**UNITED STATES DEPARTMENT OF ENERGY**

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| Midcontinent Independent System Operator | Order Nos. 202-26-46 & 202-26-47 |

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

Pursuant to section 202(c) of the Federal Power Act, 16 U.S.C. §§ 824a(c), 825l, the States of Minnesota, Illinois, Wisconsin, and the People of the State of Michigan ("the States") move to intervene and apply for rehearing of the Department of Energy's ("DOE") September 18, 2026, Order Nos. 202-26-46 (Ex. A)[1] and 202-26-47 (Ex. B) (together, "Orders"), directing the Midcontinent Independent System Operator ("MISO"), Northern Indiana Public Services Company ("NIPSCO"), and CenterPoint Energy to take all measures necessary to ensure that the coal-burning R.M. Schahfer Generating Station ("Schahfer") in Wheatfield, Indiana and coal-burning Unit 2 of the F.B. Culley Generating Station ("Culley 2") in Warrick County, Indiana are "available to operate" and "to take every step to employ economic dispatch of [Schahfer and Culley 2] to minimize cost to ratepayers." The Orders are in effect from September 20, 2026, until December 18, 2026.[2] The Orders are the fourth round of directives requiring MISO to take the same actions for the same facilities based on the same alleged statutory authority and factual circumstances.

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

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[1] All Exhibits are lettered and attached.

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

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

The Orders continue the pattern established by DOE Orders 202-25-12, 202-25-13, 202-26-19, 202-26-20, 202-26-29, and 202-26-30 ("Prior Schahfer and Culley 2 Orders"), which also directed MISO, NIPSCO and CenterPoint Energy to keep Schahfer and Culley 2 available to provide economic dispatch from their planned retirement dates of December 31, 2025, through September 19, 2026. These Orders follow a long line of executive emergency power overreach, including numerous orders directing the J.H. Campbell Plant to remain similarly "available to operate" where the States have also requested rehearing and judicial review. *See* Order Nos. 202-25-3, 202-25-7, 202-25-9, 202-26-16, 202-26-22, & 202-26-39.

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

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

those harms through ongoing, cumulative emissions and related impacts.[3] Associated impacts include discharge of coal ash wastewater into the Kankakee River and foreseeable cumulative harm of discharges from the Schahfer plant and multiple nearby sites.[4] The negative effects on the States were described in the prior challenges and are hereby incorporated by reference.[5]

The Orders compound the errors of the Prior Schahfer and Culley 2 Orders for all of the reasons set forth in the States' Requests for Rehearing filed January 22, 2026, April 22, 2026, and July 17, 2026. As with the Prior Schahfer and Culley 2 Orders, the Orders here should be rescinded because they lack reasoned decisionmaking, are contrary to law, exceed DOE's authority, are not rationally tailored to meet the purported emergency, and demonstrate impermissible prejudgment of the relevant issues.

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[3] In February, the Northern Indiana Public Service Company (NIPSC) sent a letter to NIPSCO detailing the harms from coal combustion residuals caused by continuing to run the Schahfer Plant in an emergency capacity. NIPSC, *Letter to NIPSCO*, (Feb. 13, 2026) *available at* https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/ccr/r.m.-schahfer/r.m.-schahfer-generating-station-closure-and-post-closure-care/2026-r-m-schahfer-generating-station-no-alternative-disposal.pdf?sfvrsn=83f1f751_3.

[4] *See* Maya Wilkins, *Activists Raise Concerns with NIPSCO Jasper County Water Permit Application*, CHICAGO TRIBUNE (Sept. 13, 2026), https://www.chicagotribune.com/2026/09/13/activists-raise-concerns-with-nipsco-jasper-county-water-permit-application/.

[5] The harms include economic harm to ratepayers in the States who are saddled with the increased costs associated with operating the inefficient coal plants, the environmental harms of operating the coal plants, and the harm caused by usurping the States' role in planning resource adequacy and generation. The extraordinary costs continue to accumulate, harming ratepayers generally. *See*, Seth Feaster, *Cost of Coal Plant Emergency Orders Already More than $300 Million*, INST. FOR ENERGY ECON. (June 10, 2026), https://ieefa.org/resources/cost-coal-plant-emergency-orders-already-more-300-million; Mackenzi Klemann, *Trump Administration Renews Order Keeping Indiana Coal Plants Open for the Third Time* INDIANA CAP. CHRON. (June 22, 2026), https://indianacapitalchronicle.com/2026/06/22/trump-administration-renews-order-keeping-indiana-coal-plants-open-for-the-third-time/.

