.²⁹¹ Section 202(c)(1), like the rest of the Federal Power Act, is written “in the technical language of the electric art” and federal jurisdiction generally “follow[s] the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental test.”²⁹²

The scope of the Department’s emergency power under Section 202(c) is bounded both by the provision’s specific language and Congress’s clear intention and repeated direction in the Federal Power Act to respect the states’ authority over generating facilities. When an actual emergency exists, Section 202(c)(1) authorizes the Department to require just two specific things: (1) “temporary connections of facilities” and (2) “generation, delivery, interchange, or transmission of electric energy.”²⁹³ The only reference to “facilities” in the authorizing provision of Section 202(c)(1) appears in the clause relating to temporary connections, not in the clause pertaining to “generation” of electric energy. And that clause only authorizes

²⁹¹ See Brief Amicus Curiae of Electrical Engineers, Energy Economists and Physicists in Support of Respondents at 2, *New York v. FERC*, 535 U.S. 1 (2002); see also Edison Electric Institute Glossary of Electric Utility Terms (1991 ed.) (defining electric generation as “the act or process of transforming other forms of energy into electric energy”).

²⁹² *Conn. Light & Power v. Fed. Power Comm’n*, 324 U.S. 515, 529 (1945); see also *Fed. Power Comm’n v. Fla. Power & Light Co.*, 404 U.S. 453, 454, 467 (1972).

²⁹³ *Id.* § 824a(c)(1).

“connections of” facilities; it does not provide authority to regulate the facilities. The differences in Congress’s word choice in these clauses—referencing “facilities” in one authorizing provision but not the other—must be given effect.²⁹⁴

Given Congress’s use of the term “generating facilities” elsewhere in the statute, if it had intended to give the Department authority over generating facilities in Section 202(c)(1), it would have done so explicitly. Instead, the provision conspicuously excludes authority to manage the physical characteristics of power plants. Congress purposely limited and particularized the Department’s emergency powers, carefully avoiding intrusion on the states’ authority over generating facilities recognized in Section 201(b)(1).²⁹⁵

The Department may require generation of electric power, and a utility may properly take steps at the facility to produce the power. It is commonplace in the electric sector for the federal regulator properly acting within its authority to cause effects in a state regulator’s jurisdictional sphere, and vice versa.²⁹⁶ But the federal regulator may neither directly regulate generation facilities nor impose

²⁹⁴ See, e.g., *Gallardo v. Marsteller*, 596 U.S. 420, 430 (2022); *Gomez-Perez v. Potter*, 553 U.S. 474, 486 (2008).

²⁹⁵ See S. Rep. No. 74-621, at 19 (explaining that the emergency powers in Section 202(c)(1) “which were indefinite in the original bill have been spelled out with particularity”); compare S. 1725, Cong. Tit. II § 203(a) (providing in original, unenacted bill that control of the production and transmission of electric energy “except in time of war or other emergency declared to exist by proclamation of the President, shall, as far as practicable, be by voluntary coordination”), with 16 U.S.C. § 824a(c)(1) (providing particularized, specific authorities and circumstances in which the authorities may be exercised).

²⁹⁶ See *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 281 (2016).

requirements aimed at the facilities, even if nominally regulating within its sphere.²⁹⁷ Such encroachment is impermissible, even in a real emergency and even more so in a wrongly claimed one.²⁹⁸ Thus, the Department may not require generation that necessitates the utility taking steps reserved to state authority, such as building a new generating unit or refurbishing a broken one.

Congress did not give the Department sweeping authority to order “all measures” needed to make a generation facility “available to operate.” Nowhere does the statute empower the Department to order “all” steps that may be needed to resuscitate Eddystone, which could include repairs or modifications to physical facilities and other measures going far beyond electric power generation. Because the plant is at the end of its useful life, with years of forgone maintenance and investment, rendering it capable of meeting a short-term supply shortfall could essentially require rebuilding significant parts of the plant. On its face, the Department’s Current Renewal Order is *ultra vires*. The Current Renewal Order therefore is unlawful and should be withdrawn.

2. The Department Lacks Jurisdiction to Disallow Treatment of Eddystone as a Capacity Resource.

The Current Renewal Order includes an explicit provision that “the Eddystone Units shall not be considered capacity resources,” “[b]ecause this order is

²⁹⁷ See *id.* at 281–82; see also *Hughes*, 578 U.S. at 164–65.

