

UNITED STATES OF AMERICA

Department of Energy

Washington, DC 20585

Midcontinent Independent System Operator, Inc.
and Consumers Energy Company Regarding the
J.H. Campbell Generation Facility

Order No. 202-25-7B

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued January 21, 2026)

1. On August 20, 2025, pursuant to section 202(c) of the Federal Power Act (FPA),¹ and section 301(b) of the Department of Energy Organization Act,² the Secretary of Energy (Secretary) issued an order determining that “an emergency exists in portions of the Midwest region of the United States due to a shortage of electric energy, a shortage of facilities for the generation of electricity, and other causes.”³ In the Emergency Order, the Secretary determined that “continued additional dispatch of the Campbell Plant is necessary to best meet the emergency and serve the public interest under FPA section 202(c).”⁴

2. On September 8, 2025, a request for rehearing was filed by Public Interest Organizations (PIOs);⁵ on September 11, 2025, a rehearing request was filed by Michigan Attorney General Dana Nessel (Michigan AG); and on September 19, 2025, a rehearing request was filed by the States of Minnesota and Illinois (Minnesota and Illinois). On September 19, 2025, Consumers Energy Company filed a limited request for clarification.

¹ 16 U.S.C. § 824a(c).

² 42 U.S.C. § 7151(b).

³ Department of Energy Order No. 202-25-7 (Aug. 20, 2025) (Emergency Order).

⁴ *Id.* at 7.

⁵ Sierra Club, Natural Resources Defense Council, Michigan Environmental Council, Environmental Defense Fund, Environmental Law and Policy Center, Vote Solar, Union of Concerned Scientists, the Ecology Center, and Urban Core Collective refer to themselves collectively as Public Interest Organizations.

3. On October 23, 2025, the Department of Energy (DOE) issued a notice of denial of rehearing by operation of law and providing for further consideration (DOE Notice).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. In the Emergency Order, the Secretary determined that “an emergency exists in portions of the Midwest region of the United States due to a shortage of electric energy, a shortage of facilities for the generation of electricity, and other causes,” and that “[i]ssuance of this Order will meet the emergency and serve the public interest.”⁹ The Secretary therefore directed the Midcontinent Independent System Operator, Inc. (MISO), and Consumers Energy, the Campbell Plant’s owner, to “take all measures necessary to ensure that the Campbell Plant is available to operate.”¹⁰

5. 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) indicated in its 2025 Summer Reliability Assessment that “[d]emand forecasts and resource data indicate that MISO is at elevated risk of operating reserve shortfalls during periods of high demand or low resource output.”¹¹ The Secretary observed that multiple generation facilities in Michigan have

⁶ Department of Energy Order No. 202-25-7A (Oct. 24, 2025).

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

⁸ See *Allegheny Def. Project v. FERC*, 964 F.3d 1, 16-17 (D.C. Cir. 2020). The Department 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 Emergency Order at 8, Ordering Paragraph A.

¹¹ *Id.* at 1 (quoting *2025 Summer Reliability Assessment*, North American Electric Reliability Corporation, at 16 (May 2025), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2025.pdf (NERC 2025 Summer Reliability Assessment)). The Emergency Order stated that NERC anticipates “elevated risk of operating reserve shortfalls” notwithstanding Consumers Energy’s acquisition of a 1,200 MW natural gas power plant in Covert, Michigan. *Id.* at 2.

retired in recent years, specifically identifying the closures of two nuclear plants—Big Rock Point and Palisades.¹² The Secretary explained that the retirement of the Campbell Plant would further decrease the amount of available dispatchable generation in MISO’s service territory, noting that a combined 1,575 MW of natural gas and coal-fired generation had retired since the summer of 2024.¹³ The Secretary further noted that MISO’s 2025/2026 Planning Resource Auction results indicated that, for the North/Central sub-regions, new capacity additions were insufficient to offset the negative impacts of accreditation, suspensions/retirements and external resources and that, while the results demonstrated sufficient capacity, the summer months reflected the highest risk and a tighter supply-demand balance, and the results reinforce the need to increase capacity.¹⁴

6. The Secretary explained that (as of August 21, 2025, the date when the Emergency Order was issued) the summer season had not yet concluded, and that the Campbell Plant continues to play a critical role in maintaining generation reliability in MISO.¹⁵ The Secretary noted the Campbell Plant’s substantial electricity generation during a summer heat wave that hit MISO, when the Campbell Plant produced approximately 664,000 MWh in June 2025 and operated at 61% capacity.¹⁶ The Secretary further observed that, on over 40 of the 69 days between June 11 and August 18, MISO had to issue numerous alerts to manage grid reliability in response to extreme weather, high demand, forced generation outages, and transmission limitations.¹⁷ The Secretary also noted a July 17, 2025 Seasonal Outlook issued by the National Oceanic and Atmospheric Administration (NOAA), which projected a significantly increased likelihood of above-normal

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* (summarizing *Planning Resource Auction—Results for Planning Year 2025–2026*, Midcontinent Independent System Operator, Inc., at 13 (Apr. 2025)). After the Emergency Order was issued, on May 29, 2025, MISO posted a corrected version of the presentation, which is available here: https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250529_Corrections694160.pdf.

¹⁵ *Id.*

¹⁶ *Id.* at 3 (citing *Custom Data Download, EPA CAMPD (Clean Air Markets Program Data)*, <https://campd.epa.gov/data/custom-data-download> (search criteria to produce these results could include Emissions >> Monthly >> Unit (default) >> Apply >> “2025” and “June.” The data can then be filtered to only include the Campbell Plant.).

¹⁷ *Id.*

temperatures for the Midwest region, with estimates rising to a 40-50% chance for much of the Midwest region, including Michigan.¹⁸

7. The Secretary also explained that MISO's resource adequacy problems are not limited to the summer season.¹⁹ The Secretary observed that, in 2022, in its own filing to revise its resource adequacy construct, MISO requested Federal Energy Regulatory Commission (FERC) approval to establish capacity requirements for all four seasons rather than annually based on peak summer demand.²⁰ As the Secretary noted, MISO justified this request because “[r]eliability risks associated with resource adequacy have shifted from ‘Summer only’ to a year-round concern.”²¹ The Secretary also noted that MISO’s December 2023 “Attributes Roadmap” provided an in-depth look at the evolving challenges of operating a reliable bulk electric system amid a rapidly transforming energy landscape.²² The Roadmap highlighted that, while the 2023/24 Planning Year still viewed the greatest risk of loss of load in the summer, projections indicated that by the summer of 2027, the risk will be equally high in both the summer and fall seasons.²³ It is also projected that, although the risk of loss of load in the winter and spring will not reach the same level as in summer or fall, it is nonetheless expected to increase over time.²⁴ The Secretary observed that MISO reaffirmed its findings in a 2024 report, *MISO’s Response to the Reliability Imperative*, underscoring that MISO has resource reliability concerns outside of the summer season.²⁵

¹⁸ *Id.* (citing *Seasonal Outlook*, NOAA Climate Prediction Ctr. (July 17, 2025), https://www.cpc.ncep.noaa.gov/products/predictions/long_range/seasonal.php?lead=1) (search terms in search box “2025” and “07”).

¹⁹ *Id.*

²⁰ *Id.* (citing *Midcontinent Independent System Operator, Inc.*, FERC Docket No. ER22-495-000 (Nov. 30, 2021)).

²¹ *Id.* at 3-4 (citing MISO Transmittal Letter, at 3, FERC Docket No. ER22-495-000 (Nov. 30, 2021)).

²² *Id.* at 4.

²³ *Id.* (citing MISO, *Attributes Roadmap*, at 11 (Dec. 2023), <https://cdn.misoenergy.org/2023%20Attributes%20Roadmap631174.pdf>).

