

**UNITED STATES OF AMERICA**  
**Department of Energy**  
Washington, DC 20585

PJM Interconnection, L.L.C.  
and Constellation Energy Regarding the  
Eddystone Generating Station

Order No. 202-25-08B

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued March 5, 2026)

1. On August 28, 2025, pursuant to section 202(c) of the Federal Power Act (FPA),<sup>1</sup> and section 301(b) of the Department of Energy Organization Act,<sup>2</sup> the Secretary of Energy (Secretary) issued an order determining that “an emergency exists in the PJM Interconnection, L.L.C. (PJM) region due to a shortage of facilities for the generation of electric energy, resource adequacy concerns, and other causes.”<sup>3</sup> In the Emergency Order, the Secretary determined that “continued additional dispatch of” Units 3 and 4 of the Eddystone Generating Station (Eddystone Units), owned by Constellation Energy Corporation (Constellation), “is necessary to best meet the emergency and serve the public interest under FPA section 202(c).”<sup>4</sup>

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<sup>1</sup> 16 U.S.C. § 824a(c).

<sup>2</sup> 42 U.S.C. § 7151(b).

<sup>3</sup> Department of Energy Order No. 202-25-08, at 1 (Aug. 28, 2025) (Emergency Order).

<sup>4</sup> *Id.* at 6. Eddystone Units 3 and 4 are together referred to as the “Eddystone Units” in the Emergency Order.

2. On September 26, 2025, requests for rehearing were separately filed by the Joint Consumer Advocates (JCAs)<sup>5</sup> and the Public Interest Organizations (PIOs).<sup>6</sup> On October 28, 2025, the Department of Energy (DOE) issued a notice of denial of rehearing by operation of law and providing for further consideration (DOE Notice).<sup>7</sup> However, as provided in sections 202(c) and 313(a) of the FPA,<sup>8</sup> DOE is modifying the discussion in the Emergency Order and continues to reach the same result in this Order, as discussed below.<sup>9</sup>

## **I. Background**

3. In the Emergency Order, the Secretary determined that “an emergency exists in the [PJM] region due to a shortage of facilities for the generation of electric energy, resource adequacy concerns, and other causes,” and that “[i]ssuance of this Order will meet the emergency and serve the public interest.”<sup>10</sup> The Secretary therefore directed PJM and Constellation to “take all measures necessary to ensure that the Eddystone Units are available to operate.”<sup>11</sup>

4. The Emergency Order provided substantial support for the Secretary’s emergency determination. The Emergency Order first discussed Order No. 202-25-04, which the Secretary issued on May 30, 2025, pursuant to FPA section 202(c). In Order

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<sup>5</sup> Maryland Office of People’s Counsel, the Delaware Division of the Public Advocate, New Jersey Division of Rate Counsel, Illinois Office of the Attorney General, and the Illinois Citizens Utility Board refer to themselves collectively as Joint Consumer Advocates.

<sup>6</sup> Natural Resources Defense Council, Citizens for Pennsylvania’s Future, Environmental Defense Fund, Sierra Club, and Public Citizen refer to themselves collectively as Public Interest Organizations. On October 7, 2025, PIOs filed an errata to their original September 26, 2025 request for rehearing.

<sup>7</sup> Department of Energy Order No. 202-25-08A (Oct. 28, 2025).

<sup>8</sup> 16 U.S.C. § 824a(c); 16 U.S.C. § 825l(a). In the context of FPA section 202(c) orders, DOE interprets FPA section 313’s references to “the Commission” to mean DOE.

<sup>9</sup> See *Allegheny Def. Project v. FERC*, 964 F.3d 1, 16-17 (D.C. Cir. 2020). DOE is not changing the outcome of the Emergency Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2014).

<sup>10</sup> Emergency Order at 1.

<sup>11</sup> *Id.* at 6, Ordering Paragraph A.

No. 202-25-04, the Secretary exercised his authority and determined that an emergency existed in the PJM region due to “a potential shortage of electric energy and shortage of facilities for generation of electric energy,” and “stated that the potential loss of power to homes and local business presents a risk to public health and safety.”<sup>12</sup> Accordingly, the Secretary “determined that the operational availability and economic dispatch of the Eddystone Units is necessary to best meet the emergency and serve the public interest.”<sup>13</sup>

5. The Emergency Order highlighted several facts supporting the Secretary’s emergency determination in Order No. 202-25-04. *First*, in congressional testimony, PJM’s President and CEO, Manu Asthana, warned of “a ‘growing resource adequacy concern’ due to load growth, the retirement of dispatchable resources, and other factors,” causing reliability risks.<sup>14</sup> For instance, Mr. Asthana presented data indicating that existing dispatchable fossil-based generator retirement is outpacing new resource construction.<sup>15</sup> *Second*, PJM, in its February 2023 assessment, “*Energy Transition in PJM: Resource Retirements, Replacements & Risks*,” specifically highlighted “increasing reliability risks in the coming years due to the ‘potential timing mismatch between resource retirements, load growth and the pace of new generation entry’ under ‘low new entry’ scenarios for renewable generation.”<sup>16</sup> *Third*, PJM recently filed revisions to its open access transmission tariff with the Federal Energy Regulatory Commission (FERC) to address near-term resource adequacy concerns, which FERC accepted and found “the possibility of a resource adequacy shortfall driven by significant load growth, premature retirements, and delayed new entry.”<sup>17</sup>

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<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (citing *Keeping the Lights On: Examining the State of Regional Reliability: Hearing Before the Subcomm. on Energy of the H. Comm. on Energy & Com.*, 119th Cong. (Mar. 25, 2025) (written testimony of Manu Asthana, President and CEO of PJM Interconnection) (Asthana Test.), at 4-5, <https://www.pjm.com/-/media/DotCom/library/reports-notices/testimony/2025/20250325-asthana-testimony-us-house-subcommittee-on-energy.pdf>).

<sup>15</sup> *Id.* See also Asthana Test. at 4-5, Figures 3 & 4.

<sup>16</sup> Emergency Order at 2 (citing PJM, *Energy Transition in PJM: Resource Retirements, Replacements & Risks*, at 1 (Feb. 24, 2023) (Four Rs Report), <https://www.pjm.com/-/media/DotCom/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx>).

<sup>17</sup> *Id.* (citing *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,084, at P 14 (2025),

6. The Emergency Order then explained that “the emergency conditions that led to the issuance of the Order No. 202-25-04 continue, both in the near and long term” in the PJM region.<sup>18</sup> The Emergency Order presented several additional facts that supported the Secretary’s emergency determination.

7. The Emergency Order noted that, as of the Emergency Order’s effective date (August 28, 2025), the summer season had not yet ended, and the Eddystone Units’ generation would “continue to be critical to maintaining reliability in PJM,” as evidenced “by the fact that the Eddystone Units were called on by PJM to generate electricity during heat waves that hit the [PJM] region in June and July.”<sup>19</sup> Specifically, according to U.S. Environmental Protection Agency (EPA) data, the Eddystone Units generated more than 17,000 MWh during the month of June.<sup>20</sup> The Emergency Order further noted that PJM issued Hot Weather Alerts and/or Maximum Generation Alerts (EEAs) covering a total of 20 days, including days in June, July, and August.<sup>21</sup> The Emergency Order also noted that contemporaneous data released by the National Oceanic and Atmospheric Administration (NOAA) indicated between a 40% and 60% probability of above-normal temperatures in the Mid-Atlantic region, which includes the PJM service area, in September-November 2025.<sup>22</sup>

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[https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20250211-3120](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20250211-3120)).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *Custom Data Download, EPA CAMPD (Clean Air Markets Program Data)*, <https://campd.epa.gov/data/custom-data-download> (search criteria Emissions >> Monthly >> Unit (default) >> Apply >> Time Period >> “2025” and “June” >> Facility >> “Eddystone Generating Station” >> Preview Data >> Download). The Eddystone Units generated more than 5800 MWh during the month of July. *Id.* (search criteria Emissions >> Monthly >> Unit (default) >> Apply >> Time Period >> “2025” and “July” >> Facility >> “Eddystone Generating Station” >> Preview Data >> Download).

<sup>21</sup> See PJM Emergency Procedures Postings, *Emergency Procedures* (PJM Emergency Procedures Postings), <https://emergencyprocedures.pjm.com/ep/pages/dashboard.jsf> (search range set to: effective from 06/01/2025 until 08/31/2025).

<sup>22</sup> Emergency Order at 2-3 (citing NOAA Climate Prediction Ctr., *Seasonal Outlook* (Aug. 21, 2025), [https://www.cpc.ncep.noaa.gov/products/predictions/long\\_range/seasonal.php?lead=1](https://www.cpc.ncep.noaa.gov/products/predictions/long_range/seasonal.php?lead=1)).