²⁹⁸ See *Conn. Light & Power*, 324 U.S. at 530 (“Congress is acutely aware of the existence and vitality of these state governments. It sometimes is moved to respect state rights and local institutions even when some degree of efficiency of a federal plan is thereby sacrificed.”).

predicated on the shortage of facilities for generation of electric energy and other causes.”²⁹⁹ This provision serves only to increase costs to customers, who will be required to procure duplicative capacity as a result. It is also illegal. Section 202(c) only authorizes the Commission to “require by order . . . temporary connections of facilities and . . . generation, delivery, interchange, or transmission of electric energy.”³⁰⁰ Whether a generator is “considered” a capacity resource in the PJM region is determined by PJM’s FERC-approved resource adequacy rules; nowhere does the Federal Power Act suggest that the Department may predetermine or override the reasoned decisions of FERC in its determination of whether just and reasonable wholesale rates require an operating resource to be considered a capacity resource. Indeed, the very nature of 202(c) orders, which are limited to emergencies involving extant resource shortfalls (in which, by definition, there are no alternative capacity resources that might be displaced by the ordered generation) suggests that capacity resource treatment is well outside the Department’s 202(c) authority.

The Current Renewal Order’s elimination of capacity treatment for the Eddystone Units reveals that DOE’s true intent here is not to ensure that there are adequate capacity resources, but instead to force Eddystone to continue operating, without regard to the cost on consumers. PJM’s Reliability Assurance Agreement (“RAA”) defines a “capacity resource” as any of several types of resources “that are

²⁹⁹ Ex. 28 at 8.

³⁰⁰ 16 U.S.C. § 824a(c)(1), (3).

or will be committed to . . . satisfy the reliability requirements of the PJM Region, for a Delivery Year.”³⁰¹ The Reliability Assurance Agreement and Open Access Transmission Tariff also establish clear procedures for calculating capacity contribution from all resources.³⁰² PJM’s FERC-approved tariff also includes comprehensive and detailed rules requiring various resources to offer into capacity auctions, to prevent exercises of market power through economic withholding.³⁰³ Thus, the Current Renewal Order’s elimination of capacity treatment for Eddystone bans PJM and any load-serving entity from accounting for the continued operation of Eddystone in its resource adequacy planning, in violation of PJM’s FERC-approved tariff and despite the Department’s apparent intention to force Eddystone to remain operational indefinitely. FERC has repeatedly, and very recently in the case of PJM, determined that resources retained through cost-of-service mechanisms for reliability purposes should be accounted for when an RTO procures capacity resources, lest consumers be stuck paying for redundant capacity and pay prices higher than necessary.

This is a significant and improper intrusion into FERC’s oversight authority to ensure that RTOs, like PJM, justly and reasonably ensure resource adequacy in

³⁰¹ PJM RAA Article 1, “Capacity Resources,” available at <https://agreements.pjm.com/raa/4102>.

³⁰² Open Access Transmission Tariff Attachment DD, Section 5.6(e) (defining amount of unforced capacity that can be included in sell offers, available at <https://agreements.pjm.com/oatt/3897>; RAA Schedule 9.2 (setting out methodology for calculating effective load carrying capability—a key input to a capacity resource’s unforced capacity value).

³⁰³ *Id.* Attachment DD.6.4 & DD.6.4A.

their footprint; it undermines years of FERC’s regulatory oversight of PJM’s resource adequacy construct. It is within FERC’s purview under Section 205 of the Federal Power Act to provide that oversight,³⁰⁴ and it is within PJM’s purview to decide whether Eddystone should qualify as a “Capacity Resource” within PJM’s FERC-approved resource adequacy construct.³⁰⁵

The Department’s intrusion into the oversight relationship between FERC and the RTOs also runs afoul of the filed rate doctrine, which holds that “no change shall be made in any [approved] rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days’ notice to the Commission and to the public” in another filing with FERC.³⁰⁶ Interference in PJM’s capacity auction rules for which resources qualify as capacity effectuates a *de facto* change to its tariff, without the legally required notice. And more generally, “Congress rejected a pervasive regulatory scheme for controlling the interstate distribution of power in favor of voluntary commercial relationships. . . . governed in the first instance by business judgment and not regulatory coercion.”³⁰⁷ The Department’s interference here in the core operational procedures of PJM’s resource adequacy construct improperly upends that relationship.

