UNITED STATES OF AMERICA
Department of Energy
Washington, DC 20585

Tri-State Generation and Transmission Association, Platte River Power Authority, Salt River Project, PacifiCorp, Xcel Energy Inc., Western Area Power Administration – Rocky Mountain Region, and Southwest Power Pool Regarding Craig Station

Order No. 202-25-14B

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued June 24, 2026)

1. On December 30, 2025, pursuant to section 202(c) of the Federal Power Act (FPA),[1] and section 301(b) of the Department of Energy (DOE) Organization Act,[2] the Secretary of Energy (Secretary) issued an order determining that "an emergency exists within the Western Electricity Coordinating Council (WECC) Northwest assessment area due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes."[3] In the Emergency Order, the Secretary determined that "to best meet the emergency arising from increased demand, determined shortage, and other causes, and serve the public interest under FPA section 202(c), Craig Unit 1 shall be made available for operation."[4]

2. On January 26, 2026, the Public Service Company of Colorado (Public Service) filed a motion for leave to intervene. On January 28, 2026, requests for rehearing were filed by the State of Colorado (State) and by Public Interest Organizations (PIOs).[5] On

[1] 16 U.S.C. § 824a(c).

[2] 42 U.S.C. § 7151(b).

[3] *Tri-State Generation & Transmission Ass'n*, DOE Order No. 202-25-14 (Dec. 30, 2025) (Emergency Order).

[4] *Id.* at 3.

[5] Sierra Club, GreenLatinos, Vote Solar, Public Citizen, and Environmental Defense Fund refer to themselves collectively as "Public Interest Organizations."

January 29, 2026, Tri-State Generation and Transmission Association (Tri-State) and Platte River Power Authority (Platte River) filed a request for clarification and rehearing.

3. On March 2, 2026, DOE issued a notice of denial of rehearing by operation of law and providing for further consideration.[6] However, as provided in sections 202(c) and 313(a) of the FPA,[7] DOE is modifying the discussion in the Emergency Order and continues to reach the same result in this Order, as discussed below.[8]

I. Background

4. Craig Station (Craig) is an electric generating facility in Craig, Colorado. Craig consists of three coal-fired generation units, Unit 1 (446.4 MW), Unit 2 (446.4 MW), and Unit 3 (534.8 MW), with a combined name plate capacity of 1427.6 MW. Unit 1 and Unit 2 are co-owned by Tri-State, Platte River, Salt River Project, PacifiCorp, and Xcel Energy (co-owners). Unit 3 is wholly owned by Tri-State. Unit 1 and Unit 2 began operations in 1980 and 1979, respectively. Unit 3 began operations in 1984. But for the Emergency Order, Unit 1 was scheduled to retire on December 31, 2025. Unit 2 and Unit 3 are slated to retire in 2028.[9]

5. In the Emergency Order, the Secretary determined that "an emergency exists within the [WECC] Northwest assessment area due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes," and that "[i]ssuance of this Order will meet the emergency and serve the public interest."[10] The Secretary therefore directed Tri-State and co-owners to "take all measures necessary to ensure that Craig Unit 1 is available to operate at the direction of either Western Area Power

[6] *Tri-State Generation & Transmission Ass'n*, Notice of Denial, DOE Order No. 202-25-14A (Mar. 2, 2026).

[7] 16 U.S.C. §§ 824a(c), 825*l*(a). In the context of FPA section 202(c) orders, DOE interprets FPA section 313's references to "the Commission" to mean DOE. *See* 42 U.S.C. § 7151(b); *see also* 10 C.F.R. §§ 205.370 to 205.379 (2025).

[8] *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. 2015).

[9] Emergency Order at 1.

[10] *Id*.

Administration (WAPA)—Rocky Mountain Region Western Area Colorado Missouri (WACM) [ ] or the Southwest Power Pool (SPP) West."[11]

6. The Emergency Order provided substantial support for the Secretary's emergency determination. In the Emergency Order, the Secretary reiterated that the North American Electric Reliability Corporation (NERC) 2024 Long-Term Reliability Assessment (2024 LTRA) found that in the WECC-Northwest assessment area,[12] "[e]nergy variability is greater in the Northwest than other WECC regions due to the large share of wind and hydro in the portfolio," and that "[f]ive [gigawatts] of baseload resource retirements are anticipated between 2024 and 2028," with energy needs to be replaced by solar, wind, and battery energy storage systems, "further increasing variability in the portfolio."[13] The Secretary further noted that the 2024 WECC Western Assessment of Resource Adequacy (2024 WARA) found that peak demand in WECC's Northwest-Central subregion is "forecast to grow by 8.5% over the next decade, from 33 GW in 2025 to 36 GW in 2034," while most planned retirements are "baseload generation, such as coal, natural gas, and nuclear."[14] The Emergency Order also observed that, according to the Energy Information Administration (EIA), since 2019, 571.3 MW of coal-fired generating capacity had retired in Colorado, and that approximately 3,700 MW of additional coal-fired generating capacity

[11] *Id.* at 3, Ordering Paragraph A.

[12] Tri-State and Platte River assert that the Emergency Order's reference to the WECC-Northwest assessment area is imprecise in light of NERC's subsequent revision of NERC's assessment boundaries. *See* Tri-State and Platte River Pet. at 28. However, the WECC-Northwest assessment area, as defined in the 2024 LTRA, upon which the Emergency Order relied, included Colorado and Craig within its geographic scope. The Secretary's emergency determination was thus directed at a region that encompassed the facilities and service territories at issue. NERC's reclassification does not alter the substance of the Secretary's emergency determination. Accordingly, this Order's references to the WECC-Northwest assessment area refer to the geographic region as delineated in the 2024 LTRA, which included Colorado. References to the WECC-Rocky Mountain assessment region, which likewise includes Colorado, refer to NERC's updated assessment boundaries.

[13] *Id.* at 1 (quoting NERC, *2024 Long-Term Reliability Assessment*, at 130, https://www.nerc.com/globalassets/our-work/assessments/2024-ltra_corrected_july_2025.pdf (Dec. 2024, corrected July 11, 2025)).

[14] *Id.* at 2 (quoting WECC, *W. Assessment of Res. Adequacy 2024: Peak Demand by Subregion*, at 2, https://www.wecc.org/sites/default/files/documents/products/2024/WARA%202024%20Peak%20Demand%20by%20Subregion.pdf).

and 675.6 MW of natural gas-fired generating capacity in Colorado are scheduled to retire by 2029.[15]

7. As discussed further below, the Emergency Order also observed that, in 2025, President Donald Trump issued executive orders which underscored the severity of the current energy emergency in the United States.[16] In this respect, the Secretary noted DOE's July 2025 Resource Adequacy Report, which was prepared specifically in response to Executive Order No. 14262, "Strengthening the Reliability and Security of the United States Electric Grid."[17] The July 2025 Resource Adequacy Report stated that the United States' power grid will be "unable to meet projected demand for manufacturing, re-industrialization, and data centers driving artificial intelligence [ ] innovation."[18]

8. In view of this evidence, the Secretary therefore determined that ensuring that Craig Unit 1 is available to operate is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c). The need for the Order was further substantiated when the SPP ordered the Craig facility to operate. In April 2026, Craig Unit 1 generated over 67,600 MWh to the grid. The Secretary's expert determination was based on the fact that increasing electricity demand, coupled with accelerated retirements of generation facilities continuing in the near term as well as subsequent years would result in risk to public health and safety caused by the potential loss of power to homes and businesses in areas that may be affected by curtailments or outages. The Emergency Order was limited in duration to align with the emergency circumstances. In recognition of potential conflict with environmental standards and requirements, and consistent with FPA

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[15] *Id.* at 2.

[16] *Id.* at 2 (citing Exec. Order No. 14262, 90 Fed. Reg. 15521 (Apr. 8, 2025), 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. Reg. 8433 (Jan. 20, 2025) (declaring a national energy emergency), https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/.

[17] DOE, *Res. Adequacy Rep. Evaluating the Reliability & Sec. of the U.S. Elec. Grid* (July 2025) (Resource Adequacy Report), https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf; *see also* Exec. Order No. 14262, § 3(b) (mandating the development of a uniform methodology for analyzing current and anticipated reserve margins across regions of the bulk power system regulated by the Federal Energy Regulatory Commission (FERC)).

[18] Emergency Order at 3 (quoting Resource Adequacy Report at 1).

section 202(c), the Secretary authorized only the necessary additional generation subject to specified conditions.[19]

II. Discussion

1. The Secretary's Authority to Determine the Existence of an "Emergency"

9. PIOs and Colorado State 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).[20] PIOs and Colorado State similarly argue that, while FPA section 202(c) permits action in response to a "sudden increase in the demand for electric energy" or a "shortage of electric energy or of facilities for the generation or transmission of electric energy," the provision is limited to circumstances that are both imminent and unforeseen.[21] PIOs[22] and Colorado State[23] also cite to various dictionary definitions of "emergency" to assert the same point. PIOs[24] and Colorado State[25] also each similarly assert that the Emergency Order contravenes DOE's historic use of FPA section 202(c) to address natural disasters and "specific, imminent, and unexpected shortages," and that prior to 2025, DOE had never issued a FPA section 202(c) order to prevent the retirement of a generation facility absent a request "by a system operator or governmental body."

10. Further, PIOs and Colorado State rely on *Richmond Power & Light v. FERC* and *Otter Tail Power Co. v. Federal Power Commission* for the proposition that courts have interpreted FPA section 202(c) narrowly to apply only to temporary emergencies requiring an imminent response.[26]

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[19] *Id.* at 3–4.

[20] PIOs Pet. at 36–43; Colorado State Pet. at 19–29.

[21] 16 U.S.C. § 824a(c)(1); *see also* PIOs Pet. at 36–39; Colorado State Pet. at 19–26.

[22] PIOs Pet. at 37.

[23] Colorado State Pet. at 20 nn. 72–73.

[24] PIOs Pet. at 42–43.

[25] Colorado State Pet. at 26–29.

[26] PIOs Pet. at 41–42 (citing *Richmond Power & Light v. FERC*, 574 F.2d 610 (D.C. Cir. 1978); *Otter Tail Power Co. v. Fed. Power Comm'n*, 429 F.2d 232 (8th Cir.

DOE's Determination

11. The Secretary has the statutory authority under FPA section 202(c) to determine that an emergency exists and exercise his judgment to address such an emergency. The statute's plain text grants the Secretary authority to respond to threats to the Nation's electric infrastructure. Specifically, the Secretary "*shall* have authority" to act "*whenever* the [Secretary] determines that an emergency exists."[27]

12. Next, the statute sets forth three different categories of emergency where FPA 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 of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or [3] other causes."[28]

13. 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."[29] 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 FPA section 202(c) and prior DOE practice,[30] the Secretary exercised his authority under FPA section 202(c) and determined, in his statutory discretion and substantive expertise, that "an emergency exists within the [WECC] Northwest assessment area due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes."[31]

1970); Colorado State at 29–32 (same).