8. In addition, the Emergency Order stated that PJM itself immediately expressed its support for Order No. 202-25-04.<sup>23</sup> The Emergency Order noted that PJM has raised reliability concerns for years. For instance, the Emergency Order stated that in PJM’s Four Rs Report, PJM warned that “40 GW of thermal generation are at risk of retirement by 2030.”<sup>24</sup> Although PJM noted that, “while there were then 290 GW of renewable generation capacity in the PJM interconnection queue, historically, the rate of completion for renewable projects is approximately five percent.”<sup>25</sup> Consequently, “PJM determined that the pace of new capacity additions ‘would be insufficient to keep up with expected retirements and demand grown by 2030,’” and further “estimated that, depending on the pace of new capacity additions, reserve margin erosion would occur between 2026 and 2028.”<sup>26</sup>

9. In addition, the Emergency Order described that in PJM’s December 2024 Tariff Revisions for Reliability Resource Initiative filing with FERC,<sup>27</sup> PJM again cautioned that its “resource adequacy concerns are increasing at an extraordinary pace,”<sup>28</sup> being “driven in large part by significant load growth caused by, among other things, large data centers.”<sup>29</sup> PJM’s preliminary analysis indicated “substantial increases [in load additions] since the 2024 forecast” for both summer and winter seasons.<sup>30</sup> Moreover, the Emergency Order explained that, in support of the December 2024 RRI filing, PJM submitted an affidavit from Donald Bielak, PJM’s Director, Interconnection Planning.<sup>31</sup>

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<sup>23</sup> *Id.* at 3 (citing PJM, *PJM Statement on the U.S. Department of Energy 202(c) Order of May 30* (May 31, 2025) (PJM Statement), <https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/2025-releases/20250531-doe-202c-statement-to-defer-retirements-of-certain-generators.pdf>).

<sup>24</sup> *Id.* (citing Four Rs Report at 2).

<sup>25</sup> *Id.* (citing Four Rs Report at 2).

<sup>26</sup> *Id.* (citing Four Rs Report at 16, Table 1).

<sup>27</sup> See PJM, *Tariff Revisions for Reliability Resource Initiative*, FERC Docket No. ER25-712 (Dec. 13, 2024) (December 2024 RRI Filing), [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20241213-5271](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20241213-5271).

<sup>28</sup> *Id.* at 10 (heading number and capitalization omitted).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 11-12, Figures 3 & 4.

<sup>31</sup> Emergency Order at 4.

In this statement,<sup>32</sup> Mr. Bielak “characterized the increase in forecasted load growth throughout PJM as ‘extraordinary’ and ‘unprecedented,’ stating that it ‘could not have been foreseen as recently as a year ago.’”<sup>33</sup> Mr. Bielak also stated that the “‘rapid’ retirement of thermal generation resources, ‘extreme’ forecasted load growth, and ‘delays in new generation resources achieving commercial operation,’ would adversely affect resource adequacy throughout PJM’s electricity grid.”<sup>34</sup>

10. The Emergency Order noted that the North American Electric Reliability Corporation’s (NERC) 2024 Long Term Reliability Assessment raised similar concerns about PJM’s “resource adequacy challenges, impacting system reliability and PJM’s ability to serve load.”<sup>35</sup> Notably, NERC assessed the PJM region at an elevated risk starting in 2026,<sup>36</sup> explaining that “[r]esource additions are not keeping up with generator retirements and demand growth.”<sup>37</sup> Furthermore, “NERC stated that the loss-of-load hour (LOLH) and expected unserved energy (EUE) risks are concentrated in the winter months (especially January), in both 2026 and 2028.”<sup>38</sup>

11. The Emergency Order further stated that President Trump had previously issued executive orders on January 20, 2025, and April 8, 2025, underscoring the significant energy challenges facing the Nation due to growing resource adequacy concerns.<sup>39</sup> The

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<sup>32</sup> December 2024 RRI Filing, Attachment C (Affidavit of Mr. Donald Bielak) ¶¶ 18-19 (explaining that projects studied in Transition Cycle #2, which includes RRI projects, “could be constructed and in commercial operation by the 2029/30 Delivery Year or sooner.”).

<sup>33</sup> Emergency Order at 4 (quoting Affidavit of Mr. Donald Bielak ¶ 10).

<sup>34</sup> *Id.* (quoting Affidavit of Mr. Donald Bielak ¶ 12).

<sup>35</sup> *Id.* (citing NERC, *2024 Long-Term Reliability Assessment*, at 92 (Dec. 2024, as updated July 11, 2025) (2024 NERC Assessment), [https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_Long%20Term%20Reliability%20Assessment\\_2024.pdf](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf)).

<sup>36</sup> 2024 NERC Assessment at 7, Table 1.

<sup>37</sup> *Id.*

<sup>38</sup> Emergency Order at 4 (citing 2024 NERC Assessment at 91-92).

<sup>39</sup> *Id.* (citing Exec. Order No. 14262, 90 Fed. Reg. 15521 (Apr. 8, 2025) (*Strengthening the Reliability and Security of the United States Electric Grid*), <https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-the-reliability-and-security-of-the-united-states-electric-grid/>; Exec. Order No. 14156, 90 Fed.

Emergency Order also cited DOE’s July 2025 *Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid*,<sup>40</sup> issued pursuant to President Trump’s directive in Executive Order 14262, which further detailed the multiple challenges affecting the Nation’s energy security.

12. In the Emergency Order, the Secretary determined that continued dispatch of the Eddystone Units is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c).<sup>41</sup> The Emergency Order explained that this determination is based on the potential load stress due to resource adequacy concerns and the potential loss of power to homes and local businesses in the areas that may be affected by curtailments, as well as the potential shortage of electric energy and facilities for the generation of electric energy.<sup>42</sup> The Emergency Order is limited in duration to align with the emergency circumstances.<sup>43</sup> In the Emergency Order, in recognition of potential conflict with environmental standards and requirements and consistent with FPA section 202(c), the Secretary authorized only the necessary additional generation on specified conditions.<sup>44</sup>

## II. Discussion

### 1. The Secretary’s Authority to Determine the Existence of an “Emergency”

13. JCAs and PIOs each raise similar arguments that the Emergency Order fails to meet the legal definition of an “emergency” within the meaning of FPA section 202(c).<sup>45</sup>

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Reg. 8433 (Jan. 20, 2025) (*Declaring a National Energy Emergency*), <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>).

<sup>40</sup> U.S. Dep’t of Energy, *Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid* (July 2025) (July 2025 Resource Adequacy Report), <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf>.

<sup>41</sup> Emergency Order at 6.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 6-7, Ordering Paragraph B.

<sup>45</sup> *See* JCAs Pet. at 7-9; PIOs Pet. at 25-29, 35-38.

JCAs and PIOs both contend that an “emergency” contemplated by section 202(c) is one that is sudden, unexpected, and requires immediate action.<sup>46</sup> According to JCAs, the Emergency Order does not introduce facts that would satisfy this definition.<sup>47</sup> Similarly, PIOs argue that section 202(c)’s “text and context confirm that it provides authority for the limited purpose of addressing, near-term, and concrete electricity supply shortfalls requiring immediate responses,” and not “concerns over long-term reliability.”<sup>48</sup>

14. In addition, JCAs and PIOs rely on the cases *Richmond Power & Light of Richmond v. FERC*<sup>49</sup> and *Otter Tail Power Co. v. Federal Power Commission*<sup>50</sup> for the proposition that courts have interpreted section 202(c) narrowly to apply only to temporary emergencies requiring an imminent response.<sup>51</sup>

### **DOE’s Determination**

15. The Secretary has the authority under FPA section 202(c) to determine that an emergency exists as defined by that statute and exercise his judgment to address such an emergency. The statute’s plain text grants the Secretary authority to respond to more than imminent or immediate threats to the Nation’s electric infrastructure. Specifically, the Secretary “shall have authority” to act “whenever the [Secretary] determines that an emergency exists.”<sup>52</sup> Next, the statute sets forth three different categories of emergency where section 202(c) action is permissible. An emergency may exist “by reason of [1] a sudden increase in the demand for electric energy, or [2] a shortage of electric energy or

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<sup>46</sup> See, e.g., JCAs Pet. at 7-8; PIOs Pet. at 25-28.

<sup>47</sup> See JCAs Pet. at 7-13.

<sup>48</sup> PIOs Pet. at 25-26.

<sup>49</sup> 574 F.2d 610 (D.C. Cir. 1978) (*Richmond Power & Light*).

<sup>50</sup> 429 F.2d 232 (8th Cir. 1970) (*Otter Tail Power*).

<sup>51</sup> See, e.g., JCAs Pet. at 8-9, 11; PIOs Pet. at 35-37.

<sup>52</sup> 16 U.S.C. § 824a(c)(1) (emphasis added).

of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or [3] other causes.”<sup>53</sup>

16. Pursuant to FPA section 202(c)(1), the Secretary has the authority to determine the existence of a statutory emergency, “either upon [his] own motion or upon complaint, with or without notice, hearing, or report.” Beyond providing categories of when an “emergency exists,” the statute is silent on any additional requirements that must be satisfied. Here, as is evident from the face of the Emergency Order, and as is consistent with the text of section 202(c) and prior DOE practice,<sup>54</sup> the Secretary exercised his authority under section 202(c) and determined, in his statutory discretion and substantive expertise, 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.”<sup>55</sup>

17. The argument that the Secretary can act only when a shortage of electricity is “imminent” does not comport with the statutory authority conferred by FPA section 202(c). The word imminent does not appear in FPA section 202(c). The Secretary may act to address any “shortage of . . . facilities for the generation . . . of electric energy.”<sup>56</sup> Were the Secretary to be required to wait until a blackout is “imminent” before addressing a shortage of generation facilities, his ability to take meaningful action under section 202(c) to prevent the blackout would be gravely impaired. Section 202(c) must be interpreted in the context of the electric energy industry. Accepted practice for assessing a shortage of generation is to evaluate industry preparations that are in place to meet projections and maintain reliability over the next ten years, with a special focus on adequacy in the upcoming years one to five.<sup>57</sup> It can take

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<sup>53</sup> *Id.* (brackets added). See also H.R. Rep. No 113-86, at 2 (2013) (House Committee on Energy and Commerce Report on then-proposed amendment to section 202(c), which stated that “[r]eliability-related emergencies are not limited to bad weather, natural disasters, or terrorist attacks”).