²⁴ *Id.*

²⁵ *Id.* (citing MISO, *MISO’s Response to the Reliability Imperative* (updated Feb. 2024), <https://cdn.misoenergy.org/2024+Reliability+Imperative+report+Feb.+21+Final50>

8. The Secretary further explained that evidence indicates that “there is also a potential longer term resource adequacy emergency in MISO.”²⁶ The Secretary stated that the results of MISO’s Public Resource Auction (PRA) for the 2025-26 Planning Year indicated that ““new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources’ in the northern and central zones, which include Michigan.”²⁷ The Secretary further referenced the 2025 Organization of MISO States (OMS)-MISO Survey Results, which projected that although there could be a capacity surplus for the summer of 2026, at least 3.1 GW of additional generation capacity will be needed beyond what is currently committed to meet MISO’s projected planning reserve margin requirements.²⁸ For each of the following four summers, the survey projected insufficient capacity to meet peak demand, with deficits increasing from 1.4 GW in 2027 to 8.2 GW by 2030.²⁹ The Secretary discussed that the primary reasons for these projected deficits are the continued retirement of existing generation capacity and accelerating electricity demand.³⁰ The Secretary acknowledged that MISO has been taking steps to address these projected deficits, but further assessed MISO’s efforts as “unlikely to result in the addition of any new generation capacity in the next few years.”³¹

9. As discussed further below, the Emergency Order also observed that, earlier this year, the President issued executive orders which underscored the severity of the current energy emergency in the United States.³² In this respect, the Secretary noted DOE’s July

[4018.pdf](#)).

²⁶ *Id.*

²⁷ *Id.* (quoting MISO, *Planning Resource Auction – Results for Planning Year 2025-26*, at 13 (corrected May 29, 2025), https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250529_Corrections694160.pdf).

²⁸ *Id.* at 4-5 (citing OMS and MISO, *2025 OMS-MISO Survey Results*, at 2 (updated June 6, 2025), <https://cdn.misoenergy.org/20250606%20OMS%20MISO%20Survey%20Results%20Workshop%20Presentation702311.pdf>).

²⁹ *Id.* at 5 (citing OMS and MISO, *2025 OMS-MISO Survey Results*, at 7).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 6 (citing Exec. Order No. 14262, 90 Fed. Reg. 15521 (Apr. 8, 2025) (*Strengthening the Reliability and Security of the United States Electric Grid*), <https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-the-reliability-and-security-of-the-united-states-electric-grid/>; Exec. Order No. 14156, 90 Fed. Reg. 8433

2025 Resource Adequacy Report, which was prepared specifically in response to the President’s Executive Order 14262, “Strengthening the Reliability and Security of the United States Electric Grid.”³³ DOE’s Resource Adequacy Report detailed that the United States’ power grid will be “unable to meet projected demand for manufacturing, re-industrialization, and data centers driving artificial intelligence [] innovation.”³⁴

10. Finally, the Secretary referenced recent congressional testimony from Jennifer Curran, Senior Vice President, Planning and Operations, MISO.³⁵ In her written testimony, Ms. Curran explained that “the MISO region faces resource adequacy and reliability challenges due to the changing characteristics of the electric generating fleet, inadequate transmission system infrastructure, growing pressures from extreme weather, and rapid load growth.”³⁶

11. In view of this evidence, the Secretary therefore determined that continued operation of the Campbell Plant is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c). 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 a 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

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

³³ Exec. Order No. 14262, 90 Fed. Reg. 15521 (Apr. 8, 2025), at Section 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 FERC).

³⁴ Emergency Order at 6 (quoting *Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid*, U.S. Department of Energy (July 2025), at 1, <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf>).

³⁵ *Id.* at 6-7 (citing Keeping the Lights On: Examining the State of Regional Grid Reliability Before the House Committee on Energy and Commerce, Subcommittee on Energy, 119th Cong. (Mar. 25, 2025) (statement of Ms. Jennifer Curran, Senior Vice President for Planning and Operations, Midcontinent Independent System Operator) (Curran Test.), at 5, https://democrats-energycommerce.house.gov/sites/evo-subsites/democrats-energycommerce.house.gov/files/evo-media-document/witness-testimony_curran_eng_grid-operators_03.25.2025.pdf).

³⁶ *Id.* at 6-7 (quoting Curran Test. at 5).

recognition of potential conflict with environmental standards and requirements and consistent with FPA section 202(c), the Secretary authorized only the necessary additional generation on specified conditions.³⁷

II. Discussion

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

12. Michigan AG, PIOs, and Minnesota and Illinois each raise similar arguments that the Emergency Order failed to meet the legal definition of an “emergency” within the meaning of FPA section 202(c).³⁸ Michigan AG argues that, while section 202(c) “permits some measure of flexibility with respect to what type of events may cause the emergency, allowing for ‘other causes’ beyond those enumerated,” it only authorizes action during extraordinary circumstances.³⁹ Michigan AG⁴⁰ and PIOs⁴¹ cite to various dictionary definitions of “emergency” to assert the same point. PIOs⁴² and Minnesota and Illinois⁴³ also each similarly assert that the Emergency Order is “novel” and contravenes DOE’s historic use of section 202(c) to address natural disasters and specific capacity crises, or retirements “only when requested.”⁴⁴

13. Further, Michigan AG,⁴⁵ PIOs,⁴⁶ and Minnesota and Illinois⁴⁷ each rely on *Richmond Power and Light v. FERC*, 574 F.2d 610 (D.C. Cir. 1978), and *Otter Tail Power*

³⁷ Emergency Order at 8.

³⁸ Michigan AG Pet. § IV.A.i; PIO Pet. § V.A.1; Minnesota and Illinois Pet. § V.B.

³⁹ Michigan AG Pet. at 34-35.

⁴⁰ *Id.* at 35.

⁴¹ PIO Pet. at 46.

⁴² *Id.* at 52.

⁴³ Minnesota and Illinois Pet. at 37-38.

⁴⁴ *Id.* at 38.

⁴⁵ Michigan AG Pet. at 36-37.

⁴⁶ PIO Pet. at 50-51.

⁴⁷ Minnesota and Illinois Pet. at 39-40.

Co. v. Federal Power Commission, 429 F.2d 232 (8th Cir. 1970), for the proposition that courts have interpreted section 202(c) narrowly to apply only to temporary emergencies requiring an imminent response.

DOE's Determination

14. The Secretary has 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."⁴⁸ Next, the statute sets forth three different categories of emergency where section 202(c) action is permissible. An emergency may exist "by reason of [1] a sudden increase in the demand for electric energy, or [2] a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or [3] other causes."⁴⁹

15. Pursuant to section 202(c)(1), the Secretary has authority to determine the existence of a statutory emergency, "either upon [his] own motion or upon complaint, with or without notice, hearing, or report." Beyond providing categories of when an "emergency exists," the statute is silent on any additional requirements that must be satisfied. Here, as is evident from the face of the Emergency Order, and as is consistent with section 202(c)'s text and prior DOE practice,⁵⁰ the Secretary exercised his authority under section 202(c) and determined, in his statutory discretion and substantive expertise, that "an emergency exists in portions of the Midwest region of the United States due to a shortage of electric energy, a shortage of facilities for the generation of electricity, and other causes."⁵¹

⁴⁸ 16 U.S.C. § 824a(c)(1) (emphases added).

⁴⁹ *Id.* (brackets added); *see also* H.R. Rep. No 113-86, at 2 (2013) (House Committee on Energy and Commerce Report on then-proposed amendment to section 202(c), which observed that "[r]eliability-related emergencies are not limited to bad weather, natural disasters, or terrorist attacks").

⁵⁰ *See, e.g., Puget Sound Power & Light Co.*, 6 F.P.C. 320 (1947) (WL 1048) (in which the Federal Power Commission (FPC, the predecessor of DOE) used FPA section 202(c) to prevent an anticipated power shortage despite noting that the current power supply was adequate).

⁵¹ *See* Emergency Order at 1.

16. The argument that the Secretary can act only when a shortage of electricity is “imminent” does not comport with the statutory authority conferred by section 202(c). The word imminent does not appear in the statute. The Secretary may act to address any “shortage of . . . facilities for the generation . . . of electric energy.” Were the Secretary to be required to wait until a blackout was “imminent” before addressing a shortage of generation facilities, his ability to take meaningful action under section 202(c) to prevent the blackout would be gravely impaired. Section 202(c) must be interpreted in the context of the electric industry. It can take months, and even years, to remedy a shortage of facilities for the generation of electric energy once a shortage is identified. This fact is squarely recognized in DOE’s implementing regulations for FPA section 202(c), in effect since 1981, which defines the term “emergency” to include “[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities.”⁵² Furthermore, the definition of “emergency” contained in DOE’s regulations at 10 C.F.R. § 205.371—which generally provide guidance to applicants seeking section 202(c) relief—does not supersede the statutory discretion section 202(c) affords to the Secretary to *sua sponte* “determine[] that an emergency exists.” Accordingly, the Secretary’s emergency determination is entirely consistent with the governing statutory requirements in section 202(c) and the DOE’s regulations.