[27] 16 U.S.C. § 824a(c)(1) (emphases added).

[28] *Id.*; *see also* H.R. Rep. No 113-86, at 2 (2013) (House Committee on Energy and Commerce Report on then-proposed amendment to FPA section 202(c), which observed that "[r]eliability-related emergencies are not limited to bad weather, natural disasters, or terrorist attacks").

[29] 16 U.S.C. § 824a(c)(1).

[30] *See, e.g.*, *Puget Sound Power & Light Co.*, 6 F.P.C. 320, 1947 WL 1048 (1947) (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).

[31] Emergency Order at 1.

14. The argument that the Secretary can act only when a blackout 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). Further, the Secretary acted in response to the imminent shutdown of Craig on December 31, 2025. Were the Secretary to be required to wait until a blackout is "imminent" in order to address a shortage of generation facilities, his ability to take meaningful action under FPA section 202(c) to prevent the blackout would be gravely impaired. The imminent shutdown of Craig required immediate action. Once a power plant like Craig shuts down, it cannot feasibly be brought back online in response to a severe weather event or other circumstances requiring maximum generation.[32] FPA section 202(c) must be interpreted in the context of the electric energy industry. It can take months, if not years, to remedy a shortage of facilities for the generation of electric energy once a shortage is identified. For example, in 2024, the time from interconnection request to the beginning of commercial operations for the typical completed project was 55 months.[33]

15. This fact that it can take years to remedy shortages of electric energy is squarely recognized in DOE's implementing regulations for FPA section 202(c). These regulations, in effect since 1981, define 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."[34] Furthermore, the definition of "emergency" contained in DOE's regulations at 10 C.F.R. § 205.371—which generally provide guidance to applicants seeking FPA section 202(c) relief—does not supersede the statutory discretion FPA section 202(c) affords to the Secretary to *sua sponte* "determine[ ] that an emergency exists."[35] Accordingly, the Secretary's emergency determination is entirely consistent with the governing statutory requirements in FPA section 202(c) and DOE's regulations.

16. Similarly, the dictionary definitions cited by PIOs and Colorado State are not persuasive. Those dictionary definitions cannot limit the discretion Congress expressly delegated to the Secretary in FPA section 202(c). Moreover, the leading legal dictionary in 1935, when the FPA was enacted, variously defined the term "emergency" to include "a perplexing contingency or complication of circumstances," as well as a "relatively

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[32] *Id.* at 1 n.5.

[33] Lawrence Berkeley Nat'l Lab., *Characteristics of Power Plants Seeking Transmission Interconnection as of the End of 2024*, at 47 (Dec. 2025), https://perma.cc/2287-MSXU.

[34] 10 C.F.R. § 205.371 (2025); *accord Emergency Interconnection of Elec. Facilities & the Transfer of Elec. to Alleviate an Emergency Shortage of Elec. Power*, 46 Fed. Reg. 39984–01 (Aug. 6, 1981).

[35] 16 U.S.C. § 824a(c)(1).

permanent condition of insufficiency of service or of facilities resulting in social disturbance or distress."[36] The fact that dictionary definitions in existence at the time FPA section 202(c) was drafted and ratified acknowledge that emergencies may be of varying duration further undercuts Petitioners' reliance on selected sources.

17. The arguments made by PIOs and Colorado State based on the *Otter Tail* and *Richmond Power & Light* decisions are likewise misguided.[37] *Otter Tail* did not limit the Secretary's FPA section 202(c) discretion or the meaning of "emergency" because the court held that FPA section 202(c) *did not apply* to the case.[38] Instead, *Otter Tail* involved section 202(b) of the FPA and not an "emergency" within the meaning of FPA section 202(c).[39] 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 FPA section 202(c).[40] The court determined that the FPC had discretion to choose a temporary, voluntary program rather than issue an order pursuant to FPA section 202(c), as the circumstance, in the FPC's discretion, did not warrant the use of emergency authority.[41]

18. A more relevant decision is *Board of Trade of Chicago v. Commodity Futures Trading Commission*.[42] In that case, the Court of Appeals for the Seventh Circuit recognized the broad power 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)).[43] 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

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[36] *Emergency*, BLACK'S LAW DICTIONARY 654 (3d ed. 1933).

[37] *See, e.g.*, PIOs Pet. at 41–42; Colorado State Pet. at 29–32.

[38] *See Otter Tail,* 429 F.2d at 234.

[39] *See id.* (rejecting petitioner's contention that "any proceedings in the instant case must be dealt with in compliance with § 202(c)").

[40] *See Richmond Power & Light,* 574 F.2d at 614–15.

[41] *Id*.

[42] *Bd. of Trade of Chicago v. Commodity Futures Trading Comm'n,* 605 F.2d 1016 (7th Cir. 1979) (*Board of Trade*).

[43] 605 F.2d at 1025.

warehouse shortages and potential market manipulation.[44] In response, the Board of Trade sought an injunction against the order, arguing that no emergency existed.[45] The district court granted a preliminary injunction, and the CFTC appealed.[46]

19. 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.[47] 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 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."[48] 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."[49] 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 FPA section 202(c) to determine when his emergency powers should be applied to protect the public interest.[50]

20. Congressional intent to empower the Secretary with broad discretion to determine when emergency conditions exist is further bolstered by the fact that, despite amending portions of the broader statute in 2015, Congress elected to leave the operative "emergency" language of FPA section 202(c) undisturbed. That year, Congress modified the statute to limit the duration of emergency orders that may conflict with environmental laws or regulations to 90 days.[51] Congress also mandated that, prior to renewal of a FPA section 202(c) order, DOE was to consult with the primary federal agency with expertise

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[44] *See id.* at 1018–19.

[45] *Id.* at 1019.

[46] *Id.* at 1019–20.

[47] *Id.* at 1023–25.

[48] *Id.* at 1025.

[49] *Id.* at 1023.

[50] *See id.* at 1023–25.

[51] 16 U.S.C. § 824a(c)(4)(A).

in the environmental interest protected by the law or regulation implicated.[52] However, it is notable that Congress did not restrict the number of times DOE could renew an emergency order. Likewise, Congress did not amend or constrain the definition of "emergency."[53] This decision affirms longstanding interpretations of the term "emergency" by the FPC and DOE and ratifies their prior use of FPA section 202(c) emergency authority.[54]

21. 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)[55] judgment in this respect. This history is consistent with the breadth of the Secretary's authority as expressly delegated in the statute.

2. The Secretary's Authority to Require Craig Unit 1 to Continue to Operate

22. PIOs, Colorado State, and Tri-State and Platte River argue that the Emergency Order impermissibly exceeds the Secretary's statutory authority under FPA section 202(c) in various respects.[56] For instance, Colorado State argues that the Emergency Order, in effect, impermissibly asserts the authority to further DOE's policy decisions by managing issues unrelated to addressing imminent emergencies including future energy needs, generalized supply concerns, or an alleged preference for coal-fired generation.[57]

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[52] *Id.* § 824a(c)(4)(B).

[53] *See* H.R. Rep. No. 113-86 at 5–6 (2013) (legislative history showing Congressional awareness of the *Mirant Corp.* order before 2015 amendments).

[54] *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (noting that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change").

[55] 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.

[56] PIOs Pet. at 39–41; Colorado State Pet. § V.B; Tri-State and Platte River Pet. §§ II.A, II.C.

[57] *See* Colorado State Pet. § V.B.

23. Similarly, PIOs and Colorado State contend that, in enacting FPA section 215,[58] Congress established a "circumscribed scheme" of federal action for addressing long-term reliability concerns in careful balance with the states, federal regulators, and other stakeholders.[59] Tri-State and Platte River similarly argue that the FPA strikes a comparable "careful balance" over regulations on resource and generation mix.[60] PIOs, Colorado State, and Tri-State and Platte River assert that DOE's use of FPA section 202(c) to address long-term reliability or generation mix concerns would effectively bypass the framework Congress provided under the FPA.[61]

24. Colorado State further argues that the Emergency Order is unlawful because DOE never provided the public notice or an opportunity to comment, as purportedly required by the Administrative Procedure Act (APA).[62] Specifically, Colorado State asserts that DOE now issues FPA section 202(c) orders based on an alleged "new interpretation[ ]" of FPA section 202(c) authority to "address longer-term reliability concerns or demand forecasts" without having subjected that change to public notice and comment, in violation of 5 U.S.C. § 553.[63]

25. Tri-State and Platte River further argue that the Emergency Order violated constitutional due process under the Fifth Amendment, as well as the APA and FPA's respective procedural requirements.[64] In particular, Tri-State and Platte River contend that, because the Emergency Order was predicated on long-term resource adequacy concerns rather than a sudden or imminent supply shortfall, the Order, in their view, did not justify dispensing with the pre-deprivation notice and hearing that due process ordinarily requires.[65]

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[58] 16 U.S.C. § 824o.

[59] PIOs Pet. at 39–41; Colorado State Pet. at 23–25, 36–37.

[60] Tri-State and Platte River Pet. at 32 n. 27.

[61] *See* PIOs Pet. at 39–40, 80–82 (citing 16 U.S.C. §§ 824(b)(1), 824a(c)(1), 824o(i)-(j)); Colorado State Pet. §§ V.A.ii, V.B (citing 16 U.S.C. §§ 824o(a)(3), (c)(2)(A), (d)(2)–(4), (e), (i), (j), 824h(b)).

[62] Colorado State Pet. at 29.

[63] *Id.* at 27–29.

[64] Tri-State and Platte River Pet. at 3, 26–29.

[65] *Id.* at 27.

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 (2) exercise his judgment to address that emergency. Rather, PIOs and Colorado State claim that the Secretary exceeded that authority in certain respects. As explained below, DOE is not persuaded by PIOs' and Colorado State's respective claims.

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."[66] FPA 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."[67] Congress thus purposely provided discretion in FPA section 202(c) to require changes to the operations of electric generating facilities to meet the emergency.

28. PIOs and Colorado State 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.[68] 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, FPA 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.[69] The Secretary also is authorized to "require by order . . . such generation . . . of electric energy as in [the Secretary's] judgment will best meet the emergency and serve the public interest," which is exactly the action the Emergency Order requires. [70]

29. 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

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[66] 16 U.S.C. § 824(b)(1) (emphasis added).

[67] *Id.* § 824a(c)(1).

[68] *See, e.g.*, PIOs Pet. at 39–41; Colorado State Pet. at 32–35.

[69] 16 U.S.C. § 824a(c)(1).