<sup>54</sup> See, e.g., *Puget Sound Power & Light Co.*, 6 F.P.C. 320 (1947) (WL 1048) (in which the Federal Power Commission (FPC, the predecessor of DOE) used FPA section 202(c) to prevent an anticipated power shortage despite noting that the current power supply was adequate).

<sup>55</sup> Emergency Order at 1.

<sup>56</sup> 16 U.S.C. § 824a(c)(1).

<sup>57</sup> NERC, *Long-Term Reliability Assessment* (Jan. 2026) (Jan. 2026 NERC Long-Term Reliability Assessment), at 5, [https://www.nerc.com/globalassets/our-work/assessments/nerc\\_ltra\\_2025.pdf](https://www.nerc.com/globalassets/our-work/assessments/nerc_ltra_2025.pdf).

years to remedy a shortage of facilities for the generation of electric energy once a shortage is identified, with the “typical project” requiring nearly 5 years from an interconnection request.<sup>58</sup>

18. Consistent with this, DOE’s implementing regulations for FPA section 202(c), in effect since 1981, defines the term “emergency” to include “[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities.”<sup>59</sup> Furthermore, the definition of “emergency” contained in DOE’s regulations at 10 C.F.R. § 205.371—which generally provide guidance to applicants seeking section 202(c) relief—does not supersede the statutory discretion section 202(c) affords to the Secretary to *sua sponte* “determine[] that an emergency exists.” Accordingly, the Secretary’s emergency determination is entirely consistent with the governing statutory requirements in section 202(c) and DOE’s regulations.

19. Similarly, the dictionary definitions cited by JCAs<sup>60</sup> and PIOs<sup>61</sup> are not persuasive. Those dictionary definitions cannot limit the discretion Congress expressly delegated to the Secretary in FPA section 202(c).

20. The arguments made by JCAs and PIOs based on the *Otter Tail Power* and *Richmond Power & Light* decisions are misguided.<sup>62</sup> *Otter Tail Power* did not limit the Secretary’s FPA section 202(c) discretion or the meaning of “emergency” because the court held that section 202(c) *did not apply* to the case.<sup>63</sup> Instead, *Otter Tail Power* involved section 202(b) of the FPA and not an “emergency” within the meaning of

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<sup>58</sup> Joseph Rand et al., *Queued Up: 2024 Edition, Characteristics of Power Plants Seeking Transmission Interconnection as of the End of 2023*, Lawrence Berkeley Nat’l Lab. (Apr. 2024), at 3, [https://eta-publications.lbl.gov/sites/default/files/queued\\_up\\_2024\\_edition\\_r2.pdf](https://eta-publications.lbl.gov/sites/default/files/queued_up_2024_edition_r2.pdf) (“The average time projects spent in queues before being built has increased markedly. The typical project built in 2023 took nearly 5 years from the interconnection request to commercial operations, compared to 3 years in 2015 and <2 years in 2008.”).

<sup>59</sup> 10 C.F.R. § 205.371. *Accord Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power*, 46 Fed. Reg. 39984-01 (Aug. 6, 1981).

<sup>60</sup> *See, e.g.*, JCAs Pet. at 13 n.35.

<sup>61</sup> *See, e.g.*, PIOs Pet. at 26.

<sup>62</sup> *See, e.g.*, JCAs Pet. at 8-9, 11; PIOs Pet. at 35-37.

<sup>63</sup> *See* 429 F.2d at 234.

section 202(c).<sup>64</sup> In *Richmond Power & Light*, the Court of Appeals for the D.C. Circuit merely held that the FPC did not abuse its discretion in *declining* to invoke its emergency powers under section 202(c).<sup>65</sup> The court determined that the FPC had discretion to choose a temporary, voluntary program rather than issue an order pursuant to section 202(c), as the circumstance, in the FPC's discretion, did not warrant the use of emergency authority.<sup>66</sup>

21. A more relevant decision is *Board of Trade of Chicago v. Commodity Futures Trading Commission*.<sup>67</sup> In that case, the Court of Appeals for the Seventh Circuit recognized the broad powers of the Commodity Futures Trading Commission (CFTC) to issue emergency actions under section 8a(9) of the Commodity Exchange Act (7 U.S.C. § 12a(9)).<sup>68</sup> Through section 8a(9), the CFTC issued an emergency order for the Board of Trade to suspend trading in certain wheat futures contracts, citing transportation and warehouse shortages and potential market manipulation.<sup>69</sup> In response, the Board of Trade sought an injunction against the order, arguing that no emergency existed.<sup>70</sup> The district court granted a preliminary injunction, and the CFTC appealed.<sup>71</sup>

22. In its decision to vacate and remand the district court's preliminary injunction, the Seventh Circuit concluded that Congress intended to grant the CFTC discretion in making emergency determinations under the Commodity Exchange Act.<sup>72</sup> The court reasoned: "Congress recognized that regulation of the volatile futures markets could be accomplished effectively only through the use of an expert Commission, that situations could occur suddenly for which the traditional enforcement powers would be an

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<sup>64</sup> *See id.* (rejecting petitioner's contention that "any proceedings in the instant case must be dealt with in compliance with § 202(c)").

<sup>65</sup> *See* 574 F.2d at 615.

<sup>66</sup> *Id.* at 614-15.

<sup>67</sup> *Bd. of Trade of Chicago v. Commodity Futures Trading Comm'n*, 605 F.2d 1016, 1025 (7th Cir. 1979) (*Board of Trade*).

<sup>68</sup> *Id.*

<sup>69</sup> *See id.* at 1018.

<sup>70</sup> *Id.* at 1019.

<sup>71</sup> *Id.* at 1019-20.

<sup>72</sup> *Id.* at 1023-25.

inadequate response, and that therefore the Commission should have emergency powers, the exercise of which is committed to the expertise and discretion of the Commission.”<sup>73</sup> In addition, “[t]he fact that the Commission is authorized by Congress to take emergency action is, in itself, a suggestion of Congressional intent to commit such actions to the Commission’s discretion.”<sup>74</sup> Given the similarities between FPA section 202(c) and section 8a(9) of the Commodity Exchange Act, the *Board of Trade* decision confirms the conclusion that Congress intended to grant the Secretary broad discretion in section 202(c) to determine when his emergency powers should be applied to protect the public interest.<sup>75</sup>

23. In sum, the Secretary acted within his authority to determine the existence of an emergency, and the statutory meaning of “emergency” has been satisfied here. In its 90-year history, no court has questioned the Secretary’s (or, prior to its dissolution in 1977, the FPC’s)<sup>76</sup> judgment in this respect.

## 2. The Secretary’s Authority to Require the Eddystone Units to Continue to Operate

24. JCAs argue that the Emergency Order impermissibly exceeds the Secretary’s statutory authority under FPA section 202(c) in various respects.<sup>77</sup> For instance, JCAs argue that the Emergency Order exceeds the Secretary’s authority because it concerns resource adequacy issues that are unrelated to the asserted emergency and reserved to the states and FERC under other provisions of the FPA.<sup>78</sup>

25. Similarly, PIOs contend that, in enacting FPA section 215,<sup>79</sup> Congress established a “circumscribed scheme” of federal action for addressing long-term reliability concerns

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<sup>73</sup> *Id.* at 1025.

<sup>74</sup> *Id.* at 1023.

<sup>75</sup> *See id.* at 1023-25.

<sup>76</sup> The FPC was dissolved in 1977, and the FPC’s functions were split between FERC and DOE, with the Secretary retaining FPA section 202(c) power.

<sup>77</sup> *See, e.g.,* JCAs Pet. at 9-10, 16-17.

<sup>78</sup> *Id.*

<sup>79</sup> 16 U.S.C. § 824o.

in careful balance with the states, federal regulators, and other stakeholders.<sup>80</sup> PIOs assert that DOE's use of section 202(c) to address long-term reliability concerns (and not, as PIOs say, imminent threats) would effectively bypass the framework Congress provided under section 215.<sup>81</sup>

### **DOE's Determination**

26. There is no dispute that the Secretary has the statutory authority under FPA section 202(c) to (1) determine that an emergency exists, and then (2) exercise his judgment to address that emergency. Rather, JCAs and PIOs claim that the Secretary exceeded that authority in certain respects. As explained below, JCAs' and PIOs' claims have no merit.