17. Michigan AG⁵³ and PIOs⁵⁴ each raise similar arguments that “[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities” do not constitute an emergency themselves without resulting in an unexpected, imminent inability to supply electric services. However, as discussed above, requiring the Secretary to act only when an electricity shortage is imminent does not comport with the statutory authority under section 202(c) to address a “shortage of . . . facilities for the generation . . . of electric energy.” Accordingly, the Secretary’s emergency determination is entirely consistent with the governing statutory requirements in FPA section 202(c) and DOE’s regulations.

⁵² 10 C.F.R. § 205.371; *accord Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power*, 46 Fed. Reg. 39984-01 (Aug. 6, 1981).

⁵³ Michigan AG Pet. at 38.

⁵⁴ PIO Pet. at 50.

18. The dictionary definitions cited by Michigan AG⁵⁵ and PIOs⁵⁶ are not persuasive. Those dictionary definitions cannot limit the discretion Congress expressly delegated to the Secretary in section 202(c).

19. The arguments made by Michigan AG,⁵⁷ PIOs,⁵⁸ and Minnesota and Illinois⁵⁹ based on the *Otter Tail Power* and *Richmond Power and Light* decisions are likewise misguided. *Otter Tail Power* did not limit the Secretary's section 202(c) discretion or the meaning of "emergency" because the court held that section 202(c) *did not apply* to the case.⁶⁰ Instead, *Otter Tail Power* involved section 202(b) of the FPA and not an "emergency" within the meaning of section 202(c).⁶¹ In *Richmond Power and Light*, the Court of Appeals for the D.C. Circuit merely held that the Federal Power Commission (FPC) did not abuse its discretion in *declining* to invoke its emergency powers under section 202(c).⁶² The court determined that the FPC had discretion to choose a temporary, voluntary program rather than issue an order pursuant to section 202(c), as the circumstance, in the FPC's discretion, did not warrant the use of emergency authority.⁶³

20. A more relevant decision is *Board of Trade of the City of Chicago v. Commodity Futures Trading Commission*.⁶⁴ In that case, the Court of Appeals for the Seventh Circuit recognized the broad power of the Commodity Futures Trading Commission (CFTC) to

⁵⁵ Michigan AG Pet. at 35.

⁵⁶ PIO Pet. at 46.

⁵⁷ Michigan AG Pet. at 36-37.

⁵⁸ PIO Pet. 50-51.

⁵⁹ Minnesota and Illinois Pet. at 39-40.

⁶⁰ See *Otter Tail Power Co. v. Federal Power Commission*, 429 F.2d 232, 234 (8th Cir. 1970) (*Otter Tail Power*).

⁶¹ *Id.* (rejecting petitioner's contention that "any proceedings in the instant case must be dealt with in compliance with § 202(c)").

⁶² See *Richmond Power and Light v. FERC*, 574 F.2d 610, 615 (D.C. Cir. 1978) (*Richmond Power and Light*).

⁶³ *Id.* at 614-15.

⁶⁴ *Bd. of Trade of City of Chicago v. Commodity Futures Trading Comm'n*, 605 F.2d 1016, 1025 (7th Cir. 1979).

issue emergency actions under section 8a(9) of the Commodity Exchange Act (7 U.S.C. § 12a(9)).⁶⁵ Through section 8a(9), the CFTC issued an emergency order for the Board of Trade to suspend trading in certain wheat futures contracts, citing transportation and warehouse shortages and potential market manipulation.⁶⁶ In response, the Board of Trade sought an injunction against the order, arguing that no emergency existed.⁶⁷ The district court granted a preliminary injunction, and the CFTC appealed.⁶⁸ 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.⁶⁹ 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."⁷⁰ 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."⁷¹ 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 to determine when his emergency powers should be applied to protect the public interest.⁷²

21. Further, the assertions of PIOs and Minnesota and Illinois that the Emergency Order is "novel" and contravenes prior practice wherein section 202(c) was used to address natural disasters and specific capacity crises, or retirements "only when requested" has no merit.⁷³ On its face, section 202(c)(1) authorizes the Secretary to act "either upon its own

⁶⁵ *Id.*

⁶⁶ *Id.* at 1018.

⁶⁷ *Id.* at 1019.

⁶⁸ *Id.* at 1019-20.

⁶⁹ *Id.* at 1023-25.

⁷⁰ *Id.* at 1025.

⁷¹ *Id.* at 1023.

⁷² *See id.* at 1023-25.

⁷³ *See* PIO Pet. at 52; Minnesota and Illinois Pet. at 37-38.

motion or upon complaint.” As such, under the statute, it is irrelevant whether a utility requested that the Secretary take this action. Moreover, it is undisputed that section 202(c) has been used in the past to address generation retirements.⁷⁴

22. 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)⁷⁵ judgment in this respect. This history is consistent with the breadth of the Secretary’s authority expressly delegated in the statute.

2. The Secretary’s Authority to Require the Campbell Plant to Continue to Operate

23. Michigan AG, PIOs, and Minnesota and Illinois argue that the Emergency Order impermissibly exceeds the Secretary’s statutory authority under FPA section 202(c) in various respects.⁷⁶ For instance, Michigan AG and PIOs argue that the Emergency Order, in effect, impermissibly asserts the authority to further DOE’s policy decisions by managing issues unrelated to addressing emergencies but rather concerning resource adequacy and electric generation facilities—issues which are reserved for the states and FERC, pursuant to other provisions in the FPA.⁷⁷ Michigan AG,⁷⁸ PIOs,⁷⁹ and Minnesota and Illinois⁸⁰ also cite to the definition of “emergency” in DOE’s regulations at 10 C.F.R. § 205.371 and argue that the Emergency Order exceeded the scope of that definition.

⁷⁴ See, e.g., *PJM Interconnection, L.L.C.*, Order No. 202-17-2 (2017) (in which DOE authorized Dominion Energy Virginia to operate Yorktown Power Station Units 1 and 2 as needed for reliability purposes despite their planned deactivation).

⁷⁵ The FPC was dissolved in 1977, and the FPC’s functions were split between FERC and the Department, with the Secretary retaining FPA section 202(c) power.

⁷⁶ Michigan AG Pet. § IV.B; PIO Pet. § IV.C; Minnesota and Illinois Pet. § V.E; OMS Pet. § B.

⁷⁷ See Michigan AG Pet. § IV.B.i (citing 16 U.S.C. § 824(b)(1) and 16 U.S.C. §§ 824d, 824e); PIO Pet. at 76-77 (citing 16 U.S.C. § 824(a)); *id.* at 78 (citing *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 281 (2016)).

⁷⁸ Michigan AG Pet. at 37-38.

⁷⁹ PIO Pet. at 49-50.

⁸⁰ Minnesota and Illinois Pet. at 37.

24. Michigan AG and PIOs further contend that the Emergency Order impermissibly overrides FERC decisions requiring an operating resource to be a capacity resource.⁸¹ Michigan AG and Minnesota and Illinois contend that the Emergency Order impermissibly intrudes on the states' authority to make decisions concerning generation facility retirements.⁸² PIOs also refer to the FPA's statutory structure, contending that in enacting FPA section 215,⁸³ Congress established a "circumscribed" framework of federal action for addressing long-term reliability concerns in careful balance with the states, federal regulators, and other stakeholders.⁸⁴ PIOs assert that DOE's use of section 202(c) to address long-term reliability concerns (and not, as PIOs say, imminent threats) would effectively bypass the framework Congress provided under section 215.⁸⁵ Similarly, Minnesota and Illinois contend that in enacting FPA section 215, Congress established a different authority in connection with "long-term planning," and that "emergency orders are not the proper mechanism to engage in resource planning five years into the future."⁸⁶

DOE's Determination

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

26. FPA section 201(b)(1) of the FPA specifically reserves authority over "facilities used for the generation of electric energy" for the states "*except as specifically provided in this subchapter.*"⁸⁷ 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

⁸¹ Michigan AG Pet. at 54-55; PIO Pet. at 79-80.