³⁰⁴ 16 U.S.C. § 824d.

³⁰⁵ 18 C.F.R. § 35.1(e) (“No public utility shall [...] impose any classification, practice, rule, [or] regulation [...] which is different from that provided in a rate schedule required to be on file with [FERC] unless otherwise specifically provided by order of [FERC] for *good cause shown*.”) (emphasis added).

³⁰⁶ 16 U.S.C. § 824d(d); *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021).

³⁰⁷ *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973).

Furthermore, the unavoidable implication of the Current Renewal Order not allowing PJM to include Eddystone as a capacity resource is that the Department believes PJM will likely secure the resources it determines are needed to maintain resource adequacy even without Eddystone: the provision would be unnecessary if PJM truly had no alternatives. And that means that either 1) the Department does not trust PJM's assessment of PJM's resource adequacy; or 2) the Department does not trust its own assessment of PJM's resource adequacy.

In either case, the Department's actions are improper. The Current Renewal Order provides no evidence that PJM cannot be trusted to ensure resource adequacy, so a Department determination that PJM cannot be trusted would be arbitrary and capricious. It would also conflict with the Department's heavy reliance on PJM's statements and studies in support of its assertion that the region faces an emergency in the first place. Conversely, if the Department does not have the confidence that its own dire predictions that the system does not have enough resources will come true, then it is well short of the confidence necessary for an emergency declaration under Section 202(c).

If left unchecked, this provision will impose completely avoidable cost increases on PJM's ratepayers. The Eddystone Units were unable to submit a sell offer for capacity in one of the RPM incremental auctions for the 2026-2027 or 2027-2028 delivery years, and will be unable to offer into the next Base Residual Auction (should the Order continue to be renewed, as Public Interest Organizations expect based on the Department's conduct thus far). Not only will this prohibition make

PJM's resource adequacy picture appear more constrained than it actually is (thus serving the Department's false narrative), but it will also increase the financial cost of the Current Renewal Order in two ways. First, it will remove a potential income stream that might have offset Eddystone's operational costs, and second it will force PJM consumers to pay higher prices for capacity by constraining supply in the auction and driving prices closer to the auction price cap.

In short, including this provision is yet another way in which the Department has misapplied the statute: by ensuring that Eddystone's principal impact will not be to plug a gap but rather to sabotage PJM's resource adequacy construct and intrude upon FERC's authority to establish just and reasonable rates for the same.

F. The Current Renewal Order Fails to Provide the Conditions Necessary to Override Environmental Standards Under Section 202(c)(2)

Where an order "may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, Section 202(c)(2) requires the Department to "ensure:" (1) that the order compels "generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest;" (2) that operations are "to the maximum extent practicable . . . consistent with any applicable Federal, State or local environmental laws;" and (3) that it "minimizes any adverse environmental impacts."³⁰⁸ The Current Renewal Order violates those statutory obligations. Further, the Current Renewal Order also provides the bare minimum confirmation

³⁰⁸ 16 U.S.C § 824a(c)(2).

that it complied with the final requirement to “consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and [] include in any such renewed or reissued order such conditions as such Federal agency deems necessary to minimize any adverse environmental impacts to the extent practicable,” which conditions “shall be made available to the public.”³⁰⁹

1. The Current Renewal Order May Result in a Conflict with Federal, State, or Local Environmental Law or Regulation.

Section 202(c)(2) imposes mandatory duties on the Department if a 202(c) order “may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation.”³¹⁰ The word “may” in this context denotes a mere possibility, not a certainty. This is especially apparent when matched against the term “shall” used in section 202(c)(2).³¹¹ Congress’ use of the two disparate terms must be given effect.³¹² Moreover, the results need not reach the level of “noncompliance” or “violation” of environmental law, both of which are terms Congress also used in other provisions to section 202(c). A possible “conflict” suffices.³¹³

³⁰⁹ 16 U.S.C. § 824a(c)(4)(B).

³¹⁰ 16 U.S.C. § 824a(c)(2).

³¹¹ *Id.*

³¹² *See, e.g., Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016) (discussing significance of the words “may” and “shall” in the same statutory provision).