The Court of Appeals for the District of Columbia Circuit agrees. On September 11, 2026, the court held that DOE's actions in the first Campbell case ("Campbell I") were contrary to the plain text of section 202(c) because DOE was not responding to an emergency when it issued its order. *Michigan v. Wright*, No. 25-1159, 2026 WL 2671756 at *11–12 (D.C. Cir. Sept. 11, 2026). Instead, the court recognized that DOE was using section 202(c) to usurp the roles of Michigan, MISO, and utilities in long-term resource planning. *Id.* at *5–7, *17. By ordering the Campbell plant to continue operating long after its carefully planned and scheduled retirement, DOE contravened the statute and ignored its long history and established practice of limiting its use of 202(c) emergency authority to cases where an actual emergency exists. *Id.* at *8, *15. In sum, DOE has not identified an emergency consistent with the court's decision in Campbell I in any of the Schahfer or Culley 2 orders, including the Orders at issue here. The Orders exceed DOE's authority, are contrary to law, and must be rescinded.

Further, the Orders are contrary to the factual record and not supported by substantial evidence. For example, the Orders ignore key findings when they discuss the Organization of MISO States (OMS) and MISO Survey, making nebulous claims about future uncertainty and risk reflected in the survey. Ex. A at 6; Ex. B at 6. Findings that the Orders ignore include:

- "The 2026 OMS-MISO Survey results show an adaptive response to increasing demand through generation additions that sustain near-term resource adequacy." Ex. F at 2.
- "The region is projected to maintain sufficient capacity to meet demand across the next five years, based upon current load forecasts and anticipated load growth." *Id.*
- "Load Serving Entities (LSEs) are expected to have adequate resources to meet load reserve requirements in each zone." *Id.* at 3.

Failing to consider an important aspect of a problem renders an agency's action arbitrary and subject to reversal. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 4, (2020).

The Orders also ignore important aspects of the problem when they reference language from MISO's Planning Resource Auction "(PRA") Results for the 2026–2027 Planning Year that "new generation capacity is coming online, but faster resource additions are still needed to support large load growth and ensure resource adequacy," and assert that "there continues to be tight capacity available during summer despite the recent 'gains in offered capacity outpacing pressure of load growth' in the MISO region . . . ." Ex. A at 5–6; Ex. B. at 5–6. The Orders ignore the several instances in which the PRA results plainly refute DOE's assertion of an emergency under section 202(c). MISO reports in the PRA results for Planning Year 2026-2027 that "all zones show sufficient resources at the regional, subregional, and zonal levels to meet resource adequacy requirements across all four seasons." Ex. G. at 2. MISO further reports:

- "Capacity offered into the auction increased by as much as 4% compared to last year's PRA." *Id.*
- "More capacity was offered than last year, which offset higher demand and improved reliability across seasons." *Id.* at 3.
- "New capacity and more imports outweighed lower accreditation and retirements/suspensions." *Id.*

Because the MISO PRA results show there is no emergency, the Orders are arbitrary and contrary to the purpose of section 202(c).

Finally, the Orders ignore important aspects of NERC's 2026 State of Reliability ("SOR") Technical Assessment, claiming "NERC identifies worsening reliability concerns tied to large-load

integration and localized operating stress." Ex. A at 6–7; Ex. B at 6–7; Ex. H. The Orders cite language from the NERC assessment that "shoulder seasons have become increasingly challenging for Bulk Power System operators to manage, resulting in several recent instances of pre-contingent load shedding." Ex. H at 5. However, the Orders' discussion of this point is misleading. The NERC SOR Technical Assessment cites an Incident Review for the point relied on by the Order. *Id.*; Ex. I. The Incident Review discusses incidents that occurred during 2024 and 2025, which included *both* major transmission outages *and* existing generation that was unavailable. Ex. I. The Orders draw no connection between these scenarios and the planned, orderly retirements of coal-fired power plant units.

The Orders also claim that the NERC SOR finds that "large load growth is increasing reliability risk"; that "data center and computational loads continued emerging as a major reliability consideration due to their scale, speed of development, and unique operational characteristics"; and that "data in the SOR shows that 2025 MISO summer and winter peak demands of 121.6 GW and 108.8 GW, respectively, met or exceeded extreme scenario levels showing how rapid load growth and extreme weather continue to be a real risk in MISO." Ex. A at 6–7; Ex. B at 6–7. But the Orders draw no connection between this generalized concern and the Indiana Plants, MISO Zone 6 where the plants are located, or the MISO Central Region generally. And the Orders ignore NERC's determination that operators managed both the winter and summer incidents without the use of load shedding. Ex. H at 27, 30.

In addition to acting contrary to the facts, which show there is no emergency, DOE also acted contrary to law by failing to comply with the National Environmental Policy Act ("NEPA"). Congress recently revised NEPA as part of permitting reform in the Fiscal Responsibility Act of 2023. Pub. L. 118-5 (June 3, 2023). These revisions purported to streamline the environmental

review process by minimizing timelines and setting page limits, among other provisions. It also codified aspects of the Council on Environmental Quality ("CEQ")'s implementing regulations and existing caselaw. The revisions did not change the fundamental statutory command to prepare environmental reviews for major federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C).