⁸² Michigan AG Pet. at 53-54; Minnesota and Illinois Pet. at 44-46.

⁸³ 16 U.S.C. § 824o.

⁸⁴ PIO Pet. at 48-49.

⁸⁵ *Id.*

⁸⁶ Minnesota and Illinois Pet. at 38.

⁸⁷ 16 U.S.C. § 824(b)(1) (emphasis added).

interest.” Congress thus purposely provided discretion in section 202(c) to require changes to the operations of electric generating facilities to meet the emergency.

27. Michigan AG and PIOs’ attempt to avoid this clear grant of authority by arguing that the Emergency Order addresses issues unrelated to emergencies and instead concerns the issue of resource adequacy and long-term reliability.⁸⁸ 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 section 202(c). By its terms, section 202(c) may be invoked to address a potential “shortage of electric energy or of facilities for the generation or transmission of electric energy,” which is exactly the situation that led to the issuance of the Emergency Order. The Secretary is also 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. Moreover, DOE’s regulations specifically provide that “[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities can result in an emergency as contemplated in these regulations.” As such, this provision reinforces that section 202(c) may be used to address long-term structural problems, not simply imminent and unexpected events—which is precisely what the Secretary did with the Emergency Order. DOE regulations thus implement the broad grant of discretion section 202(c) affords to the Secretary to “determine[] that an emergency exists.”⁸⁹

28. Contrary to Petitioners’ assertions,⁹⁰ the Secretary is not taking action to address matters otherwise delegated to the states or FERC, nor is he exceeding his statutory authority under section 202(c). Specifically, due to inadequate planning and delays in the construction of new generation assets,⁹¹ the Secretary took action to address the emergency in MISO. As described in the Emergency Order, MISO’s resource crisis arises, among other reasons, from the mismatch between resource retirements, such as the Campbell Plant, and heightened demand, including due to the sudden development of large data centers in MISO’s service region.⁹² This “growing reliability risk” from “the

⁸⁸ See Michigan AG Pet. § IV.B.i (citing 16 U.S.C. § 824(b)(1) and 16 U.S.C. §§ 824d, 824e); PIO Pet. at 44 (citing 16 U.S.C. § 824(a)); *id.* at 45 (citing *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 281 (2016)).

⁸⁹ 16 U.S.C. § 824a(c)(1).

⁹⁰ See, e.g., Michigan AG Pet. § IV.B; PIO Pet. § V.A.2.

⁹¹ See Emergency Order at 5.

⁹² *Id.*; see also *id.* at 7 (noting increases in demand in MISO due resurgence in manufacturing activity and “unexpected demand for energy-hungry data centers” (quoting

rapid retirement of existing coal and gas power plants threatens to outpace the ability of new resources with the necessary operational characteristics to replace them.”⁹³ If not for the Emergency Order, the Campbell Plant would have been retired on May 31, 2025, further decreasing the available dispatchable generation within MISO and deepening the reliability crisis. The emergency action taken thus best preserves the reliability of the grid until new generation resources can be added and is entirely consistent with the governing statutory requirements in section 202(c) and its implementing regulations.

29. Nor is there any requirement under section 202(c), as Minnesota and Illinois suggest,⁹⁴ that the Secretary consult with the potentially impacted states prior to issuing a section 202(c) order. Section 103 of the DOE Organization Act requires consultation with states “where practicable.”⁹⁵ In an emergency situation, it is often not practicable to consult with the states and relevant state agencies prior to taking emergency action. This point is further supported by the plain language of section 202(c), which specifically authorizes DOE to issue an emergency order “with or *without notice*.”⁹⁶

30. Finally, Michigan AG and PIOs’ argument that the Emergency Order impermissibly overrides FERC decisions requiring an operating resource to be a capacity resource⁹⁷ is incorrect. The Emergency Order states that, “[b]ecause this Order is predicated on the *shortage* of facilities for the generation of electric energy and other causes, the Campbell Plant shall not be considered a capacity resource.”⁹⁸ Capacity markets are market constructs to ensure that adequate generation exists to serve future electricity demand; the higher capacity market prices attract new firm generation. DOE’s recitation that the Campbell Plant would not be a capacity resource was a statement of DOE’s intent not to interfere with FERC and the regulated capacity market.⁹⁹ As such,

Curran Test. at 6)).

⁹³ Curran Test. at 7; *see also* Emergency Order at 5 (describing delays in constructing new capacity, including due to supply chain constraints for critical grid components).

⁹⁴ *See, e.g.*, Minnesota and Illinois Pet. at 45-46.

⁹⁵ 42 U.S.C. § 7113.

⁹⁶ 16 U.S.C. § 824a(c)(1) (emphasis added).

⁹⁷ Michigan AG Pet. at 54-55; PIO Pet. at 79-80.

⁹⁸ Emergency Order at 8, Ordering Paragraph G (emphasis added).

⁹⁹ Under the terms of the MISO tariff, zonal resource credits may only be sold from designated “capacity resources.” *See* MISO, *Resource Adequacy Business Practices*

the Emergency Order ensures that the Campbell Plant does not participate in the relevant capacity market, which could artificially lower the price signals intended to attract needed new firm generation.

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

31. Michigan AG, PIOs, and Minnesota and Illinois also raise similar objections that there is no factual basis to support the Emergency Order, and that the Secretary is required to submit “substantial evidence” in support of his emergency determination, as summarized below.¹⁰⁰ Michigan AG, PIOs, and Minnesota and Illinois dismiss the Emergency Order’s references to MISO alerts issued in June and July 2025 to manage grid reliability and the fact that MISO called upon the Campbell Plant to operate in June 2025.¹⁰¹ Rather, Minnesota and Illinois describe such MISO alerts as “common” and not indicative of emergency.¹⁰²

32. Michigan AG, PIOs, and Minnesota and Illinois further assert that the factual evidence cited in the Emergency Order does not demonstrate the existence of an emergency.¹⁰³ For example, Michigan AG contends that MISO’s year-round capacity auctions do not demonstrate a capacity shortfall,¹⁰⁴ and that the MISO “Attributes Roadmap” likewise does not present evidence of an emergency.¹⁰⁵ According to Petitioners, the projected shortfalls described in MISO’s 2025/2026 Planning Resource Auction results, the 2025 OMS-MISO survey, the DOE’s July 2025 Resource Adequacy Report, and the 2025 NERC Summer Reliability Assessment, also do not demonstrate an

Manual, BPM-011-r31, section 2.2. Under the Emergency Order, the Campbell Plant shall not be considered a capacity resource and thus cannot sell other capacity market products such as replacement capacity. *See Consumers Energy, Limited Request for Clarification of Consumers Energy Company* (September 19, 2025).

¹⁰⁰ Michigan AG Pet. §§ IV.A(ii), IV.C(i)-(ii); PIO Pet. § V.A.2-3; Minnesota and Illinois Pet. § V.A.

¹⁰¹ Michigan AG Pet. at 40-44; PIO Pet. at 63-64; Minnesota and Illinois Pet. at 27-31.

¹⁰² Minnesota and Illinois Pet. at 27.

¹⁰³ Michigan AG Pet. at 44-45; PIO Pet. at 62-63; Minnesota and Illinois Pet. at 26.

¹⁰⁴ Michigan AG Pet. at 44-45.