27. FPA section 201(b)(1) specifically reserves authority over "facilities used for the generation of electric energy" for the states "*except as specifically provided in this subchapter.*"<sup>82</sup> Section 202(c) constitutes one such exception. It grants the Secretary the "authority, either upon [the Secretary's] own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in [the Secretary's] judgment will best meet the emergency and serve the public interest."<sup>83</sup> Congress thus purposely provided discretion in FPA section 202(c) to require changes to the operation of the U.S. electricity system to meet the emergency, including changes to the operation of electric generation facilities.

28. JCAs and PIOs attempt to avoid this clear grant of authority by arguing that the Emergency Order addresses issues unrelated to emergencies and instead concerns the issue of resource adequacy and long-term reliability.<sup>84</sup> But placing a different label on the Secretary's action cannot change the fact that actions taken in the Emergency Order fall squarely within the authority granted by FPA section 202(c). By its terms, section 202(c) may be invoked to address a potential "shortage of electric energy or of facilities for the generation or transmission of electric energy," which is exactly the situation that led to the issuance of the Emergency Order. The Secretary also is authorized to "require by order . . . such generation . . . of electric energy as in [the

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<sup>80</sup> PIOs Pet. 29-32.

<sup>81</sup> *Id.*

<sup>82</sup> 16 U.S.C. § 824(b)(1) (emphasis added).

<sup>83</sup> 16 U.S.C. § 824a(c)(1).

<sup>84</sup> *See, e.g.,* JCAs Pet. at 9-10, 16-17; PIOs Pet. at 29-32.

Secretary’s] judgment will best meet the emergency and serve the public interest,”<sup>85</sup> which is exactly the action the Emergency Order requires. Moreover, DOE’s regulations specifically provide that “[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities can result in an emergency as contemplated in these regulations.”<sup>86</sup> As such, this provision reinforces the conclusion that section 202(c) could be used to address long-term structural problems, not simply imminent and unexpected events—which is precisely what the Secretary did with the Emergency Order. DOE regulations thus implement the broad grant of discretion section 202(c) affords to the Secretary to “determine[] that an emergency exists.”<sup>87</sup>

29. Contrary to the assertions of JCAs and PIOs, the Secretary is not taking action to address matters otherwise delegated to the states or FERC, nor is he exceeding his statutory authority under FPA section 202(c). Specifically, due to “inadequate planning” and “the failure to construct necessary facilities,”<sup>88</sup> the Secretary took action to address the statutory emergency in PJM. As described in the Emergency Order, PJM’s resource crisis arises, among other reasons, from the mismatch between resource retirements, such as the Eddystone Units, and heightened demand, including that attributable to the sudden development of large data centers in PJM’s service region.<sup>89</sup> This demand “is clearly outpacing the rate of construction of new resources,”<sup>90</sup> which typically require multiple years before coming online.<sup>91</sup> If not for the Emergency Order, the Eddystone Units would have been retired on May 31, 2025, further decreasing the available dispatchable generation within PJM and deepening the reliability crisis. The actions directed by the

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<sup>85</sup> 16 U.S.C. § 824a(c)(1).

<sup>86</sup> 10 C.F.R. § 205.371.

<sup>87</sup> 16 U.S.C. § 824a(c)(1).

<sup>88</sup> 10 C.F.R. § 205.371 (“Extended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities can result in an emergency as contemplated in these regulations.”).

<sup>89</sup> *See, e.g.*, Emergency Order at 3-5; *see also* Asthana Test. at 4 (further noting increases in demand in PJM from the transportation and heating sectors, as well as industrial growth).

<sup>90</sup> Asthana Test. at 4.

<sup>91</sup> *See, e.g.*, Emergency Order at 2 (noting “delayed new entry” of generation facilities as contributing to “the possibility of a resource adequacy shortfall” (citation omitted)).

Emergency Order thus preserve the reliability of the grid until new generation resources can be added and are entirely consistent with the governing statutory requirements in FPA section 202(c) and its implementing regulations.

**3. The Factual Basis to Support the Secretary's Emergency Determination**

30. JCAs and PIOs raise similar arguments that there is no factual basis to support the Emergency Order, and that the Secretary is required to set forth substantial evidence in support of his emergency determination.<sup>92</sup> For example, JCAs and PIOs assert that the March 2025 congressional testimony by PJM's President and CEO, cited in the Emergency Order, does not show the existence of an emergency.<sup>93</sup> JCAs and PIOs also criticize the Emergency Order's discussion of and the purported methodology utilized in DOE's July 2025 Resource Adequacy Report.<sup>94</sup> JCAs and PIOs similarly assert that President Trump's executive actions responding to the Nation's ongoing energy crisis also are not sufficient evidence of an emergency within the meaning of section 202(c).<sup>95</sup>

31. PIOs further contend that the Eddystone Units' operations during the summer, discussed in the Emergency Order, do not constitute evidence of an emergency.<sup>96</sup> PIOs raise a similar contention regarding PJM's Hot Weather Alerts and/or Maximum Generation Alerts, which were also cited in the Emergency Order.<sup>97</sup> PIOs assert that DOE also did not show that tight grid conditions will persist in the fall season.<sup>98</sup> According to PIOs, PJM has sufficient capacity resources even without the Eddystone Units, as illustrated in various evidence cited in the Emergency Order (e.g., PJM's Four Rs Report, PJM's December 2024 RRI Filing, and the 2024 NERC Assessment).<sup>99</sup>

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<sup>92</sup> See, e.g., JCAs Pet. at 10-13; PIOs Pet. at 44-71.

<sup>93</sup> See JCAs Pet. at 11; PIOs Pet. at 63-64.

<sup>94</sup> See JCAs Pet. at 12-13; PIOs Pet. at 67-71.

<sup>95</sup> See JCAs Pet. at 9; PIOs Pet. at 40-44.

<sup>96</sup> PIOs Pet. at 44-51.

<sup>97</sup> *Id.* at 51-55.

<sup>98</sup> *Id.* at 55-57.

<sup>99</sup> *Id.* at 57-67.

## DOE's Determination

32. The exigencies that FPA section 202(c) is designed to address necessarily require that the Secretary's determination need only be informed by the facts available at the time and by his sound expert judgment as to what situations constitute an emergency. The statute expressly states that no notice, hearing, or report is required prior to issuance of a section 202(c) order. This confirms that the Secretary is authorized broad discretion to exercise his section 202(c) authority expeditiously in responding to emergency situations.

33. In any event, the Secretary's determination that an emergency exists is supported by substantial evidence noted in the Emergency Order. As discussed above, the Emergency Order identified the ongoing emergency in the PJM region "due to a shortage of facilities for the generation of electric energy, resource adequacy concerns, and other causes."<sup>100</sup> The Secretary further stated that the "emergency conditions resulting from increasing demand and accelerated retirements of generation facilities supporting the issuance of Order No. 202-25-04 will continue in the near term and are also likely to continue in subsequent years."<sup>101</sup> As such, the Secretary found that this emergency "could lead to the potential loss of power to homes and local businesses in the areas that may be affected by curtailments or outages, presenting a risk to public health and safety."<sup>102</sup> Consistent with his emergency determination, the Secretary thus ordered PJM and Constellation Energy to take all measures necessary to ensure that the Eddystone Units are available to operate.<sup>103</sup>

34. As noted, the Secretary's determination was based on several different facts discussed in the Emergency Order and summarized here. *First*, in congressional testimony submitted on March 25, 2025, Mr. Manu Asthana, PJM's president and CEO, explained that PJM faces a "growing resource adequacy concern . . . impacting a significant part of our country" due to load growth, the retirement of dispatchable resources, and other factors, such as "the development of large data centers in the PJM service area."<sup>104</sup> Data submitted by Mr. Asthana indicates that PJM anticipates growing reliability risk from increasing electricity demand, generator retirement outpacing new resource construction, and the inherent characteristics of existing resources in PJM's

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<sup>100</sup> Emergency Order at 1.

<sup>101</sup> *Id.* at 6.

<sup>102</sup> *Id.*

<sup>103</sup> *See id.*

<sup>104</sup> Asthana Test. at 4-5.

interconnection queue.<sup>105</sup> Contrary to JCAs’ and PIOs’ assertions that PJM has taken steps to adequately address these challenges, Mr. Asthana explained that supply conditions within PJM are still tightening despite various reforms instituted by PJM to bring new generation online and prevent the retirement of existing units.<sup>106</sup> Moreover, Mr. Asthana noted that PJM “encourage[s] all generation owners who have signaled an intent to retire their units to reconsider their decision to support resource adequacy and grid reliability.”<sup>107</sup> On these points, DOE further notes a July 2025 report prepared by the Council of Economic Advisers entitled, *The Economic Benefits of Unleashing American Energy* (CEA Report).<sup>108</sup> The CEA Report highlighted rapid energy demand increases due to data centers,<sup>109</sup> while noting that “utilities can delay retirement of existing baseload capacity until a sufficient amount of reliable new generation and storage capacity comes online.”<sup>110</sup>

35. *Second*, in its February 2023 Four Rs Report, PJM highlighted increasing reliability risks in the coming years due to the “potential timing mismatch between resource retirements, load growth and the pace of new generation entry” under “low new entry” scenarios for renewable generation.<sup>111</sup> For instance, PJM warned that 40 GW of thermal generation are at risk of retirement by 2030,<sup>112</sup> and that while there is additional renewable generation in the queue, the historical rate of completion for renewable projects is approximately five percent.<sup>113</sup>

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 9-10.