DOE has claimed that 42 U.S.C. § 4336(a)(3) exempts it from NEPA compliance because the Federal Power Act ("FPA") "clearly and fundamentally conflict[s]" with NEPA. These laws do not conflict. In fact, DOE has regularly complied with both statutes when issuing FPA § 202(c) emergency orders for over 20 years, a practice that it abruptly halted upon beginning its wave of 202(c) orders. *See, e.g.*, Ex. J; Ex. K (report prepared pursuant to NEPA after DOE 202(c) emergency order). The 2023 NEPA revisions did not create a new exemption to its requirements; it codified existing case law addressing how NEPA applies when an agency cannot comply with both a mandatory statutory duty and NEPA. *Flint Ridge Dev. Co. V. Scenic Rivers Assoc. Of Oklahoma*, 426 U.S. 776 (1976). Section 202(c) does not include a mandatory statutory deadline by which DOE must take emergency action. To the contrary, it grants DOE the *discretionary* authority to respond to emergencies when necessary, as DOE has argued strenuously in litigation. *See* Resp. Br. at 23–31, *Michigan v. Wright*, No. 25-1159, Doc. No. 2164147 ("Section 202(c) affords broad discretion to the Secretary to identify and address a wide array of emergencies to ensure the Nation has access to reliable electric power."). NEPA does not exempt DOE from ensuring NEPA compliance when taking action under FPA § 202(c).[6]

[6] As the D.C. Circuit Court of Appeals recognized in its Campbell I opinion, DOE's exercise of emergency powers must still ensure that "adverse environmental impacts are minimized and the facility is ordered to operate only during hours necessary to meet the emergency and serve the public interest." *Michigan v. Wright*, 2026 WL 2671756 at *8 (citation omitted).

DOE may believe that, under its NEPA Implementing Procedures, it satisfied all NEPA obligations by conferring with CEQ concerning the 202(c) orders. But this has no legal effect. As DOE rightfully acknowledges, those non-binding, sub-regulatory procedures cannot limit or alter DOE's statutory duty to comply with NEPA. *See* Ex. L ("This document provides guidance on DOE's NEPA implementation. This document is not a regulation. Nothing contained in these procedures is intended or should be construed to limit DOE's other authorities or legal responsibilities."); *see also Revision of National Environmental Policy Act Implementing Procedures*, 90 Fed Reg. at 29,676, 29,677 (July 3, 2025) (clarifying that the implementing procedures "are intended to be non-binding guidance"). This guidance relies on 42 U.S.C. § 4336(a)(3) to exempt emergency orders from compliance. However, since there is no conflict between the FPA and NEPA, § 4336(a)(3) does not apply. DOE cannot alter its statutory obligation to comply with NEPA through adoption of an agency guidance document.

Putting aside the inaccurate guidance document, DOE's revised NEPA regulations also provide for specific measures that must be taken in the wake of any emergency actions. *See* 90 Fed. Reg. at 29,683. Under those regulatory requirements, DOE must document its emergency actions within 30 days of taking those actions and identify any resulting adverse environmental impacts, necessary mitigation measures, and any NEPA documents that may be required. 10 C.F.R. § 1021.103. Unlike other agency actions, DOE's regulations allow for NEPA analysis to be delayed until after the emergency action is taken—precisely because immediate action is often necessary to address an emergency. By neglecting to provide this required documentation after issuing its 202(c) orders, DOE has violated its own NEPA regulations.[7]

[7] DOE's NEPA Implementing Procedures also note that, "where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without

DOE has also failed to comply with FPA § 202(c)(4)(B), which requires it to consult with the federal agencies with expertise in the environmental interests protected by various laws and regulations when an order is renewed or reissued:

> In renewing or reissuing an order under subparagraph (A), the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public. The Commission may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.

16 U.S.C. § 824a(c)(4)(B) (emphasis added).

The Orders are the third renewal of the original 90-day order. The environmental interests at issue include, at a minimum, clean air, clean water, species and habitat impacts, and adverse effects on human health. The laws and regulations therefore include the Clean Air Act, Clean Water Act, and Endangered Species Act, among others. DOE has a mandatory duty under the FPA to consult with the primary federal agencies for those laws, the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service (and possibly others), and to include appropriate conditions to minimize environmental impacts in the orders. DOE must explain its determination whether to include or exclude conditions and make it publicly available. DOE also has an independent statutory obligation under the Endangered Species Act to consult with the U.S. Fish

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observing the provisions of these procedures, DOE will consult with CEQ about alternative arrangements for compliance with NEPA. In other emergency circumstances, DOE will determine how best to comply with NEPA, including any necessary variance from these DOE NEPA implementing procedures, and notify CEQ about the emergency circumstances and DOE's plan for NEPA compliance." Ex. L at 20. DOE has not identified or followed a plan for NEPA compliance for the Campbell 202(c) orders.

and Wildlife Service.[8] DOE has not complied with any of these statutory requirements. DOE's action is therefore contrary to law, arbitrary and capricious, exceeds its authority, and should be rescinded.

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

Dated: October 16, 2026

Respectfully submitted,

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[8] The Fish and Wildlife Service also has emergency consultation regulations for Endangered Species Act compliance. 50 C.F.R. § 402.05. Even if an emergency existed for the Campbell plant—and none does—there are clearly defined emergency consultation procedures that DOE must follow.

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