¹⁰⁵ Michigan AG Pet. at 45-46; *see also* Minnesota and Illinois Pet. at 31-32.

emergency.¹⁰⁶ PIOS and Minnesota and Illinois further assert that MISO has initiated a process to add new capacity over the next several years to address shortfalls.¹⁰⁷

33. In addition, Michigan AG, PIOS, and Minnesota and Illinois criticize the Emergency Order's references to the President's Executive Order 14156, "Declaring a National Energy Emergency," and Executive Order 14262, "Strengthening the Reliability and Security of the United States Electric Grid."¹⁰⁸ Minnesota and Illinois assert that the Secretary's references to the President's executive actions evinces "a pretextual effort to further the administration's policy support for fossil fuels."¹⁰⁹

34. Michigan AG, PIOS, and Minnesota and Illinois also contend that the Emergency Order's citation to the congressional testimony of Jennifer Curran, Senior Vice President, Planning and Operations, MISO, does not support the finding that an emergency exists.¹¹⁰ PIOS criticize the Secretary's citation to Ms. Curran's testimony because her recommendations did not specifically invoke DOE's use of section 202(c) orders or coal-fired generation.¹¹¹

35. Minnesota and Illinois also state that the Emergency Order failed to consider MISO's purported history of performance in several extreme weather events. According to these parties, MISO is not currently afflicted by any unexpected outage or extreme weather event.¹¹²

¹⁰⁶ Michigan AG Pet. at 47-49; PIO Pet. at 53-54, 55-57, 59-60, 65-68; Minnesota and Illinois Pet. at 20-23, 24-26, 32-36.

¹⁰⁷ PIO Pet. at 62; Minnesota and Illinois Pet. at 25.

¹⁰⁸ Michigan AG Pet. at 47 (discussing Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025), and Exec. Order No. 14262, 90 Fed. Reg. 15521 (Apr. 8, 2025)); PIO Pet. at 58-59 (same); *see also* Minnesota and Illinois Pet. at 52-55.

¹⁰⁹ Minnesota and Illinois Pet. at 52.

¹¹⁰ Michigan AG Pet. at 46 n.187; PIO Pet. at 61-62; Minnesota and Illinois Pet. at 35-36.

¹¹¹ PIO Pet. at 61.

¹¹² Minnesota and Illinois Pet. at 23.

36. Lastly, Michigan AG states that it is unclear whether the Secretary continues to rely upon the evidence cited in support of Order No. 202-25-3.¹¹³

DOE's Determination

37. The exigencies that 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 section 202(c) order. This confirms that the Secretary is authorized to exercise his section 202(c) authority expeditiously in responding to emergency situations.

38. In any event, the Secretary's determination that an emergency continues to exist is supported by substantial evidence. As discussed above, in the Emergency Order, the Secretary identified the ongoing emergency "in portions of the Midwest region of the United States due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes."¹¹⁴ Consistent with the Secretary's determination, the Emergency Order explains the need to increase capacity—specifically, through the continued operation of the Campbell Plant—to meet increasingly high demands and decreasing generation output.¹¹⁵

39. In the Emergency Order, the Secretary first summarized the bases articulated for his factual determinations in the May 2025 Order, such as: (1) the NERC 2025 Summer Reliability Assessment's designation of MISO "at elevated risk of operating reserve shortfalls;" (2) recent retirements of multiple generation facilities in Michigan; (3) the loss of additional resources if the Campbell Plant would have been allowed to retire; and (4) MISO's Planning Resource Auction Results for the 2025-2026 Planning Year, as released in April 2025, which anticipated insufficient capacity for the region containing Michigan.¹¹⁶

¹¹³ Michigan AG Pet. at 40 (citing Department of Energy Order No. 202-25-3 (May 23, 2025) (May 2025 Order)).

¹¹⁴ See Emergency Order at 1.

¹¹⁵ See *id.* (noting recent closures of generation facilities in Michigan and uncertain near-term future of generation from the Palisades nuclear power plant).

¹¹⁶ *Id.* at 1-2 (collecting sources).

40. Contrary to Michigan AG’s contention,¹¹⁷ there is no ambiguity as to whether the conditions identified in the May 2025 Order informed the Secretary’s determination to issue the Emergency Order. The Secretary stated that, in his expertise and judgment, the “emergency conditions that led to the issuance of Order No. 202-25-3 *continue*, both in the near and long term,” and thus “the production of electricity from the Campbell Plant will continue to be a critical asset to maintain reliability in MISO this summer.”¹¹⁸

41. The Secretary then discussed multiple additional facts that informed his determination that an emergency continues to exist within the meaning of section 202(c). The Secretary explained that the Campbell Plant’s operation would continue to be critical to maintaining reliability in MISO, as evidenced by the Campbell Plant’s operations during June 2025, repeated MISO alerts to manage grid reliability issued throughout the summer, and forecasted above-normal temperatures for much of the MISO region.¹¹⁹ Furthermore, the Secretary explained that MISO’s resource adequacy emergency is not limited to the summer season, citing MISO’s 2022 request for FERC approval of its filing to revise its resource adequacy construct to establish capacity requirements on a seasonal (rather than annual) basis, as well as the December 2023 MISO “Attributes Roadmap,” which described anticipated risks due to loss of load for summer and fall moving forward.¹²⁰ The Secretary also referenced and quoted from MISO’s 2024 report entitled, *MISO’s Response to the Reliability Imperative*, wherein MISO again underscored its reliability concerns beyond the summer season.¹²¹

42. The Secretary further noted that there “is also a potential longer term resource adequacy emergency in MISO,” in light of the results of MISO’s PRA for the 2025-26 Planning Year.¹²² Specifically, MISO noted that “new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources” in the areas which include Michigan.¹²³ The Secretary also cited the 2025 OMS-MISO Survey Results, which projected the need

¹¹⁷ See Michigan AG Pet. at 40.

¹¹⁸ Emergency Order at 2 (emphasis added).

¹¹⁹ *Id.* at 2-3.

¹²⁰ *Id.* at 3-4.

¹²¹ *Id.* at 4 (discussing *MISO’s Response to the Reliability Imperative*).

¹²² *Id.*

¹²³ *Id.* (quoting *Planning Resource Auction—Results for Planning Year 2025–2026*, at 13).

for additional capacity to meet the projected planning reserve margin—principally due to anticipated capacity retirements and increased demand.¹²⁴ The Secretary explained that, although MISO had been taking steps to reduce this deficit, extended construction timelines and supply chain constraints are likely to hinder this capacity from coming online to meet demand in the coming years.¹²⁵

43. Petitioners' criticisms regarding the Emergency Order's citations to Ms. Curran's congressional testimony are unconvincing. Contrary to Petitioners' assertions, Ms. Curran's testimony supports the Secretary's emergency determination, even if she did not specifically mention DOE's section 202(c) authority or coal-fired generation. Indeed, Ms. Curran's testimony observed that "the MISO region faces resource adequacy and reliability challenges due to the changing characteristics of the electric generating fleet, inadequate transmission system infrastructure, growing pressures from extreme weather, and rapid load growth."¹²⁶ Ms. Curran's testimony also described "much stronger growth [in demand for electricity] from continued electrification efforts, a resurgence in manufacturing, and an unexpected demand for energy-hungry data centers to support artificial intelligence."¹²⁷ Ms. Curran's testimony recognized "[a] growing reliability risk is that the rapid retirement of existing coal and gas power plants threatens to outpace the ability of new resources with the necessary operational characteristics to replace them."¹²⁸ In short, Ms. Curran's testimony provides important context for the Secretary's action and demonstrates MISO's own concerns regarding the resource adequacy and reliability challenges facing the grid.

44. Similarly, the argument of Minnesota and Illinois that the MISO region does not face current "extreme" weather events misses the mark.¹²⁹ The Emergency Order was based on the facts known at the time it was issued on August 20, 2025, including the projected potential for a shortage of capacity in the summer identified by NERC. In other words, it remained critical for the Secretary to act before the shortage materialized. Moreover, contrary to the contentions of Minnesota and Illinois, the conditions that

¹²⁴ *Id.* at 4-5.

¹²⁵ *Id.* at 5.

¹²⁶ Curran Test. at 5.

¹²⁷ *Id.* at 6.

¹²⁸ *Id.* at 7.

¹²⁹ Minnesota and Illinois Pet. at 22.

actually existed in the summer following issuance of the Emergency Order further confirm the ongoing emergency and sudden increased threats to grid reliability.