<sup>107</sup> *Id.* at 10.

<sup>108</sup> Council of Economic Advisers, *The Economic Benefits of Unleashing American Energy* (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/03/The-Economic-Benefits-of-Unleashing-American-Energy.pdf>.

<sup>109</sup> *Id.* at 2-6.

<sup>110</sup> *Id.* at 8-9.

<sup>111</sup> Four Rs Report, at 1.

<sup>112</sup> *Id.* at 2.

<sup>113</sup> *Id.*

36. *Third*, in December 2024, PJM filed tariff revisions for RRI with FERC.<sup>114</sup> PJM again cautioned that its “resource adequacy concerns are increasing at an extraordinary pace,”<sup>115</sup> being “driven in large part by significant load growth caused by, among other things, large data centers.”<sup>116</sup> PJM’s preliminary analysis indicated “substantial increases [in load additions] since the 2024 forecast” for both summer and winter seasons.<sup>117</sup> In a February 2025 order, FERC accepted the revisions, finding that they reasonably addressed “the possibility of a resource adequacy shortfall driven by significant load growth, premature retirements, and delayed new entry.”<sup>118</sup> PJM’s summer outlook, published in May 2025, reiterated that resource constraints could exist within its service territory under peak load conditions, stating that “available generation capacity may fall short of required reserves in an extreme planning scenario.”<sup>119</sup>

37. *Fourth*, as discussed above, the Emergency Order also noted evidence from the Eddystone Units’ operation during the summer heat wave. To recall, the Eddystone Units generated more than 17,000 MWh during the month of June and nearly 6,000 MWh during the month of July.<sup>120</sup> PJM issued Hot Weather Alerts and/or Maximum Generation Alerts (EEAs) covering a total of 20 days, including days in June, July, and

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<sup>114</sup> PJM, *Tariff Revisions for Reliability Resource Initiative*, FERC Docket No. ER25-712 (Dec. 13, 2024), [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20241213-5271](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20241213-5271).

<sup>115</sup> *Id.* at 10.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 11-12, Figures 3 & 4.

<sup>118</sup> *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,084, at P 14 (2025). *See also* *PJM Interconnection, L.L.C.*, 192 FERC ¶ 61,085 (2025) (*Order Addressing Arguments Raised on Rehearing and Clarification*).

<sup>119</sup> PJM Inside Lines, *PJM Summer Outlook 2025: Adequate Resources Available for Summer Amid Growing Risk* (May 9, 2025), <https://insidelines.pjm.com/pjm-summer-outlook-2025-adequate-resources-available-for-summer-amid-growing-risk/>.

<sup>120</sup> *See Clean Air Markets Program Data* (search criteria Emissions >> Monthly >> Unit (default) >> Apply >> Time Period >> “2025” and “June” and “July” >> Facility >> “Eddystone Generating Station” >> Preview Data >> Download).

August.<sup>121</sup> Indeed, PJM has issued more EEAs in 2025 than it has over the prior nine years combined.<sup>122</sup>

38. *Fifth*, in its statement expressing support for Order No. 202-25-04, PJM, a grid operator, explained that it has “repeatedly documented and voiced its concerns over the growing risk of a supply and demand imbalance driven by the confluence of generator retirements and demand growth. Such an imbalance could have serious ramifications for reliability and affordability for consumers.”<sup>123</sup> As the Emergency Order explained, PJM’s resource adequacy concerns have persisted for years. For example, in its Four Rs Report, PJM cautioned that the pace of new entry “would be insufficient to keep up with expected retirements demand growth by 2023.”<sup>124</sup> The Emergency Order also cited PJM’s December 2024 RRI Filing, where PJM again cautioned that its “resource adequacy concerns are increasing at an extraordinary pace,”<sup>125</sup> being “driven in large part by significant load growth caused by, among other things, large data centers.”<sup>126</sup> PJM’s preliminary analysis indicated “substantial increases [in load additions] since the 2024 forecast” for both summer and winter seasons.<sup>127</sup>

39. Moreover, the Emergency Order referenced the affidavit from Donald Bielak, PJM’s Director, Interconnection Planning.<sup>128</sup> Mr. Bielak “characterized the increase in forecasted load growth throughout PJM as ‘extraordinary’ and ‘unprecedented,’ stating that it ‘could not have been foreseen as recently as a year ago.’”<sup>129</sup> Mr. Bielak also explained that the “‘rapid’ retirement of thermal generation resources, ‘extreme’ forecasted load growth, and ‘delays in new generation resources achieving commercial

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<sup>121</sup> See PJM Emergency Procedures Postings.

<sup>122</sup> PJM Planning Committee, *Expansion of Provisional Service*, at 2 (Sept. 9, 2025), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/pc/2025/20250909/20250909-item-04---expansion-of-provisional-services.pdf>.

<sup>123</sup> PJM Statement, *supra* n.23.

<sup>124</sup> Four Rs Report at 16, Table 1.

<sup>125</sup> *Id.* at 10 (heading number and capitalization omitted).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 11-12, Figures 3 & 4.

<sup>128</sup> Emergency Order at 4.

<sup>129</sup> *Id.* (quoting Affidavit of Mr. Donald Bielak ¶ 10).

operation,’ would adversely affect resource adequacy throughout PJM’s electricity grid.”<sup>130</sup>

40. *Sixth*, the Emergency Order stated that the 2024 NERC Assessment had raised concerns regarding resource adequacy challenges in PJM’s region. As noted above, NERC assessed the PJM region at an elevated risk starting in 2026,<sup>131</sup> explaining that “[r]esource additions are not keeping up with generator retirements and demand growth.”<sup>132</sup> Furthermore, “NERC stated that the loss-of-load hour (LOLH) and expected unserved energy (EUE) risks are concentrated in the winter months (especially January), in both 2026 and 2028.”<sup>133</sup>

41. *Seventh*, the Emergency Order noted that the Secretary’s FPA section 202(c) actions as to the Eddystone Units were preceded by President Trump’s historic executive actions recognizing this Nation’s energy supply crisis. In particular, in Executive Order 14262, “Strengthening the Reliability and Security of the United States Electric Grid,” President Trump emphasized that “the United States is experiencing an unprecedented surge in electricity demand driven by rapid technological advancements, including the expansion of artificial intelligence data centers and an increase in domestic manufacturing.”<sup>134</sup> As the President explained, this significant increase in electricity demand, “coupled with existing capacity challenges, places a significant strain on our Nation’s electric grid.”<sup>135</sup> Significantly, Executive Order 14262 specifically ordered the Secretary to draw upon “all mechanisms available under applicable law, *including section 202(c) of the Federal Power Act*, to ensure any generation resource identified as critical within an at-risk region is appropriately retained as an available generation resource within the at-risk region.”<sup>136</sup>

42. President Trump recognized, in Executive Order 14156, “Declaring a National Energy Emergency,” that the “United States’ insufficient energy production, transportation, refining, and generation constitutes an unusual and extraordinary threat to

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<sup>130</sup> *Id.* (quoting Affidavit of Mr. Donald Bielak ¶ 12).

<sup>131</sup> 2024 NERC Assessment at 7, Table 1.

<sup>132</sup> *Id.*

<sup>133</sup> Emergency Order at 4 (citing 2024 NERC Assessment at 91-92).

<sup>134</sup> Exec. Order No. 14262, 90 Fed. Reg. 15521, at § 1.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* § 3(c) (emphasis added).

our Nation’s economy, national security, and foreign policy.” In declaring such emergency, including pursuant to the National Emergencies Act,<sup>137</sup> the President specifically ordered the heads of executive departments to “identify and exercise any lawful emergency authorities available to them . . . to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources.”<sup>138</sup> One such “lawful emergency authorit[y]” is the Secretary’s section 202(c) power. The executive orders informed the Secretary’s decision and action, in addition to the other factors outlined in the Emergency Order and this Order.<sup>139</sup>

43. *Eighth*, the Emergency Order referenced DOE’s July 2025 Resource Adequacy Report. The Emergency Order noted that DOE’s analysis concludes that “[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 [ ] innovation.”<sup>140</sup> The Emergency Order noted that “[t]he prolific growth of data centers for the development of AI, as well as their immense energy needs, presents a new and unexpected source of load growth.”<sup>141</sup> Indeed, as the Emergency Order described, DOE’s “analysis performed [in 2025] in collaboration with the national labs modeled the effects of approximately 25 GW of load growth in PJM, of which 15 GW came from data centers, as well as approximately 17 GW of announced coal, gas, and oil generation retirements. Under these assumptions, the model estimated approximately 430.3 loss of load hours in an average weather year. Under worst weather year assumptions, the model estimated 1,052 loss of load hours and a maximum unserved load hours of approximately 21.335 GW.”<sup>142</sup>

44. Substantial evidence discussed in the Emergency Order demonstrated capacity concerns within the PJM region, with increased tightening due to continued load growth, premature retirements, and uncertain new generation resource entries. The Secretary exercised his discretion in determining that these conditions constituted an emergency necessitating FPA section 202(c) action. As noted above, JCAs and PIOs maintain that this evidence does not show the existence of an imminent emergency. But if the Secretary had allowed the planned retirement of the Eddystone Units, then those

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<sup>137</sup> 50 U.S.C. §§ 1601-1651.