[70] *Id*.

necessary facilities can result in an emergency as contemplated in these regulations."[71] Similarly, the fact that many previous FPA section 202(c) emergency orders lasted for years, or were even of indefinite duration,[72] undermines Petitioners' assertions that use of this power must be limited to short-term emergencies. As such, longstanding precedent reinforces the conclusion that FPA section 202(c) may be used to address long-term structural problems, not simply imminent and unexpected events—which is precisely the type of action the Secretary directed in the Emergency Order. DOE's regulations and established practice thus implement the broad grant of discretion FPA section 202(c) affords to the Secretary to "determine[] that an emergency exists."[73]

30. Contrary to the assertions of PIOs, Colorado State, and Tri-State and Platte River,[74] the Secretary is not taking action to address matters otherwise delegated to the states or the 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," the Secretary took action to address the emergency in the WECC-Northwest assessment area.[75] As described in the Emergency Order, the resource crisis in the Craig service area arises, among other reasons, from the mismatch between resource retirements, such as Craig Unit 1, and accelerated load growth.[76] If not for the Emergency Order, Craig Unit 1 would have retired on December 31, 2025, further decreasing the available dispatchable generation within the Craig service region and deepening the reliability crisis. The actions directed by the 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.

31. Furthermore, contrary to Colorado State's contentions, DOE's FPA section 202(c) orders are not in conflict with the APA.[77] Colorado State's argument that DOE was

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[71] 10 C.F.R. § 205.371.

[72] BLACK'S LAW DICTIONARY, *supra* note 36.

[73] 16 U.S.C. § 824a(c)(1).

[74] PIOs Pet. at 39–41; Colorado State Pet. at 23–25, 36–37; Tri-State and Platte River Pet. at 32 n. 27.

[75] *See* 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 the regulations.").

[76] Emergency Order at 3.

[77] Colorado State Pet. at 29.

required to conduct new notice-and-comment rulemaking rests on the flawed premise that DOE has "deviate[d] from its regulations" and prior interpretation of its FPA section 202(c) authority.[78] The Secretary's exercise of his emergency authority under FPA section 202(c) in the Emergency Order is consistent with the same statutory framework and implementing regulations that have long governed DOE's use of that authority. DOE has neither promulgated new rules nor adopted new binding procedures governing the exercise of FPA section 202(c) authority. Rather, the Secretary has applied the existing statutory standard—determining that "an emergency exists" and ordering the remedy that, in his judgment, "will best meet the emergency and serve the public interest"—to the specific facts and circumstances presented here.

32. Tri-State and Platte River's Fifth Amendment due process arguments[79] are likewise without merit. The Supreme Court has "often" recognized "that summary administrative action may be justified in emergency situations."[80] Here, the Secretary's determination that an emergency existed in WECC-Northwest assessment area was grounded in substantial evidence of ongoing and worsening resource adequacy conditions, including Craig's planned retirement. The nature of the emergency—a shortage of generation facilities compounded by accelerating retirements and load growth—required the Secretary to act before Craig Unit 1's permanent retirement rendered the situation irreversible. In these circumstances, the absence of a hearing before issuance of the Emergency Order does not constitute a constitutional violation; the statute itself provides the requisite authorization to act, and the ample process available after the Emergency Order's issuance, including this rehearing process provided under FPA section 313(a) and the cost-recovery mechanisms available under FPA section 202(c), afford Petitioners an adequate opportunity to be heard.[81]

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

33. PIOs and Colorado State raise similar arguments that there is no factual basis to support the Emergency Order and that the Secretary is required to set forth substantial

[78] *Id.*

[79] Tri-State and Platte River Pet. at 26–29.

[80] *Hodel v. Va. Surface Min. and Reclamation Ass'n, Inc.*, 452 U.S. 264, 299–300 (1981).

[81] *See id*. (explaining that the "[p]rotection of the health and safety of the public is a paramount governmental interest which justifies summary administrative action," and finding that an immediate cessation order directed at a coal mine did not violate the Fifth Amendment's Due Process Clause).

evidence in support of his emergency determination.[82] For example, PIOs and Colorado State argue that the 2024 LTRA does not support an emergency determination because it classifies the WECC-Northwest assessment area as "normal risk," projects "negligible unserved energy and load-loss risk," and finds no reliability metrics violations through 2028.[83] Similarly, PIOs and Colorado State argue that the 2024 WARA found zero demand-at-risk hours in 2026 in all relevant subregions and that the EIA data cited in the Emergency Order overstated planned coal retirements in Colorado by more than 900 MW while omitting planned generation additions.[84]

34. In addition, PIOs and Colorado State criticize the Emergency Order's references to the President's Executive Order No. 14156, "Declaring a National Energy Emergency," and Executive Order No. 14262, "Strengthening the Reliability and Security of the United States Electric Grid."[85] Colorado State further asserts that the Secretary's references to the President's executive actions, together with public statements by the Secretary and other administration officials, evince a pretextual effort to further the administration's policy preference for fossil fuels, and that the Emergency Order therefore reflects an impermissible prejudgment of the outcome.[86]

35. PIOs and Colorado State further argue that DOE failed to consider contrary evidence including: the 2025–2026 Winter Reliability Assessment (2025–2026 WRA); the resource plans of all five Craig co-owners; DOE's own contemporaneous export authorizations; the Bonneville Power Administration's 2025 "White Book"; the Washington Agencies' November 2025 resource adequacy meeting; the Grid Strategies resource adequacy report; and the E3 Resource Adequacy Phase 1 Presentation.[87] PIOs and Colorado State contend that these sources collectively demonstrate that the Craig service region has adequate resources to meet demand without Craig Unit 1.[88]

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[82] *See, e.g.*, PIOs Pet. § V.A.3; Colorado State Pet. § V.C.

[83] PIOs Pet. at 3, 46–47; Colorado State Pet. at 39–40.

[84] PIOs Pet. at 3, 47–50; Colorado State Pet. at 45–47.

[85] PIOs Pet. at 50–51 (discussing Executive Order No. 14156 and Executive Order No. 14262); Colorado State Pet. at 61–65.

[86] Colorado State Pet. §§ V.C.iv, V.F.

[87] PIOs Pet. § V.A.3.iii; Colorado State Pet. at 41–45, 48–61.

[88] *Id.*

DOE's Determination

36. The exigencies that FPA section 202(c) is designed to address necessarily require that the Secretary's determination is 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 FPA section 202(c) order. This confirms that the Secretary is authorized to exercise his FPA section 202(c) authority expeditiously in responding to emergency situations.

37. In any event, the Secretary's determination that an emergency exists is supported by substantial factual evidence and the exercise of the Secretary's judgment. When reviewing an order under the FPA, the Secretary's findings "as to the facts, if supported by substantial evidence, shall be conclusive."[89] The Emergency Order has met this threshold by citing evidence that reveals rising electricity demand in WECC-Northwest assessment area and WECC-Rocky Mountain assessment region coupled with a decrease in the availability of dispatchable generation.

38. As discussed above, the Emergency Order identified the ongoing emergency in the Craig service area "due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes."[90] The Secretary further observed that "the emergency conditions resulting from increasing demand and shortage from accelerated retirement of generation facilities will continue in the near term and are also likely to continue in subsequent years."[91] As such, the Secretary found that this emergency "could lead to the loss of power to homes, and businesses in the areas that may be affected by curtailments or power outages, presenting a risk to public health and safety."[92] Consistent with his emergency determination, the Secretary thus ordered Tri-State and co-owners to take all measures necessary to ensure that the Craig Unit 1 is available to operate.[93]

39. As noted, the Secretary's determination was based on several different facts discussed in the Emergency Order and summarized here. First, the 2024 LTRA found that "[e]nergy variability is greater in the Northwest than other WECC regions due to the large share of wind and hydro in the portfolio," "[f]ive [gigawatts] of baseload resource retirements are anticipated between 2024 and 2028," and supply chain issues affecting

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[89] 16 U.S.C. § 825*l*(b).

[90] Emergency Order at 1.

[91] *Id.* at 3.

[92] *Id*.

[93] *See id.*, Ordering Paragraph A.

battery storage resources "are a concern."[94] PIOs' and Colorado State's contentions that the 2024 LTRA's "normal risk" classification forecloses reliance on that document misreads NERC's assessment.[95] The "normal risk" classification is a probabilistic base-case finding; it does not speak to the Secretary's independent determination that a shortage of generation facilities exists under FPA section 202(c), nor does it account for NERC's finding in the 2024 LTRA that the WECC-Northwest region's reserve margin fell below reference levels beginning in 2031 when Tier 2 (i.e., planned resources that have not yet achieved key development milestones, such as executed interconnection agreements or secured financing) resources are excluded.[96] The Secretary was not required to wait for NERC's long-term risk classifications to escalate before acting to prevent the permanent loss of a dispatchable generation resource.

40. Second, as the Emergency Order discussed, the 2024 WARA found that peak demand in WECC's Northwest-Central subregion is "forecast to grow by 8.5% over the next decade, from 33 GW in 2025 to 36 GW in 2034," while most planned retirements are "baseload generation, such as coal, natural gas, and nuclear."[97] Moreover, PIOs' and Colorado State's respective contentions regarding the 2024 WARA's finding of zero demand-at-risk hours in 2026 and the geographic footprint of the Northwest-Central subregion relative to the WECC-Northwest assessment area[98] miss the point. The absence of demand-at-risk hours under base-case assumptions does not negate the existence of a shortage of generation facilities. The geographic overlap between the Northwest-Central subregion and the WECC-Northwest assessment area is sufficient to render the 2024 WARA's findings probative, and the Secretary was not required to limit his analysis to sources whose geographic boundaries precisely coincide with the Order's footprint.

41. Third, the Emergency Order observed (citing EIA data) that, since 2019, 571.3 MW of coal-fired generating capacity had retired in Colorado, and that approximately 3,700 MW of additional coal-fired generating capacity and 675.6 MW of natural gas-fired generating capacity in Colorado are scheduled to retire by 2029.[99] PIOs' criticisms concerning particular generation retirement data overlook the fundamental finding that

[94] *Id.* at 1–2.

[95] *See* PIOs Pet. at 46–47; Colorado State Pet. at 38–42.

[96] *See NERC 2024* LTRA, at 127–28.

[97] Emergency Order at 2.

[98] *See* PIOs Pet. at 48–49; Colorado State Pet. at 45–47.

[99] Emergency Order at 2.

substantial baseload capacity is scheduled to retire within the relevant planning horizon.[100] Moreover, the argument that planned additions exceed planned retirements on a net megawatt basis conflates nameplate capacity with dispatchable, firm capacity. In other words, the resources planned to replace retiring coal generation are predominantly intermittent or limited-duration resources that cannot replicate the around-the-clock dispatchability of the baseload generation.