³¹³ *Cf. Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372–73 (2000) (explaining that courts find “conflict” in the preemption context where, for instance,

Thus, any time the Secretary’s order causes circumstances that might obstruct the accomplishment or execution of environmental laws or regulations, the Department must “ensure that such order” operates “only during hours necessary to meet the emergency and serve the public interest,” and that the order “minimizes any adverse environmental impacts.”³¹⁴ Congress’s approach makes sense for a provision meant for responding to emergency situations. Congress was well aware of environmental issues stemming from 202(c) orders when it imposed the requirements in section 202(c)(2).³¹⁵ Congress struck a reasonable balance so that environmental concerns are not left by the wayside while allowing the Department to respond to actual emergencies. Rather than requiring the Department to engage in a probing review of environmental permits at all levels of our federalist system before acting, Congress set a low threshold for imposition of the mandatory duties. And as discussed in the next section, the congressionally-imposed duties allow the Department to act while also limiting that authority to only what is necessary to meet the emergency, again reflecting Congress’s regard for environmental concerns even in an emergency.

a law or order “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”).

³¹⁴ 16 U.S.C. § 824a(c)(2).

³¹⁵ *See, e.g.*, Rolsma, 57 Conn. L. Rev. at 807–09 (discussing prior incidents of tension between environmental requirements and responses to emergencies on the grid, and congressional hearings addressing the matter as part of the passage of section 202(c)(2)).

The Department explicitly acknowledged that the Initial Order may result in a conflict with environmental requirements.³¹⁶ The Renewed Orders are not explicit on that issue but say nothing to indicate that the Department has backed away from that conclusion, and say nothing that would allow it to do so. Indeed, the Department implicitly acknowledges the possible conflict; each Renewed Order is limited to a 90-day duration.³¹⁷ That temporal limitation exists for a 202(c) order that may result in a conflict with environmental requirements.³¹⁸ And in imposing the 90-day duration, the Department relies on the statutory limitation for an order that may result in a conflict with environmental requirements, 16 U.S.C. § 824a(c)(4). As described below, because the Current Renewal Order may conflict with environmental laws, the Department had the obligation under Section 202(c)(2) to include certain conditions in the Current Renewal Order,³¹⁹ and it did not fulfill that obligation.

2. The Current Renewal Order Lacks the Conditions Required by Section 202(c)

a. The Terms of the Current Renewal Order Fail to Require Generation Only During Hours Necessary to Meet the Purported Emergency

The Current Renewal Order directly contradicts the Department's obligation to require generation "only during hours necessary to meet the emergency."³²⁰ The

³¹⁶ Ex. 6 at 2.

³¹⁷ Ex. 28 at 7; Ex. 9 at 6-7.

³¹⁸ 16 U.S.C. § 824a(c)(4).

³¹⁹ 16 U.S.C. § 824a(c)(2).

³²⁰ 16 U.S.C. § 824a(c)(2).

Current Renewal Order instead directs PJM to “take every step *to employ economic dispatch* of the Eddystone Units to minimize cost to ratepayers.”³²¹ The “emergency” nominally described by the Current Renewal Order is the potential “loss of power to homes and local businesses in the areas affected by curtailments or outages.”³²² Even if the Department had substantiated that emergency (which it has not), the Federal Power Act would allow the Department to compel generation only when such losses would occur absent operation of Eddystone.³²³ “Economic dispatch,” in sharp contrast, requires “the lowest-cost resources [to] run first,” in pursuit of “the lowest-cost energy available.”³²⁴ By instructing PJM to pursue economic dispatch, the Current Renewal Order’s terms permit (indeed, direct) operation of Eddystone even when other—albeit higher cost—resources are available that would prevent any “curtailments or outages”—that is, the claimed emergency.³²⁵ The Current Renewal Order’s further instructions—limiting “dispatched units to the times and within the parameters as determined by PJM pursuant to paragraph A,”³²⁶—just repeats that initial instruction to “employ

³²¹ Ex. 28 at 8 (emphasis added).

³²² *Id.* at 7.

³²³ 16 U.S.C. 824a(c)(2); *see, e.g.*, Ex. 4 at 9 (DOE Order No. 202-17-4 Summary of Findings) (“authorizing operation of” units subject to emergency order “only when called upon . . . for reliability purposes,” according to “dispatch methodology” approved by Department).

³²⁴ *City of New Orleans v. FERC*, 67 F.3d 947, 948–49 (D.C. Cir. 1995); *see also Fla. Power & Light Co. v. FERC*, 88 F.3d 1239, 1241 (D.C. Cir. 1996) (noting distinction between economic dispatch and reserve capacity rules).