45. As noted in the Emergency Order, between June 11 and August 18, MISO issued dozens of alerts to manage grid reliability in its Central Region in response to hot weather, severe weather, high customer load, forced generation outages, and transfer capability limits. MISO issued alerts for the Central Region on at least 40 of the 69 days between June 11 and August 18. Looking to the fall season, DOE notes NERC’s 2024 Long-Term Reliability Assessment, as updated July 15, 2025, which highlighted that “MISO has continued the seasonal capacity auction construct and has found growing evidence of risk in non-peak (e.g., spring and fall) seasons. Countering the risk during these off-peak seasons requires more resources to be available, and this can result in less opportunity for generators to pursue their maintenance needs.”¹³⁰

46. In any case, seasonal fluctuations in temperature are only one source of generation demand and must be considered among other strains on the grid, particularly increasing and sudden demand from AI data centers and premature retirements of existing generation facilities. On these points, DOE notes a July 2025 report prepared by the Council of Economic Advisers entitled, *The Economic Benefits of Unleashing American Energy* (CEA Report).¹³¹ The CEA Report highlighted rapid energy demand increases due to data centers,¹³² 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.¹³³

47. The Secretary issued the Emergency Order in the context of and pursuant to the President’s executive actions declaring a national energy emergency and ordering DOE to take action to ameliorate the “unprecedented surge in electricity demand driven by rapid

¹³⁰ NERC, *2024 Long-Term Reliability Assessment*, at 42 (Dec. 2024, as updated July 15, 2025), <https://www.nerc.com/globalassets/our-work/assessments/2024-ltra-corrected-july-2025.pdf>.

¹³¹ Council of Economic Advisers, *The Economic Benefits of Unleashing American Energy* (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/03/The-Economic-Benefits-of-Unleashing-American-Energy.pdf>.

¹³² *Id.* at 2-6.

¹³³ *Id.* at 7-8. Minnesota and Illinois Exhibit G (MISO Transmission Plan) further supports the need for delayed retirements. The report cautions that current reliability relies on temporary measures such as delayed retirements and imports, warning that, while the energy generation mix continues to evolve, unless more generation is built, “the risks of capacity shortfalls and other reliability issues will continue to grow.” *See* Ex. G at 34, 36.

technological advancements, including the expansion of artificial intelligence data centers and an increase in domestic manufacturing.”¹³⁴ As the President explained in Executive Order 14262, this significant increase in electricity demand, “coupled with existing capacity challenges, places a significant strain on our Nation’s electric grid.”¹³⁵ Significantly, Executive Order 14262 specifically ordered the Secretary to draw upon “all mechanisms available under applicable law, *including section 202(c) of the Federal Power Act*, to ensure any generation resource identified as critical within an at-risk region is appropriately retained as an available generation resource within the at-risk region.”¹³⁶ The President ordered the Secretary to “develop a uniform methodology for analyzing current and anticipated reserve margins for all regions of the bulk power system regulated by [FERC] and [] utilize this methodology to identify current and anticipated regions with reserve margins below acceptable thresholds as identified by the Secretary of Energy.”¹³⁷ PIOS’ argument that DOE used this methodology as the basis for issuing the Emergency Order is misplaced. The President did not require this methodology for implementation of section 202(c), and the Emergency Order did not purport to rely upon this methodology in determining the existence of an emergency. The executive orders informed the Secretary’s decision and action, in addition to the other factors outlined in the Emergency Order and this Order.

48. The Emergency Order also cited the declared state of national energy emergency established in Executive Order 14156.¹³⁸ In declaring such emergency, including pursuant to the National Emergencies Act,¹³⁹ 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.”¹⁴⁰ One such “lawful emergency authorit[y]” is the Secretary’s section 202(c) power. PIOS’ criticisms of the President’s declaration of a national energy emergency in Executive Order 14156

¹³⁴ Emergency Order at 6 (citing Exec. Order 14262 § 1).

¹³⁵ Exec. Order 14262 § 1.

¹³⁶ *Id.* § 3(c) (emphasis added).

¹³⁷ *Id.* § 3(b).

¹³⁸ Emergency Order at 4 (citing 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/>).

¹³⁹ 50 U.S.C. § 1601 *et seq.*

¹⁴⁰ Exec. Order 14156 § 2.

are irrelevant to the Secretary's decision to issue the Emergency Order.¹⁴¹ Moreover, PIOS' assertion that the national emergency described in Executive Order 14156 is not "specific enough" to demonstrate the existence of an emergency within the meaning of section 202(c) misses the mark. As discussed above, in the Emergency Order, the Secretary determined an emergency exists in the MISO region and undertook lawful action pursuant to his existing emergency authority under section 202(c).

49. In sum, Michigan AG, PIOS, and Minnesota and Illinois maintain that this evidence does not show the existence of an ongoing statutory emergency. But if the Secretary had allowed the planned retirement of the Campbell Plant, then that generating unit would have never been available to address the ongoing emergency in MISO. Accordingly, based on the evidence available, the Secretary reasonably exercised his judgment and issued the Emergency Order in compliance with section 202(c).

4. Best and Appropriate Means for Addressing the Emergency

50. Michigan AG and PIOS raise similar arguments that the Campbell Plant is neither the best nor an appropriate means of alleviating the capacity shortfall addressed by the Emergency Order.¹⁴² In particular, Michigan AG and PIOS argue that DOE was required to consider alternatives and evaluate other possible methods for addressing the emergency, which they argue the Secretary failed to do.¹⁴³ They further argue that there are alternative means by which DOE could have addressed the emergency.¹⁴⁴

51. PIOS additionally argue that the Emergency Order fails to consider the various policies of the FPA.¹⁴⁵ Specifically, PIOS argue that the Emergency Order fails to provide a reasoned basis for its determination that additional dispatch of the Campbell Plant is necessary to best meet the emergency.¹⁴⁶ PIOS further contend that the Emergency Order

¹⁴¹ See PIO Pet. at 43-45.

¹⁴² Michigan AG Pet. at 60-61; PIO Pet. § V.B.

¹⁴³ Michigan AG Pet. at 60-61; PIO Pet. at 68-69.

¹⁴⁴ Michigan AG Pet. at 60-61; PIO Pet. § V.B.2.

¹⁴⁵ PIO Pet. at 69.

¹⁴⁶ *Id.* § V.B.2.

does not examine the expense or environmental impact of running the Campbell Plant, or address how the Campbell Plant can meet the emergency.¹⁴⁷

DOE's Determination

52. The Secretary, in issuing the Emergency Order, adhered to the process established in FPA section 202(c) in exercising his judgment by directing MISO and Consumers Energy to undertake specific actions as to the Campbell Plant.¹⁴⁸ There is no dispute that the Secretary, as the presidentially-appointed and Senate-confirmed head of DOE,¹⁴⁹ is the appropriate individual to determine the existence of an emergency within the meaning of section 202(c) and exercise “[the Secretary’s] judgment” as to what actions “best meet the emergency and serve the public interest.”¹⁵⁰ As discussed above, the Secretary exercised his discretion in responding to an emergency pursuant to an express delegation of authority under section 202(c). Further, as explained below, there is no basis to grant rehearing to review the Secretary’s exercise of his judgment in prescribing the required response to the emergency.

53. As noted above, section 202(c)(1) affords the Secretary discretion as to what remedy “will best meet the emergency and serve the public interest.” The statute expressly delegates the decision regarding the appropriate remedy to the Secretary’s “judgment” (similar to the express delegation to “determine[] that an emergency exists”).¹⁵¹ Here, the Secretary exercised his judgment in determining that “continued additional dispatch of the Campbell Plant [is] necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c).”¹⁵² The Secretary’s determination in the May 2025 Order was based “on the insufficiency of dispatchable capacity and anticipated demand during the summer months, and the potential loss of power to homes and local businesses in the areas that may be affected by curtailments or outages, presenting a risk to public health and safety.”¹⁵³ In the Emergency Order, the Secretary determined that “the emergency

¹⁴⁷ *Id.*

¹⁴⁸ See generally Emergency Order.

¹⁴⁹ 42 U.S.C. § 7131.

¹⁵⁰ 16 U.S.C. § 824a(c)(1).

¹⁵¹ *Id.*

¹⁵² Emergency Order at 7.