42. Fourth, the Emergency Order referenced DOE's July 2025 Resource Adequacy Report. As the Emergency Order noted, DOE's analysis concluded 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."[101] Indeed, the recent increase in demand for electricity stands in sharp contrast to the period between 2005 and 2020, when demand grew at an average rate of 0.1%.[102] On these points, DOE notes a July 2025 report prepared by the Council of Economic Advisers entitled, *The Economic Benefits of Unleashing American Energy*.[103] The CEA Report highlighted rapid energy demand increases due to data centers,[104] while noting that "utilities can delay retirement of existing baseload capacity until a sufficient amount of reliable new generation and storage capacity comes online" to help mitigate price increases associated with heightened demand.[105]

43. Fifth, the Emergency Order noted that the Secretary's FPA section 202(c) actions as to Craig Unit 1 were preceded by President Trump's executive actions concerning this Nation's energy supply crisis. In particular, in Executive Order No. 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

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[100] *See* PIOs Pet. at 49–50.

[101] Emergency Order at 3; July 2025 Resource Adequacy Report, at 1.

[102] U.S. Energy Info. Admin., *After More than a Decade of Little Change, U.S. Elec. Consumption Is Rising Again* (May 13, 2025), https://perma.cc/X62V-VN4L.

[103] *See* Council of Econ. Advisers, *The Econ. Benefits of Unleashing Am. Energy*, at 8–9 (July 2025) (CEA Report), https://www.whitehouse.gov/research/2025/07/the-economic-benefits-of-unleashing-american-energy/.

[104] *Id.* at 2–6.

[105] *Id.* at 8–9.

intelligence data centers and an increase in domestic manufacturing."[106] 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."[107] Notably, Executive Order No. 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."[108]

44. President Trump likewise recognized, in Executive Order No. 14156, "Declaring a National Energy Emergency," that the "United States' insufficient energy production, transportation, refining, and generation constitutes an unusual and extraordinary threat to our Nation's economy, national security, and foreign policy."[109] In declaring this national emergency, including pursuant to the National Emergencies Act,[110] 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."[111] One such "lawful emergency authorit[y]" is the Secretary's FPA 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.

45. PIOs and Colorado State maintain that this evidence does not show the existence of an imminent emergency. But if the Secretary had allowed the planned retirement of Craig Unit 1 on December 31, 2025, that generating unit would have never been available to address the ongoing emergency in the Craig service area. Accordingly, based on the evidence available, the Secretary reasonably exercised his judgment and issued the Emergency Order in compliance with FPA section 202(c).

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[106] Exec. Order No. 14262 § 1.

[107] *Id.*

[108] *Id.* § 3(c)(i) (emphasis added).

[109] Exec. Order No. 14156 § 1.

[110] 50 U.S.C. §§ 1601–1651.

[111] Exec. Order No. 14156 § 2(a).

46. With respect to the additional sources cited by PIOs[112] and Colorado State,[113] the Secretary considered the totality of the evidence available at the time of the Emergency Order and exercised his expert judgment accordingly. The sources cited by PIOs and Colorado State do not, individually or collectively, negate the Secretary's emergency determination. In fact, these sources further support the Secretary's findings in the Emergency Order.

47. For instance, the 2025–2026 WRA corroborates rather than undermines the Secretary's emergency determination. The 2025–2026 WRA designated the WECC-Rocky Mountain assessment area—the subregion in which Craig Unit 1 is located in this report—as exhibiting the highest year-over-year increase in net internal demand of any assessment area evaluated, with net internal demand rising 10.0%.[114] The 2025–2026 WRA further found that the Anticipated Reserve Margin for the WECC-Rocky Mountain area declined by 20.3% year-over-year.[115] The findings in the 2025–2026 WRA are fully consistent with the Secretary's determination that accelerating load growth, combined with the retirement of baseload generation resources such as Craig Unit 1, is producing a worsening shortage of generation facilities within the WECC-Northwest region. The 2025–2026 WRA's base-case finding that resources are adequate under normal peak conditions does not negate the Secretary's independent determination that a shortage of generation facilities exists or is developing under FPA section 202(c); rather, the dramatic demand growth and reserve margin deterioration documented in the 2025–2026 WRA confirm the growing emergency in the Craig service region.

48. Similarly, the resource plans of the Craig co-owners likewise do not negate the Secretary's emergency determination. PIOs and Colorado State point to the integrated resource plans and electric resource plans of Tri-State, Platte River, PacifiCorp, Xcel, and Salt River Project as evidence that the region has adequate resources without Craig Unit 1.[116] However, those plans are limited in that they only reflect each entity's individual assessment of its own load obligations and planned resource acquisitions within its respective service territory. The Secretary's emergency authority is not contingent upon any individual utility's resource adequacy assessment, and the co-owners' respective planning documents do not constitute a basis for rehearing.

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[112] PIOs Pet. § V.A.3.iii.

[113] Colorado State Pet. at 41–45, 48–61.

[114] *See* 2025–2026 WRA at 49.

[115] *Id.*

[116] *See* PIOs Pet. § V.A.3.iii.a; Colorado State Pet. § V.C.iii.

49. Furthermore, PIOs' contention that DOE's authorizations of electricity exports under FPA section 202(e) contradict the Secretary's emergency determination under FPA section 202(c) is without merit.[117] FPA sections 202(e) and 202(c) operate under distinct regulatory frameworks, each with different statutory purposes, standards, and criteria. DOE's exercise of these distinct statutory authorities under separate provisions of the FPA, each informed by its own set of considerations, is not contradictory.

50. Additionally, as DOE has explained in recent export authorization orders, the existing reliability framework ensures that export authorizations cannot compromise the sufficiency of supply or the operational reliability of the domestic transmission system.[118] NERC Reliability Standard IRO-001-4 requires that "[e]ach Reliability Coordinator shall act to address the reliability of its Reliability Coordinator Area via direct actions or by issuing Operating Instructions," including the suspension of exports if that electric energy is needed to support the regional power grid.[119] Reliability Standard EOP-011-4 also requires each Balancing Authority to develop, maintain, and implement Operating Plans to mitigate capacity and energy emergencies within its Balancing Authority Area.[120] These reliability safeguards ensure that, during periods of grid stress—precisely the conditions that the Emergency Order is designed to address—exports would be curtailed or suspended as necessary to preserve the reliability of the domestic system. In other words, section 202(e) export authorizations are necessarily subject to, and operate consistently with, the reliability imperatives underlying emergency action pursuant to FPA section 202(c).

51. Moreover, many of DOE's export authorizations, including those cited by PIOs, are issued to power marketers that do not own generation resources, do not have franchised service areas, and do not have native load obligations.[121] Such entities purchase and sell

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[117] *See* PIOs Pet. at 69–70.

[118] *See, e.g.*, *H.Q. Energy Servs. (US) Inc.*, Order No. EA-182-F, at 8 (Jan. 14, 2026), https://www.energy.gov/sites/default/files/2026-02/EA-182-F_HQEnergy ServicesUSInc_Order.pdf ("Specifically, the reliability coordinator has the authority to suspend exports if the electric energy would be needed to support the regional power grid.").

[119] *See* NERC Reliability Standard IRO-001-4, at 1, https://www.nerc.com/ (search "Reliability Standard IRO-001-4"; then select "IRO-001-4").

[120] *See* NERC Reliability Standard EOP-011-4, at 3, https://www.nerc.com (search "Reliability Standard EOP-011-4"; then select "EOP-011-4")

[121] *See, e.g.*, *Rcsh. Power Corp.*, Order No. EA-365-C (Oct. 21, 2025), https://www.energy.gov/sites/default/files/2025-11/EA-365C%20Research%20Po

electricity in the wholesale market; their export transactions do not withdraw power from load-serving obligations or diminish the generation capacity available to serve domestic demand. Accordingly, DOE's continued authorization of electricity exports under section 202(e) is fully consistent with the Secretary's emergency determination under FPA section 202(c).

52. Further, the evidence subsequently available after issuance of the Emergency Order further confirms the Secretary's exercise of sound discretion and judgment in issuing the Emergency Order. In January 2026, NERC released its 2025 Long-Term Reliability Assessment (2025 LTRA),[122] which independently corroborates the resource adequacy concerns in Craig's service region. While NERC assessed that the WECC-Rocky Mountain region, which includes Colorado, is at normal risk of energy shortfalls over the next five years, the area has an anticipated reserve margin that falls below the Reference Margin Level in Summers 2034 and 2035, and Winter 2034–35.[123] The 2025 LTRA also notes that the WECC-Rocky Mountain assessment area faces challenges from an aging thermal resource fleet that can lead to unplanned outages, a risk further exacerbated by supply chain constraints and limited vendor availability. Additionally, both solar and wind variability are year-round concerns, and while the region is pursuing advancement into Regional Transmission Organizations to leverage a wider footprint, smaller entities currently have limited geographic diversity to counteract these generation constraints.[124]

53. Furthermore, the WECC Western Assessment of Resource Adequacy (2025 WARA) notes that "the West's planned resource buildout will not keep up with anticipated load growth over the next decade, particularly in the Basin and Northwest subregions," and that "[t]he West could see energy shortfalls as early as 2028."[125] The 2025 WARA further found that if resources are added as planned, loss of load may be limited to the Basin and Northwest subregions; however, if planned resource additions are

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wer%20Corporation%20-%20Export%20Authorization%20Order.pdf; *Macquarie Energy LLC*, Order No. EA-479-A (July 11, 2025), https://www.energy.gov/sites/default/files/2025-08/EA-479A%20Macquarie%20Energy%20LLC%20Export%20Authorization%20Order.pdf.

[122] NERC, *LTRA* (Jan. 2026), https://www.nerc.com/globalassets/our-work/assessments/nerc_ltra_2025.pdf.

[123] *Id.* at 160–61.

[124] *Id.* at 161.

[125] WECC, *2025 W. Assessment of Res Adequacy*, https://feature.wecc.org/2025wara/index.html.

delayed or cancelled, other subregions could also be at risk.[126] The 2025 WARA also highlights that 90% of planned resources over the next decade are inverter-based resources, which "continue the rapid evolution of the resource mix away from traditional dispatchable resources to more weather-dependent resources."[127] The 2025 LTRA and 2025 WARA thus provide substantial, independent confirmation that the conditions underlying the Secretary's emergency determination are real, material, and worsening.

4. Best and Appropriate Means for Addressing the Emergency

54. PIOs, Colorado State, and Tri-State and Platte River raise similar arguments that Craig Unit 1 is neither the best nor an appropriate means of alleviating the capacity shortfall addressed by the Emergency Order.[128] PIOs, Colorado State, and Tri-State and Platte River contend that DOE failed to consider Craig Unit 1's operational shortcomings in determining that it represents the best means of addressing the emergency.[129] PIOs, Colorado State, and Tri-State and Platte River similarly contend that DOE was required to consider alternatives and evaluate other possible methods for addressing the emergency, which they argue the Emergency Order failed to do.[130]

55. Tri-State and Platte River and PIOs additionally argue that the Emergency Order fails to consider the various policies of the FPA.[131] Specifically, Tri-State and Platte River contend that, by ordering that Craig Unit 1, an "uneconomic unit," remain available to operate on the eve of its retirement, the Emergency Order "is inconsistent" with the FPA's core objectives.[132] PIOs similarly argue that the public interest element of FPA section 202(c) requires the Secretary to advance, or at minimum consider, the FPA's core

[126] *Id.*

[127] *Id.*

[128] PIOs Pet. § V.B; Colorado State Pet. § V.D; Tri-State and Platte River Pet. at 29–32.