³²⁵ Ex. 28 at 7.

³²⁶ *Id.* at 8.

economic dispatch,” without any further limitation that would “ensure” that generation occurs “only during hours necessary to meet the emergency” described by the Current Renewal Order.³²⁷ As such, the Current Renewal Order’s terms fail to require operation “only during the hours necessary to meet the emergency” described by the Current Renewal Order and violate Section 202(c)(2).³²⁸

b. The Current Renewal Order Fails to Ensure Maximum Practical Compliance with Environmental Rules and Minimize Adverse Environmental Impacts

The Current Renewal Order further fails to “ensure” that Eddystone operates, “to the maximum extent practicable,” in conformity with applicable environmental rules.³²⁹ The Current Renewal Order paraphrases the statutory text—that “operation of the Eddystone Units must comply with applicable environmental requirements . . . to the maximum extent feasible,” but fails to specify who bears that responsibility or what such operation entails.³³⁰ It imposes no further conditions beyond requiring Constellation to “pay fees or purchase offsets or allowances for emissions.”³³¹ The direction to “comply . . . to the maximum extent feasible” is, as a result, wholly unenforceable; the Current Renewal Order provides no basis for the Department, or anyone else, to determine whether the plant is in

³²⁷ 16 U.S.C. § 824a(c)(2).

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ Ex. 28 at 8.

³³¹ *Id.*

fact complying or who might face the consequences of any failure to do so.³³² As such, the Current Renewal Order does not meet the Department’s statutory obligation to “ensure” the maximum feasible compliance with applicable environmental standards—an obligation that requires the Department to offer some discrete guidance as to the plant’s operations, rather than merely parroting the statutory text.³³³

In addition, the Current Renewal Order fails to “minimize[] any adverse environmental impacts.”³³⁴ That mandate is textually and substantively distinct from the Department’s (also unfulfilled) obligation to ensure maximum practicable compliance with environmental standards.³³⁵ The Current Renewal Order claims to minimize impacts by limiting operation of dispatched units to the times and within the parameters outlined in Current Renewal Order’s Paragraph A, but that paragraph contains only a command that PJM “take all measures necessary to ensure that the Eddystone Units are available to operate” and “employ economic dispatch . . . to minimize costs to ratepayers,” and requires Constellation to comply with PJM’s orders implementing those commands.³³⁶ An instruction minimizing

³³² See Ex. 8 at 5–6 (DOE Order No. 202-22-4) (requiring, inter alia, reporting of “number and actual hours each day” of operation “in excess of permit limits or conditions,” and information describing how generators met requirement to comply with environmental requirements to maximum extent feasible).

³³³ 16 U.S.C. § 824a(c)(2) (emphasis added).

³³⁴ 16 U.S.C. § 824a(c)(2).

³³⁵ *Id.*

³³⁶ *Id.*

ratepayer costs and demanding availability has no rational relationship to a requirement to minimize environmental impacts. And the Current Renewal Order includes no measures that would mitigate impacts when compliance with environmental standards proves impracticable—measures that have been routinely included in past orders.³³⁷ 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.³³⁸ The Current Renewal Order here instead only requires “such additional information” as the Department, in the future, may (or may not) “request[] . . . from time to time.”³³⁹ That possibility of future, unspecified inquiry cannot satisfy the statute’s demand that the Department “ensure” that its Order minimizes environmental impacts.³⁴⁰

c. The Department’s Required Consultation Is Lacking

Section 202(c)(4)(B) requires the Department to “consult with the primary Federal agency with expertise in the environmental interest protected” by the laws

³³⁷ *See, e.g.*, Ex. 4 at 4 (DOE Order No. 202-17-4) (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); Ex. 8 at 7 (DOE Order No. 202-22-4) (requiring “reasonable measures to inform affected communities” of non-compliant operations).

³³⁸ *See, e.g.*, Ex. 9 at 5 (DOE Order No. 202-24-1) (requiring detailed data on emissions of pollutants).

³³⁹ Ex. 28 at 8.