¹⁵³ See May 2025 Order at 2.

conditions that led to the issuance of Order No. 202-25-3 continue, both in near and long term.”¹⁵⁴

54. What is more, PIOs’ contention¹⁵⁵ that the Campbell Plant is unreliable is unsupported by their own authorities. Specifically, PIOs point to the fact that, as part of the agreement to retire the Campbell Plant, Consumers Energy agreed to extend the operation of certain units at two other power plants, including units 3 and 4 of the Dan E. Karn Power Plant located in Essexville, Michigan.¹⁵⁶ However, Generation Performance Statistics attached to PIOs’ petition indicate that the Campbell Plant generally *outperformed* the Karn units in random outage rates, unit availability, and MWh availability.¹⁵⁷

55. Petitioners have now identified alternatives they deem to be better and more appropriate solutions to the emergency. But this after-the-fact analysis is irrelevant. Section 202(c)(1) authorizes the Secretary to determine the existence of an emergency and to order the means to address such a statutory emergency. It does not require the Secretary to engage in a lengthy weighing of options or explanation of his actions prior to issuing an emergency order. Indeed, such a process is incompatible with the purpose of the emergency power to act expeditiously and within the judgment of the Secretary.

5. Authority to Order Economic Dispatch

56. Michigan AG, PIOs, and Minnesota and Illinois assert that the Secretary does not have the authority under FPA section 202(c)(1) to order the use of economic dispatch of the Campbell Plant as a response to an emergency, and that economic dispatch is not an effective or rational measure to address resource shortages.¹⁵⁸ According to Michigan AG, PIOs, and Minnesota and Illinois, economic dispatch is not in the public interest, as required under section 202(c).¹⁵⁹ In addition, PIOs contend that the Emergency Order’s

¹⁵⁴ Emergency Order at 2.

¹⁵⁵ PIO Pet. § V.B.2.i.

¹⁵⁶ PIO Pet. at 37.

¹⁵⁷ See PIO Exhibit 14 (Michigan Public Service Commission, Generation Performance Statistics January 1, 2023 to December 31, 2023).

¹⁵⁸ Michigan AG Pet. at 62-72; PIO Pet. at 86; Minnesota and Illinois Pet. at 46-52.

¹⁵⁹ See Michigan AG Pet. at 62-72; PIO Pet. at 86; Minnesota and Illinois Pet. at 46-52.

economic dispatch requirement is ambiguous and vague.¹⁶⁰ Michigan AG asserts that the possibility of the Campbell Plant’s costs exceeding its revenues is “even stronger” than during the May 2025 Order because energy demand will be lower during the fall season, while the Campbell Plant remains operational.¹⁶¹ Michigan AG asserts that, if this happens, the costs to ratepayers will not have been minimized.¹⁶²

DOE’s Determination

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.” 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”). In the Emergency Order, the Secretary soundly exercised his judgment to determine that “continued additional dispatch of the Campbell Plant is necessary to best meet the emergency and serve the public interest under FPA section 202(c).”¹⁶³ This determination was based on the Secretary’s finding that the “emergency conditions resulting from increasing demand and accelerated retirements of generation facilities supporting the issuance of Order No. 202-25-3 will continue in the near term and are also likely to continue in subsequent years,” as discussed above.¹⁶⁴

58. The Emergency Order therefore directs MISO and Consumers Energy to “take all measures necessary to ensure that the Campbell Plant is available to operate.”¹⁶⁵ The Emergency Order then directs MISO “to take every step to employ economic dispatch of the [facility] to minimize [the] cost to ratepayers.”¹⁶⁶

59. Lastly, DOE disagrees with Michigan AG, PIOS, and Minnesota and Illinois’ respective arguments that economic dispatch is not an effective or rational measure to address resource shortages. The Secretary’s directive regarding economic dispatch ensures that the Campbell Plant can be dispatched instead of more costly generation (if

¹⁶⁰ Michigan AG Pet. at 70.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Emergency Order at 7.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*, Ordering Paragraph A.

¹⁶⁶ *Id.*

available), reducing electricity costs and serving the public interest. The directive recognizes the fact that MISO uses “a production cost modeling software that produces a unit commitment and security-constrained economic dispatch while optimizing production costs.”¹⁶⁷ DOE clarifies, however, that to the extent operational (including safety) limitations prevent the Campbell Plant from being economically dispatched, offering the Campbell Plant on a must run basis may be necessary to ensure the units are available to operate.¹⁶⁸ Under those circumstances, such operation would be consistent with minimizing the cost to ratepayers because a price taker can decrease (but cannot increase) the market price.

6. Potential Environmental Impacts

60. Michigan AG, PIOs, and Minnesota and Illinois raise similar arguments that the Emergency Order fails to comply with section 202(c)’s requirement to ensure that any order “to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.”¹⁶⁹ PIOs argue that the Emergency Order may result in a conflict with environment requirements because, for example, Campbell’s air pollution control equipment “may not be installed, maintained, and operated in a satisfactory manner,” and requiring Campbell to continue operating “may conflict with Michigan’s newly-approved regional haze implementation plan and its obligation under the Clean Air Act to reduce haze-causing emissions.”¹⁷⁰

61. In particular, Michigan AG, PIOs, and Minnesota and Illinois argue that the Emergency Order fails to identify any specific criteria or conditions, including the temporal and environmental constraints, for ensuring compliance with environmental

¹⁶⁷ MISO, *MISO Economic Planning Whitepaper*, at 3 (Oct. 3, 2024), <https://cdn.misoenergy.org/MISO%20Economic%20Planning%20Whitepaper651689.pdf>

¹⁶⁸ Minnesota and Illinois cite Exhibit Z (Campbell Operation Data) in support of their argument that the Campbell Plant takes 12 hours to reach peak load and therefore makes it unsuitable for emergencies. As a threshold matter, that the Campbell Plant takes 12 hours to reach peak load is unsupported by this exhibit. And in any event, the data reflected in this Exhibit pertains to startup from *cold shutdown*, and therefore only further indicates that to the extent economic dispatch is unavailable, the Campbell Plant should be run on a must run basis so that it remains available for emergency operation.

¹⁶⁹ Michigan AG Pet. at 72-79 (citing 16 U.S.C. § 824a(c)(2)); PIO Pet. at 82-85 (citing 16 U.S.C. § 824a(c)(2)); Minnesota and Illinois Pet. at 41-42 (citing 16 U.S.C. § 824a(c)(2)).

¹⁷⁰ PIO Pet. at 83-85.

regulations or limiting environmental impact.¹⁷¹ Michigan AG and PIOs further argue that the Emergency Order serves as a renewal or re-issuance of the May 2025 Order, and is therefore subject to section 202(c)(4)(B)'s requirement that DOE "consult[ed] with the primary Federal agency with expertise in the environmental interest protected" by the laws with which the Emergency Order may conflict, with which DOE fails to comply.¹⁷²

DOE's Determination

62. Section 202(c)(2) requires the Secretary to ensure that any section 202(c) order that may result in a conflict with a requirement of any environmental law or regulation to the "maximum extent practicable, [be] consistent with any applicable . . . environmental law or regulation and minimize[] any adverse environmental impacts." In addition, Section 202(c)(2) requires the Secretary to ensure that any section 202(c) order 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[.]"

63. Contrary to PIOs, Michigan AG, and Minnesota and Illinois' contentions, the Emergency Order contains certain limitations to minimize the hours of operation and adverse environmental impacts. Specifically, the Emergency Order requires that "[a]ll operation of the Campbell Plant must comply with applicable environmental requirements, including but not limited to monitoring, reporting, and recordkeeping requirements, to the maximum extent feasible,"¹⁷³ and requires daily reporting from MISO on "whether the Campbell Plant has operated in compliance with the allowances contained in this Order."¹⁷⁴ These reporting requirements provide a mechanism for DOE to obtain information concerning any adverse environmental impacts of the Emergency Order, and DOE may modify the Emergency Order to require additional actions as the Secretary deems appropriate.

64. Michigan AG and PIOs argue that the Emergency Order is not tailored to respect environmental considerations and express concern about the potential environmental impacts that may be produced by the Campbell Plant.¹⁷⁵ Michigan AG and PIOs provide examples of certain conditions that in their view would, presumably, satisfy the

¹⁷¹ Michigan AG Pet. at 76-79; PIO Pet. at 85-88; Minnesota and Illinois Pet. at 41-42.