[129] PIOs Pet. § V.B.2; Colorado State Pet. at 65–66; Tri-State and Platte River Pet. at 29–30.

[130] *See* PIOs Pet. § V.B.3; Colorado State Pet. at 67–73; Tri-State and Platte River Pet. at 30–32.

[131] PIOs Pet. at 74–78; Tri-State and Platte River Pet. § II.C.

[132] Tri-State and Platte River Pet. at 32–33.

policies, and that the Emergency Order fails to do so—particularly in light of Craig Unit 1's unavailability at the time the Order was issued.[133]

DOE's Determination

56. The Secretary, in issuing the Emergency Order, adhered to the process established in FPA section 202(c) in exercising his judgment by directing Tri-State and co-owners to undertake specific actions as to Craig Unit 1.[134] The Secretary, as the presidentially-appointed and Senate-confirmed head of DOE,[135] is the appropriate individual to determine the existence of an emergency within the meaning of FPA section 202(c) and exercise "[the Secretary's] judgment" as to what actions "best meet the emergency and serve the public interest."[136] As discussed above, the Secretary exercised his discretion in responding to an emergency pursuant to an express delegation of authority under FPA 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.

57. As noted, FPA section 202(c)(1) affords the Secretary discretion as to what remedy "will best meet the emergency and serve the public interest."[137] Similarly, the fact that FPA section 202(c)(1) permits the Secretary to issue emergency orders "upon [his] own motion . . . with or without notice, hearing, or report" reinforces the breadth of his discretionary authority.[138] 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").[139] The statute does not contain any requirement to consider and evaluate in writing any alternative means for addressing the emergency.[140] Here, the

[133] PIOs Pet. at 74–78.

[134] *See generally* Emergency Order.

[135] *See* 42 U.S.C. § 7131.

[136] 16 U.S.C. § 824a(c)(1).

[137] *Id*.

[138] *Id.*

[139] *Id*.

[140] The assertion of PIOs and Tri-State and Platte River (*see* PIOs Pet. at 74–75; Tri-State and Platte River Pet. at 30) 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

Secretary soundly exercised his judgment in determining that "continued operation [of Craig Unit 1] will best meet an emergency caused by a sudden increase in the demand for electric energy or a shortage of generation capacity."[141]

58. What is more, the PIOs'[142] and Tri-State and Platte River's[143] respective contentions that Craig Unit 1 is an uneconomic and unreliable resource do not support their requested relief on rehearing. The Emergency Order directs WAPA-WACM, in its role as Balancing Authority, and SPP West, in its role as Reliability Coordinator, to dispatch Craig Unit 1 only as necessary to address the emergency, which minimizes unnecessary operational costs to ratepayers.[144] The Secretary's expert judgment that the continued availability of Craig Unit 1 best meets the emergency is not undermined by the facility's economic status or its maintenance history—including the outage at the time the Order was issued—both of which are concerns that the co-owners and the applicable Balancing Authority and Reliability Coordinator are directed to address under the terms of the Emergency Order.[145]

59. In addition, Ordering Paragraph G of the Emergency Order provides that "Craig Unit 1 shall not be considered a capacity resource." As used in the Emergency Order, the term "capacity resource" refers to a generation unit that is committed or counted upon to satisfy forward capacity obligations or planning reserve margin requirements under applicable tariffs, market rules, or resource adequacy programs—such as those administered by SPP West or WAPA-WACM. The Emergency Order's direction reflects the Secretary's determination that Craig Unit 1 is being retained to best meet the identified emergency shortage of generation facilities under FPA section 202(c), and not to satisfy any market-based or tariff-based capacity obligation of the co-owners or any other entity. This distinction ensures that the Emergency Order does not distort capacity market signals and is consistent with the Secretary's judgment that the continued availability of Craig

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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.

[141] Emergency Order at 3.

[142] *See* PIOs Pet. at 75–78.

[143] *See* Tri-State and Platte River Pet. § II.C.

[144] Emergency Order at 3, Ordering Paragraph A.

[145] *See id.*

Unit 1 represents the means that will best meet the emergency and serve the public interest.[146]

60. PIOs, Colorado State, and Tri-State and Platte River offer alternatives that they deem to be better and more appropriate solutions to the emergency.[147] But the Secretary's determination need not consider, or reconsider, this after-the-fact analysis. FPA section 202(c)(1) authorizes the Secretary to determine the existence of an emergency and to order the means to address such an 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 statutory emergency power to act expeditiously and within the judgment of the Secretary.[148]

5. Fifth Amendment Takings Claims and Cost Recovery Consideration

61. Tri-State and Platte River contend that the Emergency Order constitutes an uncompensated taking in violation of the Fifth Amendment to the U.S. Constitution.[149] In support of this position, they assert that the Emergency Order gives rise to both a physical taking and a regulatory taking under the Fifth Amendment and that neither FERC rate recovery nor any other available mechanism provides just compensation.[150]

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[146] DOE notes that PIOs and Colorado State raise concerns regarding the meaning and legal effect of Ordering Paragraph G of the Emergency Order. (*See* Colorado State Pet. at 78 n. 301; PIOs Pet. at 82–83). The Secretary clarifies, as set forth above, that Ordering Paragraph G is intended solely to define the operational and market status of Craig Unit 1 during the pendency of the Emergency Order and does not purport to affect any ratemaking determination, state regulatory proceeding, or FERC-jurisdictional tariff obligation. To the extent any party believes that Ordering Paragraph G requires further clarification in connection with a specific tariff filing or cost recovery proceeding before FERC, such matters may be addressed in the appropriate forum.

[147] PIOs Pet. 63–70; Colorado State Pet. at 67–75; Tri-State and Platte River Pet. at 29–32.

[148] 16 U.S.C. § 824a(c) ("[T]he Commission shall have authority . . . with or without notice, hearing, or report, to require by order such temporary . . . generation . . ..").

[149] Tri-State and Platte River Pet. § I (citing U.S. CONST. amend. V).

[150] *Id.*

62. Tri-State and Platte River advance two grounds on which they assert the Emergency Order constitutes a physical taking.[151] First, they contend that the Emergency Order effectuates a taking through its directives to (1) ensure Craig Unit 1's operational availability and (2) limit Craig Unit 1's operations to certain times and parameters to minimize adverse environmental impacts.[152] According to Tri-State and Platte River, a taking occurred because compliance with the Emergency Order requires Tri-State and Platte River to involuntarily undertake "extensive repairs" to Craig Unit 1 and maintain employees to operate the unit.[153]

63. Second, Tri-State and Platte River contend that the Emergency Order compels discrete physical changes to their property, each of which independently constitutes a *per se* physical taking.[154] Such changes include: (1) repairs and deferred maintenance to Craig Unit 1, including the restoration of out-of-service equipment that would not otherwise be used absent the Emergency Order;[155] (2) diversion of coal from fuel reserves dedicated to Craig Units 2 and/or 3 to Craig Unit 1;[156] and (3) potential interference concerning transmission infrastructure shared between the Craig Generating Station and the Axial Basin generating facility.[157]

64. In addition, Tri-State and Platte River assert that the Emergency Order constitutes a regulatory taking under factors articulated in *Penn Central Transportation Co. v. New York City*.[158] Under the *Penn Central* test, courts evaluating an alleged regulatory taking consider three factors: (1) the economic impact of the regulation, (2) the regulation's

[151] *Id.* § I.A.

[152] *Id.* at 14–15.

[153] *Id.* § I.A.1.

[154] *Id.* § I.A.2.

[155] *Id.* at 16–18.

[156] *Id.* at 18–19.

[157] *Id.* at 19.

[158] *Penn Cent. Transp. Co. v. N.Y.C.*, 438 U.S. 104 (1982) (*Penn Central*); Tri-State and Platte River Pet. § I.B.

interference with reasonable investment-backed expectations, and (3) the character of the government action.[159]

65. Applying these factors, Tri-State and Platte River argue that all three weigh in favor of finding a compensable regulatory taking here. First, with respect to economic impact, they assert that the Emergency Order imposes significant operations and maintenance costs "with no economic benefit" and prevents them from "efficiently and affordably managing the transmission and generation system."[160] Second, as to investment-backed expectations, they contend that DOE's current exercise of its FPA section 202(c) authority represents "a substantial and novel change" from prior uses of that authority, and that Tri-State and Platte River "could not have fairly anticipated" the Emergency Order when Craig Unit 1's planned retirement was announced.[161] Third, with respect to the character of the government action, they argue that the Emergency Order "directs operational control for a public reliability aim" that should instead be addressed through alternative means.[162]

66. Finally, Tri-State and Platte River argue that expected cost recovery through FERC's rate-making process, as contemplated under FPA section 202(c)(1) and DOE's implementing regulations, does not constitute "just compensation" for the Emergency Order within the meaning of the Fifth Amendment's Takings Clause.[163] They anticipate that the purported complexity of the FERC rate-making process will prevent complete recovery of their costs.[164] Furthermore, they assert that because costs for the continued operation of Craig Unit 1 are intended to be recovered through the FERC rate-making process, the financial burden of compliance will ultimately be borne by Tri-State's members and Platte River's ratepayers (rather than by the Government itself).[165] On this basis, Tri-State and Platte River contend that DOE cannot discharge its constitutional

[159] *See* 438 U.S. at 124.

[160] Tri-State and Platte River Pet. § I.B.1.

[161] *Id.* § I.B.2.

[162] *Id.* § I.B.3.

[163] *Id.* § I.C.; *see also* 10 C.F.R. § 205.376 (DOE implementing regulations)

[164] *Id.* at 24.

[165] *Id.* at 24–25.

obligation to provide just compensation by shifting that burden onto private parties who ultimately may not even bear the Emergency Order's full costs.[166]

DOE Determination

67. Tri-State and Platte River's arguments that DOE's exercise of its legitimate regulatory and emergency authority over private property implicates the Takings Clause of the Fifth Amendment are unavailing and do not warrant rehearing, as discussed below. Further, even if DOE's actions did implicate the Takings Clause, Petitioners' contention that the FPA framework for recovering costs arising from compliance with an FPA section 202(c) emergency order does not provide "just compensation"[167] as required by the Fifth Amendment is likewise without merit.