³⁴⁰ 16 U.S.C. § 824a(c)(2).

with which the Current Renewal Order may conflict.³⁴¹ The Current Renewal Order merely quotes this statutory text to demonstrate that it has complied.³⁴² Unlike in past practice, here the Department does not clarify which agency it consulted with, which environmental interests are at stake, or which laws and regulations the Order may conflict with.³⁴³

VI. REQUEST FOR STAY

Public Interest Organizations further move the Department for a stay of the Current Renewal Order until the conclusion of judicial review.³⁴⁴ The Department has the authority to issue such a stay under the Administrative Procedure Act and should do so where “justice so requires.”³⁴⁵ In deciding whether to grant a request for stay, agencies consider: (1) whether the party requesting the stay will suffer

³⁴¹ 16 U.S.C. § 824a(c)(4)(B).

³⁴² Ex. 28 at 7.

³⁴³ *See, e.g.*, Ex. 7 at 2 (DOE Order No. 202-22-2 Amendment No. 1) (stating that “The Environmental Protection Agency (EPA) is the primary federal agency in this case with expertise in the protected environmental interest, specifically Title V of the Clean Air Act and the Department consulted with EPA... and EPA did not request any additional conditions”) (citing an email from Acting Assistant Administrator Larry Starfield, EPA Office of Enforcement and Compliance Assurance); Ex. 6 at 2 (DOE Order No. 202-22-1 Amendment No. 2) (same); Ex. 4 at 9–10 (DOE Order No. 202-17-4) (including EPA consultation in public record).

³⁴⁴ 18 C.F.R. § 385.212. Pursuant to Federal Power Act Section 313 and Rule 713(e) of the applicable rules, the filing of a request for rehearing does not automatically stay a Department Order. 16 U.S.C. § 825/(c), 18 C.F.R. § 385.713(e).

³⁴⁵ 5 U.S.C. § 705.

irreparable injury without a stay; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest.³⁴⁶

Injuries under this standard must be actual, certain, imminent, and beyond remediation.³⁴⁷ Financial injury is only irreparable where no “adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.”³⁴⁸ 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.”³⁴⁹

A. Intervenors Are Irreparably Harmed by the Order.

Here, a stay is necessary to ensure that Eddystone does not continue with activities that are already causing irreparable harm to Public Interest

³⁴⁶ 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 P 41 (2023); *ISO New Eng. Inc.*, 178 FERC ¶ 61,063, at P 13 (2022), *rev'd on other grounds sub nom. In re NTE Conn., LLC*, 26 F.4th 980, 987-88 (D.C. Cir. 2022).

³⁴⁷ *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 p. 61,887 (2000); *City of Tacoma*, 89 FERC ¶ 61,273, at p. 61,795 (1999) (recognizing that, absent a stay, options for “meaningful judicial review would be effectively foreclosed”).

³⁴⁸ *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.

³⁴⁹ *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987).

Organizations, their members, and the public as a result of the Current Renewal Order.³⁵⁰

Operating the Eddystone Units, which burn oil and natural gas, results in emissions of dangerous air pollutants, including sulfur dioxide (“SO₂”), nitrogen oxides (“NO_X”), particulate matter (“PM”), and carbon dioxide (“CO₂”) that would not otherwise have occurred but for the Orders blocking the deactivation of the Eddystone Units.³⁵¹ These pollutants cause and exacerbate respiratory problems, cardiovascular issues, and other health conditions. These impacts are accentuated by Eddystone’s location in an area already disproportionately overburdened by heavily polluting industrial sources and toxic waste sites.³⁵²

The Current Renewal Order also causes irreparable harm by imposing costs on PJM ratepayers that would not otherwise be borne and will not be recoverable through litigation. Constellation is complying with the Orders and according to PJM, will be compensated based on PJM’s Deactivation Avoidable Cost Credit approach, which is already part of PJM’s FERC-approved tariff for units retained for local reliability purposes.³⁵³ PJM and Constellation have both taken the position

³⁵⁰ The Eddystone Units have in fact operated as a result of the Order. *See, e.g.,* Compliance Report, *supra* Section IV.D.

³⁵¹ *Id.*

³⁵² *See supra*, Section IV.A.