¹⁷² Michigan AG Pet. at 79; PIO Pet. at 88.

¹⁷³ Emergency Order at 8, Ordering Paragraph C.

¹⁷⁴ *Id.*, Ordering Paragraph B.

¹⁷⁵ Michigan AG Pet. at 77-79; PIO Pet. at 86-88.

requirements of the statute (e.g., direction to optimize use of pollution control equipment or avoid operations during air quality episodes,¹⁷⁶ sufficiently detailed reporting obligations to ascertain what impacts result from emergency operations¹⁷⁷). These conditions, however, are either already included in the Emergency Order or not required by statute and would not necessarily minimize adverse environmental impacts. The Emergency Order requires MISO to provide a daily notification to DOE “reporting whether the Campbell Plant has operated in compliance with the allowances contained” in the Emergency Order.¹⁷⁸ Further, Congress did not prescribe in section 202(c) how DOE was to fulfill its obligations concerning consistency with environmental laws and minimization of adverse effects.

65. Moreover, 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 and minimization of all potential adverse environmental impacts infeasible. This phrase provides DOE with discretion in fulfilling its obligations under 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 plant comply with environmental laws to the maximum extent feasible, as well as the reporting requirements that allow DOE to monitor MISO’s compliance with the Emergency Order, were sufficient to satisfy the Secretary’s obligation under section 202(c)(2).

66. Section 202(c)(4)(B) further requires that, in renewing or reissuing an emergency order, DOE “shall consult with the primary Federal agency with expertise in the environmental interest protected” by laws or regulations with which the Emergency Order may conflict.¹⁷⁹ Prior to issuing the Emergency Order, DOE consulted with the EPA regarding the Campbell Plant’s operations. DOE notes that the EPA did not identify any environmental concerns arising from the Campbell Plant’s continued operation pursuant to the Emergency Order.

7. NEPA Concerns

67. Michigan AG claims that the Emergency Order violates the National Environmental Policy Act (NEPA), as any orders issued under section 202(c) that affect

¹⁷⁶ Michigan AG Pet. at 78.

¹⁷⁷ PIO Pet. at 88.

¹⁷⁸ Emergency Order at 8, Ordering Paragraph B.

¹⁷⁹ 16 U.S.C. § 824a(c)(4)(B).

the quality of the environment are considered “major federal actions”¹⁸⁰ that require compliance with NEPA standards and requirements.¹⁸¹ According to Michigan AG, these requirements include the “issuance of an environmental impact statement, environmental assessment, categorical exclusion, or special environmental analysis.”¹⁸²

68. Michigan AG further asserts that in other section 202(c) orders, DOE has previously sought to comply with NEPA through categorical exclusions, such as categorical exclusion B4.4 for “power management activities,” or special environmental assessments—neither of which has been undertaken in this instance.¹⁸³ Lastly, Michigan AG argues that there is no justification to side-step NEPA requirements because DOE had a 90-day lead time to comply with those requirements while the May 2025 Order was in place.¹⁸⁴

DOE’s Determination

69. The Secretary disagrees with Michigan AG’s contention that DOE “is acting contrary to its own NEPA regulations and to its obligations under NEPA.”¹⁸⁵ Although DOE has previously followed the procedures provided in DOE’s NEPA regulations governing emergency actions, as described in 10 C.F.R. § 1021.343 (for example, by preparing a special environmental analysis after the issuance of a section 202(c) order), recent amendments to NEPA clarify 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.”¹⁸⁶ As DOE recently explained in its NEPA Implementing Procedures, “NEPA does not apply to DOE’s issuance of emergency Orders pursuant to section 202(c) of the Federal Power Act (16 U.S.C. § 824a(c)) because preparing an

¹⁸⁰ Michigan AG Pet. at 80-82 (citing 42 U.S.C. § 4336e(10)).

¹⁸¹ *Id.* at 80.

¹⁸² *Id.* (citing 10 C.F.R. § 1021.102(b)).

¹⁸³ *Id.* at 81.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 80.

¹⁸⁶ See 42 U.S.C. § 4336(a)(3); *see also* Fiscal Responsibility Act of 2023, Pub. L. No. 188-5, § 321(b), 137 Stat. 10, 39 (2023).

environmental document under NEPA's generally applicable provisions would clearly and fundamentally conflict with the emergency provisions in the Federal Power Act.”¹⁸⁷

70. As discussed above, under FPA section 202(c), Congress explicitly authorized the Secretary to exercise certain emergency authorities “with or without . . . report.” Requiring compliance with the analytic and procedural demands of preparing an environmental document under NEPA prior to issuing a section 202(c) emergency order is fundamentally at odds with the congressional authorization to exercise such authorities without report. 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) . . . because preparing an environmental document under NEPA’s generally applicable provisions would clearly and fundamentally conflict with the emergency provisions in the Federal Power Act.”¹⁸⁸ Contrary to Michigan AG’s contention, this nexus does not change now merely because DOE has issued a new 202(c) order addressing a continuing emergency.

71. Furthermore, as stated above, section 202(c) specifically provides alternative measures for affording environmental protection by requiring the Secretary to ensure that any such order “to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.”¹⁸⁹ Again, those environmental obligations were met through the conditions imposed via the Emergency Order’s limitation on the duration of the emergency operations, authorization only of the additional generation necessary, the requirement that operation of the Campbell Plant comply with environmental laws to the maximum extent feasible, and MISO’s obligation to report to DOE on its compliance with the Emergency Order and corresponding environmental impacts, if any.

III. Procedural Issues

1. Michigan AG and PIOS’ Request for a Stay

72. Michigan AG and PIOS move for a stay of the Emergency Order pending resolution of judicial review. In support of their request, Michigan AG and PIOS contend that:

¹⁸⁷ U.S. Dep’t of Energy, *National Environmental Policy Act (NEPA) Implementing Procedures*, at 6 (June 30, 2025), <https://www.energy.gov/sites/default/files/2025-06/2025-06-30-DOE-NEPA-Procedures.pdf>.

¹⁸⁸ See *id.*

¹⁸⁹ 16 U.S.C. § 824a(c)(2).

(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.¹⁹⁰

DOE's Determination

73. 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 is in the public interest.¹⁹¹

74. By its terms, the Emergency Order terminated on November 19, 2025.¹⁹² Consequently, the stay request is now moot. Michigan AG and PIOs also fail to present evidence of any substantial irreparable harm.

75. In any case, DOE finds that a stay is not warranted here based on a broader consideration of the equities at issue. A stay would have substantially harmed other 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 the Midwest region of the United States. As discussed above, this determination is based on the insufficiency of dispatchable capacity and anticipated demand, as well as the risk to 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 Midwest region of the United States who would face potentially critical electric energy shortages, rendering such a stay contrary to the public interest. The balance of equities thus favors denial of a stay.

2. Motions to Intervene

76. Michigan AG, PIOs, and Minnesota and Illinois each moved to intervene in this proceeding, citing various alleged interests which may be affected by the outcome of this proceeding.¹⁹³

¹⁹⁰ Michigan AG Pet. § V; PIO Pet. § VI.

¹⁹¹ See *Nken v. Holder*, 556 U.S. 418, 434, 436 (2010); *Ohio v. EPA*, 603 U.S. 279, 291 (2024).

¹⁹² Emergency Order at 9, Ordering Paragraph H.

¹⁹³ See Michigan AG Pet. § I; PIO Pet. § III; Minnesota and Illinois Pet. at 4-10.

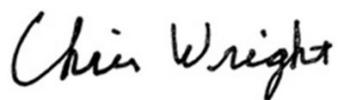
DOE's Determination

77. The motions to intervene in this administrative proceeding are hereby permissively granted for Michigan AG, PIOs, and Minnesota and Illinois to advocate before the agency, but DOE takes no position on whether they are “aggrieved” parties for purposes of FPA section 313 or have constitutional standing.¹⁹⁴

* * * * *

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

Issued at 11:28pm Eastern Standard Time on this 21st day of January 2026.



Chris Wright
Secretary of Energy

¹⁹⁴ See 16 U.S.C. § 825l(b) (“Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part.”).