68. The Takings Clause provides that "private property [shall not] be taken for public use, without just compensation."[168] This constitutional limit, however, does not prohibit the Government from exercising its legitimate regulatory and emergency authority over private property.[169] Rather, a compensable taking is recognized only where "regulation goes too far."[170] Accordingly, petitioners seeking constitutional relief must overcome a demanding threshold to demonstrate a compensable taking.[171] This is particularly so in the context of highly regulated fields, such as utilities, where market participants must reasonably expect and accept significant governmental involvement.[172] Indeed,

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[166] *Id.* at 25.

[167] Tri-State and Platte River Pet. at 23–24.

[168] U.S. CONST. amend. V.

[169] *See Lingle v. Chevron*, 544 U.S. 528, 538 (2005) (explaining that "government regulation—by definition—involves the adjustment of rights for the public good," and "[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law" (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979), and *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922))).

[170] *Mahon*, 260 U.S. at 415.

[171] *See, e.g.*, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 493, 501 (1987) (noting "the heavy burden placed upon one alleging a regulatory taking" and rejecting petitioner's taking claim).

[172] *See generally Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 227 (1986) ("Those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end."); *Ruckelshaus v.*

construction, operation, pricing, interconnection, and retirement of an electric generating unit is conditioned on government permission and is subject to extensive federal, state, and local regulation, including in the areas of energy law, environmental law, health and safety law, state utility regulation, and local land use law.[173] Furthermore, it is well-established that a government entity may ensure that generating units continue to operate past their planned retirement dates.[174]

69. Here, Tri-State and Platte River first argue that the Emergency Order constitutes a physical taking because the Secretary directed them to maintain and operate Craig Unit 1—a unit previously slated for retirement on December 31, 2025.[175] This argument, however, mischaracterizes the nature of the Emergency Order. DOE has not assumed operational control of Craig Unit 1. The Emergency Order does not transfer Craig Unit 1's ownership or occupy the facility for the Government's own use, and Tri-State and Platte River retain possession and control of the facility. Rather, in the Emergency Order, the Secretary properly exercised his FPA section 202(c) authority to direct Tri-State and co-owners to

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Monsanto Co., 467 U.S. 986, 1006–07 (1984) (recognizing that reasonable investment-backed expectations are shaped by the regulatory environment in which a party operates).

[173] *See, e.g.*, Federal Power Act, 16 U.S.C. §§ 824d-824e; Clean Air Act §§ 7401 *et. seq.*; Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; Occupational Safety and Health Act §§ 651 *et seq.*; Standards of Performance for New Stationary Sources, 40 C.F.R. pt. 60 (2025); Steam Elec. Power Generating Point Source Category, 40 C.F.R. pt. 423; COLO. CODE REGS. §§ 40-1-101 *et seq*. (2026).

[174] *See, e.g.*, *Sw. Power Pool, Inc.*, 194 FERC ¶ 61,198 (2026) (approving System Support Resource program to prevent a generating resource retirement when needed to ensure the reliability of the transmission system); *see also* Midcontinent Indep. Sys. Operator, Inc., FERC Electric Tariff, Module A, § 1.S (Definitions), System Support Resource (SSR) (80.0.0) (describing units that are required by the transmission provider for reliability purposes); Letter from Michael E. Bryson, Senior Vice President, PJM, to Chris Wright, Secretary, DOE, at 3 (May 21, 2026) (requesting emergency order under FPA section 202(c) and describing PJM's determination that retirement of certain units will adversely affect reliability and PJM's request for continued operation of the units to support reliability), https://www.energy.gov/documents/pjm-wagner-unit-4-202c-application; Cal. S.B. 846, 2021–2022 Reg. Sess. (Cal. 2022) (requiring the California Energy Commission to determine the need to extend Diablo Canyon's license to operate beyond its expiration date of 2025); *In re Comanche Unit 2 Retirement Extension*, No. 25V-0480E, Decision No. C25-0892 (Colo. Pub. Utils. Comm'n Dec. 10, 2025) (granting request to extend operating life of Pueblo Unit 2).

[175] Tri-State and Platte River Pet. at 14.

"take all measures necessary to ensure that Craig Unit 1 is available to operate" to meet the emergency conditions in Craig's service area.[176]

70. The cases cited by Tri-State and Platte River are inapposite. In both *United States v. Pewee Coal Co.* and *United States v. General Motors Corp*., the Government seized or condemned private property and displaced the owner from physical possession and control.[177] For instance, in *Pewee Coal*, the President issued an executive order directing the Secretary of the Interior to take immediate possession and operational control of certain coal mines in response to wartime labor stoppages.[178] The Secretary of the Interior subsequently seized the mines, required the American flag to be flown at every mine, and directed placards reading "United States Property!" to be posted on the premises.[179] Here, by contrast, DOE has neither assumed physical control of Craig Unit 1 nor asserted any claim of ownership over the facility or any portion of it.

71. Similarly, in *General Motors*, the Government condemned the temporary occupancy of a warehouse, physically ousted the tenant—who was required to remove all personal property and dismantle fixtures—and took physical possession of the premises for temporary use pursuant to the Second War Powers Act of 1942.[180] The Emergency Order involves no comparable action: DOE has not condemned or physically occupied Craig Unit 1, ousted Tri-State or Platte River from the facility, nor taken possession of the premises in whole or in part.

72. Tri-State and Platte River's contention that the Emergency Order constitutes a *per se* physical taking likewise lacks merit. As discussed above, Tri-State and Platte River's argument in this respect focuses on physical changes purportedly arising from compliance with the Emergency Order: (1) repairing out-of-service equipment, (2) using coal reserves allocated to other Craig units, and (3) potentially interfering with transmission infrastructure concerning the Axial Basin facility.[181] None of these grounds is availing.

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[176] Emergency Order at 3, Ordering Paragraph A.

[177] *United States v. Pewee Coal Co.*, 341 U.S. 114 (1951) (*Peewee Coal*); *United States v. Gen. Motors Corp*., 323 U.S. 373 (1945) (*General Motors*).

[178] *See Peewee Coal*, 341 U.S. at 116.

[179] *Id.*

[180] *General Motors*, 323 U.S. at 375.

[181] Tri-State and Platte River Pet. at 16–19.

73. First, operating the electric energy generation facility at the Order of Secretary is specifically contemplated by Congress and authorized by the statute. The fact that Tri-State and co-owners are undertaking repairs or modifications to comply with an emergency directive is an ordinary incident of operating within a regulated industry. Tri-State and Platte River cite *Furey v. City of Sacramento*, for the proposition that government-mandated improvements to property that confer no benefit to the owner evince a taking.[182] *Furey*, however, is inapposite. The Court of Appeals for the Ninth Circuit simply held that the challenged measures—additional improvements to an existing sewage system—*did not* constitute a taking, because it was a landowner-formed assessment district, rather than the government itself, that directed the improvements.[183]

74. More relevant here is *Union Bridge Co. v. United States*, in which the Supreme Court held that a government order requiring a bridge owner to alter its structure at its own expense did not constitute a compensable taking under the Fifth Amendment.[184] The Court in *Union Bridge*—a foundational case not discussed by Tri-State and Platte River—relied on the established principle that "uncompensated obedience to a regulation enacted for the public safety under the police power of the state was not taking property without due compensation."[185] The Court further held that the company "erected the bridge subject to the possibility that Congress might, at some future time, when the public interest demanded, exert its power by appropriate legislation to protect navigation against unreasonable obstructions."[186] The Court accordingly opined that "an order to so alter a bridge over a water way of the United States that it will cease to be an unreasonable obstruction to navigation will not amount to a taking of private property for public use for which compensation need be made," even where compliance would "compel the Bridge Company to make a very large expenditure in money."[187]

75. Similarly, in *AT&T Corp. v. City of Toledo*, the court held that a city's directive requiring a company to relocate its telecommunication cables at its own expense did not effect an unconstitutional taking, because the company's easement was "implicitly subject

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[182] Tri-State and Platte River Pet. at 17–18 (citing *Furey v. City of Sacramento*, 780 F.2d 1448 (9th Cir. 1986)).

[183] 780 F.2d at 1457; *see also id.* at 1454–55.

[184] *Union Bridge Co. v. United States*, 204 U.S. 364 (1907).

[185] 204 U.S. at 395 (citing *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 254 (1897)).

[186] *Id.* at 400.

[187] *Id.* at 401, 403.

to [the city's] continuing duty and right under the police power to engage in the types of construction activities at issue for the preservation of the public health and safety."[188] The court grounded its holding in the well-established principle that "the enforcement of uncompensated obedience to a regulation established under [the police] power for the public health or safety is not an unconstitutional taking."[189]

76. The same general principles reflected in *Union Bridge* and *AT&T* apply here. The Emergency Order advances a compelling governmental interest to address an emergency impacting grid reliability, pursuant to Congress's express delegation of authority in FPA section 202(c). Tri-State and co-owners retain full ownership of Craig Unit 1, notwithstanding the need to make certain repairs to comply with the Emergency Order.

77. Second, Tri-State and Platte River's contention that a taking arose from their reallocation of coal fuel resources from other Craig units to satisfy the Emergency Order's requirements also is unpersuasive. Tri-State and Platte River cite *Horne v. Department of Agriculture*, for the proposition that a "forced depletion of a utility's fuel reserves" constitutes a taking.[190] In *Horne,* the government compelled raisin growers to physically surrender a specific portion of their crop to a government-controlled reserve for redistribution.[191] Here, by contrast, DOE has not directed Tri-State or Platte River to transfer title to any coal or surrender it to a government entity. Any reallocation of fuel reserves reflects an internal operational decision by Tri-State and its co-owners as to the manner of compliance with the Emergency Order—no property has changed hands with the government.

78. Third, Tri-State and Platte River's contention that the Emergency Order constitutes a "physical intrusion" on Tri-State's transmission infrastructure is misguided.[192] This argument rests on the flawed assumption that the Emergency Order requires Craig Unit 1 to continuously dispatch power to the grid. As noted, however, the Emergency Order directs Tri-State and co-owners to "take all measures necessary to ensure that Craig Unit 1 is *available to operate* at the direction of either [WAPA-WACM] in its role as Balancing

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[188] *AT&T Corp. v. City of Toledo*, 351 F. Supp. 2d 744, 747–48 (N.D. Ohio 2005).

[189] *Id.* at 748 (quoting *Tennessee v. United States*, 256 F.2d 244, 256–57 (6th Cir. 1958) (quoting *Atl. Coast Line R.R. Co. v. Goldsboro*, 232 U.S. 548, 558–59 (1914))).

[190] *Horne,* 576 U.S. 350, 357–65 (2015); Tri-State and Platte River Pet. at 18–19.

[191] 576 U.S. at 352 ("The reserve requirement imposed by the Raisin Committee is a clear physical taking. Actual raisins are transferred from the growers to the Government. Title to the raisins passes to the Raisin Committee.").

[192] Tri-State and Platte River Pet. at 19.

Authority or the [SPP] West in its role as the Reliability Coordinator."[193] Accordingly, those entities are empowered to address concerns related to transmission capacity on existing infrastructure.