³⁵³ *See* Letter from David E. Mills, Chair, PJM Board, to PJM Members and Stakeholders (June 26, 2025), <https://perma.cc/376D-WNXP>.

that these costs are unreviewable by FERC.³⁵⁴ FERC has approved PJM’s proposal to allocate these costs to consumers throughout PJM.³⁵⁵

The Department does not identify any clear recourse for a refund in the event the Current Renewal Order is declared unlawful. In forcing ratepayers to reopen and operate an uneconomic, unreliable, and obsolete resource that was already approved for closure, the Order also jeopardizes the diversification of generating resources the Department itself has said increases grid reliability and will inherently and unjustifiably add to ratepayer costs.³⁵⁶ As there is no clear recourse to recovering these costs from the Department should Public Interest Organizations prevail in their challenge, a stay pending judicial review is necessary to protect ratepayers from unwarranted energy cost increases—especially at a time when energy prices are already on the rise.³⁵⁷

³⁵⁴ See FERC Docket No. ER25-2653, Motion for Leave to Answer and Answer of PJM Interconnection LLC, filed July 18, 2015, at 17 (“in this case, where CEG and PJM have reached agreement on the rates that will apply to the relevant transactions, the Commission need not provide additional guidance or review.”); FERC Docket No. ER25-2653, Motion for Leave to Answer and Answer of Constellation Energy Generation, LLC, filed July 18, 2025, at 4 (“Put simply, the FPA does not grant the Commission review authority where—like here—the parties have agreed to the terms of compensation.”).

³⁵⁵ *PJM Interconnection, LLC*, 192 FERC ¶ 61,159 (Aug. 15, 2025).

³⁵⁶ See U.S. Dep’t of Energy, Energy Reliability and Resilience, <https://www.energy.gov/eere/energy-reliability-and-resilience> (last visited June 26, 2025).

³⁵⁷ See Mitchell Terpstra, *2024 News Release: PJM Capacity Auction Prices Skyrocket*, Energy Choice Blog (Oct. 2, 2024), <https://perma.cc/Z4FK-MXZ7>.

B. A Stay Would Not Result in Harm to Any Other Interested Parties.

No other interested parties would be harmed by a stay. The issuance of a stay would not harm end-use electricity consumers because the lack of an actual emergency means that a stay would not disrupt the provision of electricity.³⁵⁸ Furthermore, because Constellation and PJM had both already planned for the closure of the Eddystone Units, a stay would only have the effect of relieving them of the administrative, compliance, and planning burdens imposed by the Current Renewal Order.³⁵⁹ On the balancing of equities, there is therefore no meaningful countervailing harm that would follow from a stay.

C. A Stay is in the Public Interest.

There is no public interest served by the Current Renewal Order, and a stay will benefit the public. First, the Current Renewal 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 justify the Eddystone Units' continued operation.³⁶⁰ Second, a stay would protect the broader public—beyond Public Interest Organizations and their members—from the costs and additional pollution produced by unnecessary operation of the Eddystone Units.

³⁵⁸ *See supra*, Section V.B.

³⁵⁹ *See, e.g.*, Ex. 28 at 2-3.

³⁶⁰ *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)).

VII. CONCLUSION

For the reasons set forth above, the undersigned Public Interest Organizations respectfully request that the Department grant intervention; grant rehearing and rescind the Current Renewal Order (and any further renewals of it); and stay the Current Renewal Order.

/s/ Caroline Reiser

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Caroline Reiser
Simi Bhat
Gavin McCabe
Karen Chen
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
creiser@nrdc.org
sbhat@nrdc.org
gmccabe@nrdc.org
kchen@nrdc.org
(202) 717-8341

/s/ Ted Kelly

Ted Kelly
Tomás Carbonell
Environmental Defense Fund
555 12th St. NW, #400
Washington, DC 20004
tekelly@edf.org
tcarbonell@edf.org
(202) 387-3500

/s/ Jessica O'Neill

Jessica O'Neill
PennFuture
1429 Walnut Street, Suite 701
Philadelphia, PA 19102
oneill@pennfuture.org

/s/ Danielle Fidler

Danielle Fidler
Francis W. Sturges, Jr.

Clean Air Task Force
114 State St., 6th Floor
Boston, MA 02109
fsturges@catf.us
dfidler@catf.us
(617) 624-0234
Counsel for Citizens for Pennsylvania's Future

/s/ Tyson Slocum
Tyson Slocum
Public Citizen, Inc.
215 Pennsylvania Ave SE
Washington, DC 20003
(202) 454-5191
tslocum@citizen.org

/s/ Gregory E. Wannier
Gregory E. Wannier
Sanjay Narayan
Sierra Club Environmental Law Program
2101 Webster St., Ste 1300
Oakland, CA 94612
greg.wannier@sierraclub.org
sanjay.narayan@sierraclub.org
(415) 977-5646