<sup>138</sup> Exec. Order No. 14156, 90 Fed. Reg. 8433, at § 2.

<sup>139</sup> *Id.* § 1.

<sup>140</sup> July 2025 Resource Adequacy Report at 1.

<sup>141</sup> Emergency Order at 5.

<sup>142</sup> *Id.* (citing July 2025 Resource Adequacy Report at 27-28).

generating units would have never been available to address the imminent loss of load in the PJM region. In other words, the Secretary was required to act before current load stress resulted in an EEA or actual loss of load. Moreover, contrary to the contentions of JCAs and PIOs, the conditions that actually existed in the summer following issuance of the Emergency Order further confirm the ongoing emergency and sudden increased threats to energy reliability. Again, “the increase in forecasted load growth throughout PJM . . . could not have been foreseen as recently as a year ago.”<sup>143</sup> Accordingly, based on the evidence available, the Secretary reasonably exercised his judgment and issued the Emergency Order.

45. The evidence subsequently available further confirms the Secretary’s exercise of sound discretion and judgment in issuing the Emergency Order. On December 17, 2025, PJM held its 2027/2028 Base Residual Auction, the market construct used to secure capacity resources from electricity generators to meet forecasted demand in the PJM region for the 2027/2028 delivery year.<sup>144</sup> Significantly, the auction results demonstrated that the emergency in the PJM region is deepening even faster than anticipated.<sup>145</sup> The 134,479 MW of resources procured through the auction, plus the additional 11,299 MW for regions under the Fixed Resource Requirement (FRR) (a total of 145,777 MW), is short of PJM’s reliability requirement by 6,623 MW.<sup>146</sup> As PJM explained, this means “that the committed supply is less than what would be required to meet the one-event-in-10-year reliability standard of a 20% reserve margin.”<sup>147</sup> PJM further noted that the auction result “leaves no doubt that data centers’ demand for electricity continues to far outstrip new supply,” and “[t]he supply-and-demand imbalance that PJM and much of the nation are currently experiencing requires action on multiple fronts, including speeding the entry of new generation onto the system, maintaining and maximizing existing generation, and finding ways to increase the flexibility of system demand.”<sup>148</sup> One of the key mitigating measures PJM highlighted for addressing this shortage is “the potential for

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<sup>143</sup> *Id.* at 4 (quoting Affidavit of Mr. Donald Bielak ¶ 10).

<sup>144</sup> PJM, *2027/2028 Base Residual Auction Report* (Dec. 17, 2025), <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2027-2028/2027-2028-bra-report.pdf>. See also PJM Inside Lines, *PJM Auction Procures 134,479 MW of Generation Resources* (Dec. 17, 2025) (2027/2028 BRA Press Release), <https://insidelines.pjm.com/pjm-auction-procures-134479-mw-of-generation-resources/>.

<sup>145</sup> See 2027/2028 BRA Press Release.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* (internal quotation marks and citation omitted).

generators with announced retirements to continue operating.”<sup>149</sup> Indeed, this evidence further supports the existence of “a sudden increase in the demand for electric energy.”<sup>150</sup>

46. The findings contained in the 2027/2028 Base Residual Auction Report are consistent with those of NERC’s Long-Term Reliability Assessment, released in January 2026.<sup>151</sup> NERC assessed PJM as an area of elevated risk from 2026 to 2028, and an area of high risk in 2029 and 2030.<sup>152</sup> This shift to high risk will occur because “[c]urrent projections for resource additions do not keep pace with escalating demand forecasts and expected generator retirements.”<sup>153</sup> According to NERC, this will result in the “anticipated resource margin fall[ing] below the Reference Margin Level starting in 2029.”<sup>154</sup> NERC noted that “[d]emand for electricity in PJM is growing at its fastest pace in years, driven primarily by data centers, followed by electrification and manufacturing loads . . . [and that] PJM’s annual net energy for load growth rate is projected to average 4.8% per year over the next 10 years, up from 2.3% in last year’s projections.”<sup>155</sup> However, at the same time that PJM is experiencing surging demand for electricity, NERC stated that PJM is also facing “extreme and rapid tightening of capacity resources in the near term because of generator retirements and project delays.”<sup>156</sup>

47. Notably, on January 24, 2026, in anticipation of Winter Storm Fern, PJM petitioned DOE to issue an order pursuant to FPA section 202(c) that would “broadly authorize[] all electric generating units located within the PJM Region to operate up to

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<sup>149</sup> *Id.*

<sup>150</sup> 16 U.S.C. § 824a(c)(1).

<sup>151</sup> Jan. 2026 NERC Long-Term Reliability Assessment.

<sup>152</sup> *Id.* at 8, Table 1.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 16. Net energy for load is the net generation of an electric system, “plus energy received from other Balancing Authority Areas, less energy delivered to Balancing Authority Areas through interchange. It includes Balancing Authority Area losses but excludes energy required for storage at energy storage facilities.” See NERC, *Glossary of Terms Used in NERC Reliability Standards* (updated Feb. 17, 2026), [https://www.nerc.com/globalassets/standards/reliability-standards/glossary\\_of\\_terms.pdf](https://www.nerc.com/globalassets/standards/reliability-standards/glossary_of_terms.pdf).

<sup>156</sup> Jan. 2026 NERC Long-Term Reliability Assessment at 16.

their maximum generation output levels.”<sup>157</sup> PJM stated that, “[a]bsent such an order, there is a risk that residences, hospitals, military facilities, water treatment plants, and other critical facilities may lose electric service to all or parts of their facilities due to the lack of adequate generation.”<sup>158</sup> The fact that PJM would request such an order and perceives such risks illustrates the severity of the energy emergency within the PJM Region. During periods of extreme weather, reliable energy can be the difference between life and death.

48. Lastly, and in further support of the order upon rehearing, FPA section 202(c) authorizes the Secretary to “determine[] that an emergency exists by reason of . . . other causes.”<sup>159</sup> As noted, the plain language of the statute does not impose an imminence requirement on FPA section 202(c) emergencies. To this end, one “other cause[]” of the statutory emergency is the collateral market impact caused by the scale of penetration of non-dispatchable variable generation into market-based regional transmission organizations (RTOs), including specifically PJM. It is “essential” to an RTO’s “ability to service electrical demand” that it maintain “adequate level of generation resources, with the right operational and physical characteristics.”<sup>160</sup>

49. “Non-variable generation—including coal, petroleum, natural gas” and other thermal sources—“can ramp up or down in response to demand” and “provide other [essential reliability services] like system inertia, dynamic reactive support, and frequency response for stable grid operation.”<sup>161</sup> “Operating costs of competing resources are significant factors for PJM to determine which plants will run.”<sup>162</sup> Nevertheless, the externality cost of variable generation is borne by non-variable sources

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<sup>157</sup> PJM, *Request for Emergency Order Under Federal Power Act, Section 202(c)*, at 2 (Jan. 24, 2026). In response, DOE issued Order No. 202-26-02, which was, after an additional request from PJM, extended by Order No. 202-26-02A.

<sup>158</sup> *Id.* at 3.

<sup>159</sup> 16 U.S.C. § 824a(c)(1).

<sup>160</sup> PJM, *Energy Transition in PJM: Resource Retirements, Replacements & Risks*, at 1 (Feb. 24, 2023), <https://www.pjm.com/-/media/DotCom/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx>.

<sup>161</sup> Jan. 2026 NERC Long-Term Reliability Assessment at 32.

<sup>162</sup> U.S. Energy Info. Admin. (EIA), *PJM has been dispatching coal-fired generators less than other generators*, Today in Energy (June 17, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=62343>.

in most market designs. The “duck curve” (the steep rise in the evening need for load when solar generation drops off), and unpredictable rapid shifts attendant to wind turbines, create “grid stress” demanding other conventional generation to quickly ramp up electricity production (if it can) to meet consumer demand and maintain reliability.<sup>163</sup> This “can challenge the traditional economics of dispatchable power plants because the factors contributing to the curve reduce the amount of time a conventional power plant operates, which results in reduced energy revenues.”<sup>164</sup> In addition, “large thermal plants can experience problems caused by repeated startups and shutdowns, increasing maintenance costs.”<sup>165</sup> The effects of these market externalities can lead to premature retirement of coal-fired and other assets with physical characteristics important to grid stability and the public interest. The sudden increase in the demand for electric energy, shortage of dispatchable generation, and other causes undermining grid stability within PJM constitutes an emergency that justifies the Secretary’s use of section 202(c) to ensure the operational availability of the Eddystone Units.

#### 4. Whether the Emergency Order Interferes with Competitive Markets

50. PIOs contend that the Emergency Order impermissibly undermines competitive markets to the detriment of consumers and reliability.<sup>166</sup> Specifically, PIOs argue that the Emergency Order, Executive Order 14156 and Executive Order 14262, and DOE Order No. 202-25-03<sup>167</sup> together advance an unlawful energy policy that overrides capacity and energy markets to force private entities to continue operating uneconomic units they would otherwise decommission.<sup>168</sup> Lastly, PIOs allege that DOE’s actions have destabilized the market by interrupting the reallocation of transmission and

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<sup>163</sup> EIA, *As solar capacity grows, duck curves are getting deeper in California*, Today in Energy (June 21, 2023), <https://www.eia.gov/todayinenergy/detail.php?id=56880>.