79. Furthermore, and as discussed above, Tri-State and Platte River argue that the Emergency Order also constitutes a regulatory taking under the *Penn Central* standard, which evaluates (1) the economic impact of the regulation, (2) the regulation's interference with reasonable investment-backed expectations, and (3) the character of the government action.[194] These arguments are equally unavailing. Tri-State and Platte River state that compliance with the Emergency Order imposes economic burdens on them, such as operations and maintenance costs.[195] However, the mere fact that a regulation may impose economic costs is insufficient to establish a taking.[196] The economic impact factor demands something approaching a wholesale deprivation of economically viable use—and not merely the incremental costs of complying with an emergency regulatory order.

80. In addition, Tri-State and Platte River argue that the Emergency Order upsets their investment-backed expectations, including in view of DOE's "novel" use of FPA section 202(c) to address long-term reliability risks and Tri-State and Platte River's operational and financial decisions concerning Craig Unit 1's planned retirement.[197] These arguments overstate both the nature of DOE's action and the protection afforded by the investment-backed expectations factor.

81. Government regulation is an inherent and expected element of operating an electric generating unit because Congress and state legislatures have determined that electric generation is an activity with important public interests that benefit from government involvement.[198] In other words, a reasonable investment-backed expectation for an electric

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[193] Emergency Order at 3, Ordering Paragraph A (emphasis added).

[194] *See* 438 U.S. at 124; Tri-State and Platte River § I.B.

[195] Tri-State and Platte River Pet. at 20–21.

[196] *Penn Central*, 438 U.S. at 131 (noting that courts "uniformly reject the proposition that diminution in property value, standing alone, can establish a 'taking'").

[197] Tri-State and Platte River Pet. at 21–22.

[198] *See, e.g.*, 16 U.S.C. § 824(a) ("It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation . . . is necessary in the public interest").

utility is that it is subject to substantial (and sometimes costly) government regulation.[199] In issuing the Emergency Order, the Secretary exercised, in view of the specific emergency circumstances presented here, the same statutory authority that has governed the application of FPA section 202(c) since the FPA's inception in 1935.[200] Indeed, the exercise of FPA section 202(c) authority is well established, dating back to its inaugural use in June 1941.[201] DOE has not adopted any new methodology or interpretation of its emergency authority, and the fact that the ongoing emergency in the Craig service region was not anticipated in Tri-State and Platte River's internal planning does not render the mechanism by which DOE acted disruptive to reasonable investment-backed expectations.

82. Tri-State and Platte River also argue that the character of the Emergency Order further strengthens their case for a regulatory taking, asserting that the Order effectively commandeers Craig Unit 1, its fuel, the potential dispatch of the Axial Basin facility, and related infrastructure.[202] This argument also is misplaced. The character of the Emergency Order is that of a temporary, narrowly tailored emergency measure responding to documented resource adequacy conditions, not a commandeering of private property. As noted, Tri-State and co-owners retain ownership of Craig Unit 1. The Emergency Order imposes conditions on the use of Craig Unit 1 in service of a compelling public interest: preventing the loss of power to homes and businesses in areas that may be impacted by curtailments or power outages, creating a risk to public health and safety.[203] This is precisely the kind of government action that *Penn Central* and its progeny recognize as falling short of a taking, and the fact that Tri-State and Platte River believe that other

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[199] *See, e.g.*, FERC Filing of Rate Schedules and Tariffs, 18 C.F.R. pt. 35 (2026) (requiring the filing of rate schedules, tariffs, and service agreements); EPA National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, 40 C.F.R. pt. 63, subpt. UUUUU (2026) (establishing standards to limit emissions of mercury and other hazardous air pollutants); COLO. CODE REGS. § 40-5-101 (2026) (requiring a certificate of public convenience and necessity to construct and to operate a facility or an extension of a facility).

[200] *See, e.g.*, *Ruckelshaus*, 467 U.S. at 1006–07 ("[Plaintiff] can hardly argue that its reasonable investment-backed expectations are disturbed when [the Agency] acts . . . in a manner that was authorized by law at the time of the submission.").

[201] Recommendation for Curtailment of the Use of Elec. Energy in the Se. States, 2 F.P.C. 990, 990 (1941).

[202] Tri-State and Platte River Pet. at 23.

[203] *See generally* Emergency Order at 3.

utilities or other means could address the emergency does not transform a legitimate exercise of emergency regulatory authority into a constitutional violation.[204]

83. Even if Petitioners were correct that the Emergency Order constituted a taking under the Fifth Amendment, Petitioners' contention that the FPA framework for recovering costs arising from compliance with an FPA section 202(c) emergency order does not provide "just compensation"[205] as required by the Fifth Amendment is unavailing. FPA section 202(c)(1) expressly establishes:

> If the parties affected by [a FPA section 202(c)] order fail to agree upon the terms of any arrangement between them in carrying out such order, [FERC], after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

84. Furthermore, DOE's regulations address the procedures that DOE follows when relevant entities are unable to agree on rate issues arising from a FPA section 202(c) order:

> The applicant and the generating or transmitting systems from which emergency service is requested are encouraged to utilize the rates and charges contained in approved existing rate schedules or to negotiate mutually satisfactory rates for the proposed transactions. In the event that the DOE determines that an emergency exists under [FPA] section 202(c), and the "entities" are unable to agree on the rates to be charged, the DOE shall prescribe the conditions of service and refer the rate issues to the Federal Energy Regulatory Commission for determination by that agency in accordance with its standards and procedures.[206]

85. As FERC recently explained in a cost-recovery proceeding related to another 202(c) order,[207]

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[204] 438 U.S. at 123–28; *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 321–22 (2002) (applying *Penn Central* and holding temporary moratorium on development did not constitute a *per se* taking); *Keystone*, 480 U.S. at 485 (applying *Penn Central* and finding no taking where regulation served a substantial public interest and did not render the property economically unviable).

[205] Tri-State and Platte River Pet. at 23–24.

[206] 10 C.F.R. § 205.376.

[207] *PJM Interconnection, L.L.C.*, DOE Order No. 202-25-8 (Aug. 27, 2025)

> DOE and [FERC] have distinct roles under the DOE Organization Act. DOE has sole responsibility to determine that "an emergency exists" due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and to require temporary connections of facilities that, "in its judgment will best meet the emergency and serve the public interest." [FERC] is responsible for prescribing "compensation or reimbursement."[208]

86. Indeed, the Secretary followed this process here. Specifically, the Emergency Order directed "Tri-State and co-owners" "to file with [FERC] [t]ariff revisions or waivers to effectuate this Order. Rate recovery is available pursuant to 16 U.S.C. § 824a(c)."[209] In this respect, DOE finds Tri-State and Platte River's assertion that the process detailed above does not "guarantee [their] complete recovery"[210] as speculative and unfounded. Tri-State and Platte River's concerns about the purported procedural "complexity" of such proceedings do not override the cost-recovery framework Congress provided in FPA section 202(c), so the Emergency Order does not amount to an uncompensated taking.

The cases Tri-State and Platte River cite for the proposition that FERC cost recovery is not "just compensation" because some costs would be borne by ratepayers are inapposite. *Baker v. City of McKinney*, involved incidental third-party donations or collateral insurance recoveries, not a statutorily authorized recovery framework.[211] The decision in *U.S. Bank, National Association v. SFR Investments Pool 1, LLC* is likewise inapposite.[212] There, the plaintiff sought redress against a private purchaser rather than the government,[213] and the court held that the plaintiff bore the burden of demonstrating that state compensation

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(concerning Units 3 and 4 of the Eddystone Generating Station in Eddystone, Pennsylvania).

[208] *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,002, at P 26 (2026) (citations omitted).

[209] Emergency Order at 4, Ordering Paragraph E.

[210] Tri-State and Platte River Pet. at 24.

[211] *Baker v. City of McKinney*, 608 F. Supp. 3d 457, 464–67 (E.D. Tex. 2022).

[212] *U.S. Bank, Nat'l Ass'n v. SFR Invs. Pool 1, LLC*, 2016 WL 1248704 (D. Nev. Mar. 28, 2016).

[213] 2016 WL 1248704, at *4.

remedies were unavailable or inadequate.[214] The case thus fails to support the notion that the congressionally established cost-recovery mechanism under FPA section 202(c) does not or cannot provide "just compensation."

6. Potential Environmental Impacts

87. PIOs and Colorado State contend that the Emergency Order fails to comply with FPA section 202(c)'s requirements to ensure that any order that may result in a conflict with environmental law or regulation requires generation only during hours necessary to meet the emergency, is consistent with applicable environmental laws to the maximum extent practicable, and minimizes any adverse environmental impacts.[215] Specifically, PIOs and Colorado State contend that the Emergency Order may conflict with multiple environmental requirements applicable to Craig Unit 1, such as Colorado's Clean Air Act State Implementation Plan (SIP) and regional haze requirements.[216] According to PIOs and Colorado State, the Emergency Order also lacks detailed reporting obligations, without which DOE has no mechanism to minimize potential adverse environmental impacts.[217]

88. Moreover, PIOs and Colorado State argue that the Emergency Order fails to ensure that Craig Unit 1 generates electric energy "only during hours necessary to meet the emergency and serve the public interest," as required by FPA section 202(c)(2)."[218] In particular, PIOs and Colorado State argue that, absent clear temporal limitations on Craig Unit 1's operational status, the Emergency Order will be in direct conflict with state and federal environmental laws.[219]

DOE's Determination

89. FPA section 202(c)(2) requires the Secretary to ensure that any FPA 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

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[214] *Id.* at *4–5.

[215] PIOs Pet. § V.D. (citing 16 U.S.C. § 824a(c)(2)); Colorado State Pet. § V.E.ii (citing 16 U.S.C. § 824a(c)(2)).

[216] PIOs Pet. at 84–90; Colorado State Pet. at 79–83.

[217] *Id*.

[218] 16 U.S.C. § 824a(c)(2); PIOs Pet. at 87–88; Colorado State Pet. at 77–79.

[219] PIOs Pet. at 87–88; Colorado State Pet. at 77–79.

impacts."[220] In addition, FPA 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."[221]

90. PIOs and Colorado State argue the Emergency Order does not adequately limit the operating hours of any Craig Unit 1 to those necessary to meet the emergency.[222] This argument is not valid. The Emergency Order expressly provides that, "[t]o minimize adverse environmental impacts, this Order limits operation of Craig Unit 1 to the times and within the parameters established in paragraph A."[223] The applicable Balancing Authority and Reliability Coordinator retain full discretion to dispatch Craig Unit 1 only as necessary to address the emergency as identified in the Emergency Order. The Emergency Order thus does not authorize unlimited or unrestricted operation of Craig Unit 1; rather, it confines operation to those hours necessary to meet the emergency and serve the public interest, consistent with FPA section 202(c)(2).