<sup>164</sup> *Id.*

<sup>165</sup> EIA, *supra* n.162.

<sup>166</sup> PIOs Pet. at 72-80.

<sup>167</sup> Order No. 202-25-03 applies to the J.H. Campbell Generating Plant within the operating territory of Midcontinent Independent System Operator, Inc. (MISO).

<sup>168</sup> PIOs Pet. at 77-80.

capacity rights, preventing the addition of new generation resources, and deterring outside investment.<sup>169</sup>

### **DOE's Determination**

51. PIOs' assertions are incorrect. The Secretary determined that an emergency exists and ordered the remedy that "will best meet the emergency and serve the public interest."<sup>170</sup> The statute contains no requirement for the Secretary to consider the impacts his order would have on competitive markets. The statute expressly delegates the decision on the appropriate remedy to the Secretary's "judgment" (similar to the express delegation to "determine[] that an emergency exists").<sup>171</sup> Indeed, as discussed above, PJM itself has expressed support for the order "to defer the retirements" of the Eddystone Units, referencing the "growing risk of a supply and demand imbalance" that poses "serious ramifications for reliability and affordability for consumers."<sup>172</sup>

52. PIOs' assertion that the Emergency Order will destabilize the market is speculative, unfounded, and similarly irrelevant. When DOE referred rate issues arising from Order No. 202-25-04 to FERC,<sup>173</sup> it specified that the Eddystone Units were not to be counted as capacity resources.<sup>174</sup> This ensures that the Emergency Order will not "destabilize" the market or otherwise interfere with the development of new generation, while appropriately compensating the operators.

53. PIO's argument is also premised on a fallacy. These alleged "uneconomic units" may not be profitable for private parties to continue operating under the strictures of the PJM market tariffs, particularly given the rate of return of a generator's overall asset fleet. That does not mean these units are "uneconomic" for the ratepayers and broader public as a whole. The power blackouts in Texas during Winter Storm Uri were a prime

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<sup>169</sup> *Id.* at 79-80.

<sup>170</sup> 16 U.S.C. § 824a(c)(1).

<sup>171</sup> *Id.*

<sup>172</sup> PJM Statement, *supra* n.23.

<sup>173</sup> *See* 10 C.F.R. § 205.376.

<sup>174</sup> U.S. Dep't of Energy, *Referral to the Fed. Energy Reg. Comm'n*, Docket No. AD25-15-000 (filed June 17, 2025), [https://elibrary.ferc.gov/eLibrary/docinfo?accession\\_number=20250617-5308&sid=9bdf7a5c-69d9-4147-8088-a43babc3a070](https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20250617-5308&sid=9bdf7a5c-69d9-4147-8088-a43babc3a070).

54. contributor to major economic losses.<sup>175</sup> The storm contributed to at least 210 deaths, while the Federal Reserve Bank of Dallas estimated the state's storm-related financial losses between \$80 billion to \$130 billion.<sup>176</sup> Similarly, Winter Storm Elliott resulted in outages, and the high outage rates for certain generators resulted in substantial non-performance charges of almost \$2 billion to suppliers that exceeded their committed capacity levels.<sup>177</sup> As noted above, operational data from this summer confirms that the Eddystone Units generated more than 17,000 MWh during the month of June and nearly 6,000 MWh during the month of July.<sup>178</sup> The actual dispatch of the Eddystone Units during the summer underscores that generation from the Eddystone Units contributes to maintaining reliability in PJM. Contrary to PIOs' contentions, the Secretary's action in dispatching the Eddystone Units is increasing reliability and affordability for consumers and in the public interest.

### 5. Best and Appropriate Means for Addressing the Emergency

55. JCAs and PIOs raise similar arguments that the Eddystone Units are neither the best nor an appropriate means of alleviating the capacity shortfall addressed by the Emergency Order.<sup>179</sup> JCAs and PIOs further contend that DOE was required to consider alternatives and evaluate other possible methods for addressing the emergency, which JCAs and PIOs argue the Emergency Order failed to do.<sup>180</sup>

56. PIOs further argue that DOE is required to consider the various policies of the FPA or the strictures of the Administrative Procedure Act.<sup>181</sup> For example, PIOs contend that the Emergency Order does not address how the Eddystone Units can meet the

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<sup>175</sup> Tex. Comptroller of Pub. Accounts, *Fiscal Notes: Winter Storm Uri 2021*, at 3 (Oct. 2021), <https://comptroller.texas.gov/economy/fiscal-notes/archive/2021/oct/winter-storm-impact.php>.

<sup>176</sup> *Id.*

<sup>177</sup> PJM, *Winter Storm Elliott Event Analysis and Recommendation Report*, at 2 (July 17, 2023), <https://www.pjm.com/-/media/DotCom/library/reports-notice/special-reports/2023/20230717-winter-storm-elliott-event-analysis-and-recommendation-report.ashx>.

<sup>178</sup> EPA, *Clean Air Markets Program Data*, *supra* n.120.

<sup>179</sup> JCAs Pet. at 13-14; PIOs Pet. at 80-87.

<sup>180</sup> *See, e.g.*, JCAs Pet. at 13-14; PIOs Pet. at 81.

<sup>181</sup> *See, e.g.*, PIOs Pet. at 80-82.

emergency and suggest that the Eddystone Units are unfit for the use specified.<sup>182</sup> PIOs also assert that DOE could have considered “alternatives” that PIOs introduced in their request for rehearing as to Order No. 202-25-04.<sup>183</sup>

### **DOE’s Determination**

57. The Secretary, in issuing the Emergency Order, adhered to the process established in FPA section 202(c) in exercising his judgment by directing PJM to undertake specific actions as to the Eddystone Units.<sup>184</sup> There is no dispute that the Secretary, as the presidentially-appointed and Senate-confirmed head of DOE,<sup>185</sup> is the appropriate individual to determine the existence of an emergency within the meaning of section 202(c) and exercise “[the Secretary’s] judgment” as to what remedy will “best meet the emergency and serve the public interest.”<sup>186</sup> As discussed above, the Secretary exercised his discretion in responding to an emergency pursuant to an express delegation of authority under section 202(c). Further, as explained below, there is no basis to grant rehearing to review the Secretary’s exercise of his judgment in prescribing the required response to the emergency.

58. As noted above, section 202(c)(1) affords the Secretary discretion as to what remedy “will best meet the emergency and serve the public interest.”<sup>187</sup> The statute expressly delegates the decision on the appropriate remedy to the Secretary’s “judgment” (similar to the express delegation to “determine[] that an emergency exists”).<sup>188</sup> The statute does not contain any requirement to consider and evaluate in writing any alternative means for addressing the emergency.<sup>189</sup> Here, the Secretary exercised his

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<sup>182</sup> *Id.* at 84-85.

<sup>183</sup> *Id.* at 81-82.

<sup>184</sup> *See generally* Emergency Order.

<sup>185</sup> *See* 42 U.S.C. § 7131.

<sup>186</sup> 16 U.S.C. § 824a(c)(1).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> PIOs’ assertion (*see* PIOs Pet. at 82-83) that the Secretary must consider a wide range of possible means of addressing an emergency relies on a DOE regulation that sets forth rules for *applications* for emergency orders. 10 C.F.R. § 205.373. That regulation is not applicable here because the Secretary issued the Emergency Order upon his own initiative. PIOs’ argument that emergency orders issued pursuant to section 202(c) must

judgment in determining that “operational availability and economic dispatch of the Eddystone Units is necessary to best meet the emergency and serve the public interest.”<sup>190</sup> It is indisputable that the Eddystone Units are well positioned, as has been demonstrated by their dispatch during the summer heatwave, to address the “potential shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes” in the PJM region.<sup>191</sup>

59. PIOs continue to offer alternatives that PIOs contend are better and more appropriate solutions to the emergency. But this after the fact analysis is irrelevant. Section 202(c)(1) authorizes the Secretary to determine the existence of an emergency and to order the means to address such a statutory emergency. It does not require the Secretary to engage in a lengthy weighing of options or explanation of the Secretary’s actions prior to issuing the emergency order. Indeed, such a process would defeat the very purpose of the emergency power to act expeditiously and within the judgment of the Secretary. Nevertheless, as discussed further, *infra*, the Secretary’s judgment is that the order to the Eddystone Units best meets the emergency, not the alternatives suggested.

## 6. Potential Environmental Impacts

60. PIOs contend that the Emergency Order fails to comply with section 202(c)’s requirement to ensure that any order “to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.”<sup>192</sup> In particular, PIOs argue that the Emergency Order’s instruction to employ economic dispatch violates DOE’s obligation

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*further* numerous specific public interest factors is similarly misplaced. *See* PIOs Pet. at 71-74. The Secretary determined that the issuance of the Emergency Order served the public interest compared to the alternative of allowing the facility to stop generating by, among other things, helping to prevent the loss of power to homes and local businesses. PIOs’ reliance on Order No. 202-22-04, in which PJM was directed to exhaust available alternatives before operating additional requested generation, is similarly misplaced. *See* PIOs Pet. at 82-83. In that order, the requirement to exhaust available alternatives was a limitation the Secretary placed on action by PJM. The statute imposes no such limitation on action by the Secretary before issuing a section 202(c) order. Pursuant to section 202(c), the Secretary is empowered to use his reasoned judgment to address emergency conditions in the manner he deems most appropriate, which may or may not include such alternatives as identified by PIOs.

<sup>190</sup> Emergency Order at 1.

<sup>191</sup> *Id.*

<sup>192</sup> PIOs Pet. at 96 (citing 16 U.S.C. § 824a(c)(2)).

to ensure generation of electric energy only during hours necessary to meet the emergency and serve the public interest.<sup>193</sup>

61. Moreover, PIOs claim that the Emergency Order lacks sufficiently detailed dispatch and reporting instructions, which they claim are necessary because the Eddystone Units can be run on either oil or natural gas. PIOs argue that the Emergency Order does not specify who bears the responsibility for operation of the Eddystone Units or include mitigation measures to alleviate environmental impacts, and therefore does not ensure conformity with environmental regulations “to the maximum extent practicable.”<sup>194</sup>

62. PIOs further argue that the Emergency Order serves as a renewal or re-issuance of DOE Order No. 202-25-04, and is therefore subject to section 202(c)(4)(B)’s requirement that DOE “consult with the primary Federal agency with expertise in the environmental interest protected” by the laws with which the Emergency Order may conflict, with which DOE fails to comply.<sup>195</sup>

### **DOE’s Determination**

63. Section 202(c)(2) requires the Secretary to ensure that any section 202(c) order that may result in a conflict with a requirement of any environmental law or regulation to the “maximum extent practicable, [be] consistent with any applicable . . . environmental law or regulation and minimize[] any adverse environmental impacts.” In addition, section 202(c)(2) requires the Secretary to ensure that any directed action that may result in a conflict with a requirement of any environmental law or regulation be limited to the “hours necessary to meet the emergency and serve the public interest.”

64. It is important to note that “the emergency” the order imposes requirements to “best meet” is the statutory emergency resulting from the sudden increase in demand for electric energy, the shortage of facilities for the generation of electric energy, and other causes previously described to exist in PJM. Therefore, the statutory direction to operate “only during hours necessary” must be read in that context.

65. PIOs argue that employment of economic dispatch does not adequately limit the operating hours of the Eddystone Units.<sup>196</sup> However, the Emergency Order also states that to “minimize adverse environmental impacts, this Order limits operation of

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<sup>193</sup> *Id.* at 99-100 (citing Emergency Order at 6).

<sup>194</sup> *Id.* at 100-02.

<sup>195</sup> *Id.* at 102-03.

<sup>196</sup> *Id.* at 99-100.

dispatched units to the times and within the parameters as determined by PJM pursuant to paragraph A.”<sup>197</sup> As PJM reported, Constellation will maintain active cost-based offers for the Eddystone Units, unless either fuel (oil or gas) is unavailable or the units are on an outage, and PJM operators will only dispatch the units to address specified reliability needs.<sup>198</sup>

66. PIOs’ contention that the Emergency Order does not identify conditions to minimize any adverse environmental impact is similarly mistaken. The Emergency Order requires that “[a]ll operation of the Eddystone Units must comply with applicable environmental requirements, including but not limited to monitoring, reporting, and recordkeeping requirements, to the maximum extent feasible,”<sup>199</sup> and requires daily reporting from PJM on “whether the Eddystone Units [have] operated in compliance with the allowances contained in this Order.”<sup>200</sup> These requirements limit the time and manner of operation, and provide a mechanism for DOE to obtain information concerning adverse environmental impacts of the emergency operations. DOE may modify the Emergency Order to require additional actions as the Secretary deems appropriate within his judgment and in view of the declared emergency as may subsequently be needed.

67. PIOs argue that certain measures, such as use of imports, demand response resources, and behind-the-meter generation, would mitigate environmental impacts when compliance with environmental standards proves impractical.<sup>201</sup> These conditions, however, are not required by statute, and would not in the Secretary’s judgment best meet the emergency, nor necessarily minimize adverse environmental impacts. Congress did not prescribe in section 202(c) how DOE was to fulfill its obligation to comply with environmental laws and regulations.

68. In addition, Congress recognized, by including the phrase “practicable,” that emergency circumstances would at times make compliance with all Federal, state, and local environmental requirements and minimization of all potential adverse environmental impacts not just infeasible, but inappropriate given the conditions. The direction to do what is “practicable” provides the Secretary with discretion in fulfilling

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<sup>197</sup> Emergency Order at 6, Ordering Paragraph B.

<sup>198</sup> PJM, *Eddystone 3 and 4 Unit Reporting and Commitment Process*, <https://www.pjm.com/-/media/DotCom/committees-groups/committees/oc/postings/2025/0612-eddystone-3-and-4-unit-reporting-and-commitment-process.pdf> (emphasis added).

<sup>199</sup> Emergency Order at 7, Ordering Paragraph C.

<sup>200</sup> *Id.* at 6-7, Ordering Paragraph B.

<sup>201</sup> *See* PIOs Pet. at 102.

his obligations under section 202(c). Accordingly, the Emergency Order’s (1) limits on duration, (2) conditions that authorize only the additional generation necessary and require the operation of the plant to comply with environmental laws to the extent feasible, and (3) reporting requirements that allow DOE to monitor PJM’s compliance with the Emergency Order and the environmental impacts such that DOE could take additional action as the Secretary deems appropriate, are sufficient to satisfy the Secretary’s obligation under section 202(c)(2).

69. PIOs’ argument that DOE failed to satisfy the FPA’s consultation requirement in reissuing the Emergency Order for an additional 90 days is inapposite. Specifically, section 202(c)(4)(B) requires that, in renewing or reissuing an emergency order, DOE “shall consult with the primary Federal agency with expertise in the environmental interest protected” by laws or regulations with which the Emergency Order may conflict.<sup>202</sup> Prior to issuing the Emergency Order, DOE consulted with the EPA regarding the Eddystone Units’ operations. DOE notes that the EPA did not identify any additional environmental conditions for the Eddystone Units’ continued operation pursuant to the Emergency Order.

### **III. Procedural Issues**

#### **1. PIOs’ Request for Stay**

70. PIOs move for a stay of the Emergency Order pending resolution of judicial review.<sup>203</sup> In support of their request, PIOs contend that (1) absent a stay, they will be irreparably harmed by the Emergency Order, (2) a stay will not harm any other interested parties, and (3) the public interest favors a stay.<sup>204</sup>

#### **DOE’s Determination**

71. In considering a request for a stay, agencies consider (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay serves the public interest.<sup>205</sup>

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<sup>202</sup> 16 U.S.C. § 824a(c)(4)(B).

<sup>203</sup> PIOs Pet. § VI.

<sup>204</sup> *Id.* at 86-89.

<sup>205</sup> See *Nken v. Holder*, 556 U.S. 418, 434-36 (2009); *Ohio v. Env’t Prot. Agency*, 603 U.S. 279, 291 (2024).

72. By its terms, the Emergency Order terminated on November 26, 2025.<sup>206</sup> Consequently, the stay request is now moot. PIOs also fail to present any evidence of substantial and irreparable harm.

73. In any case, DOE finds that a stay is not warranted here based on a broader consideration of the equities at issue. A stay would have substantially harmed other parties and therefore would not have been within the public interest. Specifically, the Emergency Order was issued to address a shortage of electric energy and a shortage of facilities for the generation of electric energy in portions of the electric grid operated by PJM. As discussed above, this determination is based on the potential stress load due to resource adequacy concerns and the potential loss of power to homes and local businesses that may be affected by curtailments or outages, which presents a risk to public health and safety. Imposition of a stay would also harm those citizens residing in the PJM region who would face potentially critical electric energy shortages during the industry-accepted period for the assessment of reliability, and therefore the stay would have been contrary to the public interest. The balance of equities thus favors denial of a stay.

## 2. Motions to Intervene

74. On September 26, 2025, JCAs and PIOs each filed separate motions to intervene and requests for rehearing. JCAs and PIOs each cite various alleged interests which may be affected by the outcome of this proceeding.<sup>207</sup>

### DOE's Determination

75. The motions to intervene in this administrative proceeding are hereby permissively granted for JCAs and PIOs, but DOE takes no position on whether they are “aggrieved” parties for purposes of FPA section 313.<sup>208</sup>

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<sup>206</sup> Emergency Order at 7, Ordering Paragraph H.

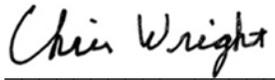
<sup>207</sup> PIOs Pet. § III; JCAs Pet. at 1-4.

<sup>208</sup> See 16 U.S.C. § 825l(b) (“Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part.”).

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The Emergency Order is hereby modified upon the issuance of this Order and the result sustained, as discussed in the body of this Order.

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Issued on this 5th day of March 2026.

A handwritten signature in cursive script that reads "Chris Wright".

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Chris Wright  
Secretary of Energy