91. PIOs and Colorado State further contend that the Emergency Order does not identify sufficient conditions to minimize adverse environmental impacts.[224] However, the Emergency Order expressly recognizes the potential for conflict with environmental requirements and responds to it. The Order requires that "[a]ll operations of Craig Unit 1 must comply with applicable environmental requirements, including but not limited to monitoring, reporting, and recordkeeping requirements, to the maximum extent feasible while operating consistent with the emergency conditions" and further confirms that the Order "does not provide relief from any obligation to pay fees or purchase offsets or allowances for emissions."[225] In addition, the Emergency Order requires Tri-State to provide daily notifications to DOE reporting whether Craig Unit 1 has operated consistently with the Order and in compliance with applicable environmental requirements.[226] These conditions provide a mechanism for DOE to monitor compliance and obtain information concerning any adverse environmental impacts of the emergency

[220] 16 U.S.C. § 824a(c)(2).

[221] *Id.*

[222] PIOs Pet. at 87–88; Colorado State Pet. at 77–79.

[223] Emergency Order at 4, Ordering Paragraph B.

[224] PIOs Pet. at 87–90; Colorado State Pet. at 79–83.

[225] Emergency Order at 4, Ordering Paragraph C.

[226] *Id.*, Ordering Paragraph B.

operations, and 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.

92. Finally, DOE notes that Congress recognized, by including the phrase "to the maximum extent practicable," that emergency circumstances would at times make compliance with all Federal, state, and local environmental requirements infeasible.[227] Furthermore, the FPA provides that any "omission or action [taken to comply with an order issued under FPA section 202(c)] shall not be considered a violation of such environmental law or regulation."[228] To the extent that continued availability to operate or dispatch the Craig Unit 1 creates compliance challenges under those requirements, Tri-State is directed to comply with applicable environmental requirements to the maximum extent feasible while continuing to fulfill the terms of the Emergency Order.

7. NEPA Concerns

93. Colorado State claims that the Emergency Order violates the National Environmental Policy Act (NEPA) because it constitutes a major federal action significantly affecting the quality of the human environment that requires compliance with NEPA.[229] Colorado State argues that, because DOE has allegedly misused its FPA section 202(c) emergency authority, DOE cannot rely on the determination in its NEPA Implementing Procedures that NEPA does not apply to the issuance of emergency orders pursuant to FPA section 202(c).[230] According to Colorado State, there is no "emergency situation that demands immediate action," and therefore the exception for 202(c) emergency orders is unavailable.[231]

94. Colorado State further asserts that DOE's NEPA Implementing Procedures preclude the use of a categorical exclusion where an action has the potential to cause significant impacts on environmentally sensitive areas, including federally and state-designated wilderness areas and national parks.[232] Colorado State contends that Craig Unit 1's retirement by December 31, 2025 was required under Colorado's federally approved State

[227] 16 U.S.C. § 824a(c)(2).

[228] *Id.* § 824a(c)(3).

[229] Colorado State Pet. at 19, 87–88.

[230] *Id.* at 87.

[231] *Id*. (citing 10 C.F.R. § 1021.103).

[232] *Id.* at 88 (citing 10 C.F.R. pt. 1021, app. B).

Implementation Plan, which is designed to protect national parks and wilderness areas in Colorado from visibility impairment.[233]

DOE's Determination

95. DOE disagrees with Colorado State's contention that the Order "requires evaluation under NEPA."[234] NEPA does not apply "where compliance would be inconsistent with other statutory requirements."[235] Preparing an environmental document under NEPA's generally applicable provisions would be inconsistent with the emergency provisions in the FPA, which explicitly authorizes the Secretary to exercise certain emergency authorities "with or without notice, hearing, or report."[236] Requiring compliance with the analytic and procedural burdens of preparing an environmental document under NEPA prior to issuing a FPA section 202(c) emergency order is inconsistent with the congressional authorization to exercise such emergency authority without report and would render the emergency relief statute a nullity.

96. Moreover, Congress enacted specific environmental compliance requirements for emergency orders. Specifically, the FPA requires that any emergency order that may result in a conflict with a Federal, State, or local environmental law or regulation must be limited to the "hours necessary to meet the emergency," must be consistent with applicable environmental laws "to the maximum extent practicable," and must minimize "any adverse environmental impacts."[237] Additionally, an emergency order that may result in a conflict with an environmental law or regulation is capped at 90 days and only may be renewed after consultation with the primary Federal agency with expertise in the environmental interest protected by law.[238] These statutory directives provide the governing framework for addressing environmental compliance for an emergency order issued under FPA section 202(c), and the FPA statutory scheme controls. NEPA review would be inconsistent with the FPA statutory requirements, thus the FPA displaces the need for NEPA review.

97. While DOE previously followed the steps provided in DOE's NEPA regulations governing emergency actions, as described in the prior 10 C.F.R. § 1021.343 (for example,

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[233] *Id.*

[234] *Id.* at 87.

[235] 42 U.S.C. § 4332(C).

[236] 16 U.S.C. § 824a(c)(1).

[237] *Id.* § 824a(c)(2).

[238] *Id.* § 824a(c)(4).

by preparing a special environmental analysis after the issuance of a FPA section 202(c) order), those regulations have been revised.[239] DOE is using its NEPA Implementing Procedures and is not bound by its prior approach. NEPA states that agencies are "not required to prepare an environmental document with respect to a proposed agency action if . . . the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law."[240] Accordingly, DOE has determined, in consultation with the Council on Environmental Quality, that "NEPA does not apply to DOE's issuance of emergency Orders pursuant to section 202(c) of the [FPA] (16 U.S.C. § 824a(c)) because preparing an environmental document under NEPA's generally applicable provisions would clearly and fundamentally conflict with the emergency provisions in the [FPA]."[241]

98. In addition, by including the phrase "to the maximum extent practicable," Congress recognized that emergency circumstances would at times make compliance with all Federal, State, and local environmental requirements and minimization of all potential adverse environmental impacts infeasible. This phrase illustrates Congressional intent to subordinate environmental concerns to ensure an adequate supply of electric energy, providing DOE with discretion to fulfill its obligations under FPA section 202(c). Accordingly, the Emergency Order's limits on duration, the conditions that authorize only the additional generation necessary, and the requirement that operation of the Craig Unit complies with environmental laws to the maximum extent feasible, as well as the reporting requirements that allow DOE to monitor compliance with the Emergency Order, were sufficient to satisfy the Secretary's obligation under FPA section 202(c)(2).

99. DOE's environmental obligations were met through the conditions imposed via the Emergency Order's limitation on the duration of the emergency operations, the authorization only of the additional generation necessary, the requirement that operation of Craig Unit 1 comply with environmental laws to the maximum extent feasible, and Tri-State's obligation to report to DOE on its compliance with the Emergency Order and corresponding environmental impacts, if any. Preparation of a NEPA environmental document would be inconsistent with issuing an emergency order under FPA section 202(c), preparing a NEPA environmental document would clearly and fundamentally

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[239] *See* 10 C.F.R. § 1021.343; Revision of Nat'l Env't Pol'y Act Implementing Procs., 90 Fed. Reg. 29676 (July 3, 2025).

[240] Fiscal Responsibility Act of 2023, Pub. L. No. 188-5, § 321(b), 137 Stat. 10, 39 (2023).

[241] DOE, *Nat'l Env't Pol. Act* (*NEPA) Implementing Procs.*, at 6 (June 30, 2025), https://www.energy.gov/sites/default/files/2025-06/2025-06-30-DOE-NEPA-Procedures.pdf.

conflict with the requirements of FPA section 202(c), and FPA section 202(c) displaces the need for NEPA review.

100. Colorado State's contention[242] that DOE cannot invoke NEPA's conflict-based exclusion because DOE has allegedly "misused" its emergency authority is without merit. As addressed above, the Secretary's emergency determination under FPA section 202(c) is lawful and well-supported. Similarly, Colorado State's argument that DOE's NEPA implementing regulations preclude the use of a categorical exclusion for actions affecting environmentally sensitive areas is inapposite.[243] DOE's determination that NEPA does not apply to FPA section 202(c) orders rests on the statutory conflict between NEPA and FPA section 202(c), not on the application of a categorical exclusion. Because the conflict-based exclusion renders NEPA inapplicable to the Emergency Order in its entirety, the categorical exclusion framework—and any potential limitations thereon—are not implicated.

III. Procedural Issues

1. Requests for Stay

101. PIOs and Colorado State each move for a stay of the Emergency Order pending resolution of judicial review.[244] In support of their request, PIOs and Colorado State 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.[245]

DOE's Determination

102. 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.[246]

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[242] Colorado State Pet. at 87.

[243] *Id.* at 88.

[244] PIOs Pet. § VI; Colorado State Pet. § VI.

[245] PIOs Pet. § VI; Colorado State Pet. § VI.

[246] *See Nken v. Holder*, 556 U.S. 418, 434–36 (2009); *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 291 (2024).

103. By its terms, the Emergency Order terminated on March 30, 2026.[247] Consequently, the stay request is now moot.

104. In any case, DOE finds that a stay is not warranted here based on a broader consideration of the equities at issue. First, PIOs and Colorado State also fail to present any evidence of substantial and irreparable harm. Indeed, a stay would substantially harm other stakeholders and is therefore not 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 Craig's service region. As discussed above, this determination is based on the insufficiency of dispatchable capacity and anticipated demand, as well as the risk to the public health and safety presented by the potential loss of power to homes and local businesses in areas that may be affected by curtailments or outages. Imposition of a stay would also harm those citizens residing in the Craig's service region who would face potentially critical electric energy shortages, 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

105. On January 26, 2026, Public Service filed a motion for leave to intervene. On January 28, 2026, PIOs and Colorado State also filed a motion to intervene and request for rehearing. On January 29, 2026, Tri-State and Platte River filed a motion to intervene. Public Service, PIOs, Tri-State and Platte River, and Colorado State each cite various alleged interests which may be affected by the outcome of this proceeding.[248]

DOE's Determination

106. The motions to intervene in this administrative proceeding are hereby permissively granted for Public Service, PIOs, Tri-State and Platte River, and Colorado State, but DOE takes no position on whether Public Service, PIOs, and Colorado State are "aggrieved" parties for purposes of FPA section 313.[249]

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[247] Emergency Order at 4, Ordering Paragraph H.

[248] Public Service Pet. at 1–3; PIOs Pet. § III; Colorado State Pet. § II.

[249] *See* 16 U.S.C. § 825*l*(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

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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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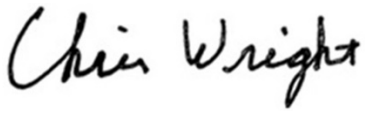
Issued on this 24th day of June 2026.



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Chris Wright
Secretary of Energy

petition praying that the order of the Commission be modified or set aside in whole or in part.").