

UNITED STATES OF AMERICA

Department of Energy

Washington, DC 20585

Northern Indiana Public Service Company and
Midcontinent Independent System Operator, Inc.
Regarding the R.M. Schahfer Generating Station

Order No. 202-26-19B

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

Issued October 16, 2026

1. On March 23, 2026, 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 (the Emergency Order) determining that “an emergency exists in portions of the Midwest region of the United States (U.S.) 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, “to best meet the emergency arising from increased demand, determined shortage, and other causes, and serve the public interest under FPA section 202(c), Schahfer Units 17 and 18 shall be made available for operation.”⁴ Indeed, the Secretary identified a substantial energy supply shortfall that called for immediate action.

2. On April 22, 2026, requests for rehearing were filed by Public Interest Organizations (PIOs)⁵ and the States of Minnesota, Illinois, Wisconsin, and Michigan (the States).

¹ 16 U.S.C. § 824a(c).

² 42 U.S.C. § 7151(b).

³ *Midcontinent Indep. Sys. Operator, Inc.*, DOE Order No. 202-26-19, at 1 (Mar. 23, 2026) (regarding R.M. Schahfer Generating Station) (*Schahfer II*).

⁴ *Id.* at 8.

⁵ Sierra Club, Citizens Action Coalition of Indiana, Just Transition Northwest Indiana, Hoosier Environmental Council, Environmental Law and Policy Center, and Public Citizen refer to themselves collectively as Public Interest Organizations.

3. On May 26, 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. The R.M. Schahfer Generating Station (Schahfer) is an electric generating facility in Wheatfield, Indiana. Schahfer is owned and operated by Northern Indiana Public Service Company (NIPSCO), a division of NiSource Inc. Schahfer consists of two 129 MW natural-gas fired units and two coal-fired units, Unit 17 (423.5 MW) and Unit 18 (423.5 MW). Schahfer Units 17 and 18 (Schahfer Units) were both slated to cease operations in December 2025.⁹

5. On December 23, 2025, based upon the determination that “emergency conditions existed in the region served by the Midcontinent Independent System Operator, Inc. (MISO),” the Secretary issued Order No. 202-25-12, pursuant to FPA section 202(c), which required that the Schahfer Units remain in operation for 90 days, until March 23, 2026.¹⁰

6. In the March 23, 2026 Emergency Order, the Secretary summarized certain facts that supported his original emergency determinations in Order No. 202-25-12. First, the Secretary noted that, in its 2024 Long-Term Reliability Assessment (LTRA), the North American Electric Reliability Corporation (NERC) identified the MISO assessment area

⁶ *Schahfer II*, Notice of Denial, DOE Order No. 202-26-19A (May 26, 2026).

⁷ 16 U.S.C. §§ 824a(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. *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 *Schahfer II*, DOE Order No. 202-26-19, at 1.

¹⁰ *Id.*; *Midcontinent Indep. Sys. Operator, Inc.*, DOE Order No. 202-25-12 (Dec. 23, 2025) (*Schahfer I*).

as being at an elevated risk of an energy supply shortage due to the “uncertainty around new resource additions and existing generator retirements.”¹¹

7. Second, the Secretary considered MISO’s own reports on resource adequacy, which document year-round reliability concerns. For instance, in 2022, MISO obtained approval from the Federal Energy Regulatory Commission (FERC) to establish seasonal capacity requirements rather than annual requirements based on peak summer demand, reflecting that over 60% of all “MaxGen” events—events when MISO initiates emergency procedures because of concerns over the adequacy of available generation—occurred outside the summer season.¹²

8. The Secretary then determined in the Emergency Order that “[t]he emergency conditions that necessitated the issuance of Order No. 202-25-12 continue, both in the near and long term.”¹³ The Secretary concluded that an emergency exists in portions of the Midwest region “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.”¹⁴ Indeed, the Secretary concluded that production of electricity from Schahfer will continue to be critical to maintain reliability in MISO.¹⁵ The Secretary therefore directed MISO and NIPSCO to “take all measures necessary to ensure that Schahfer Units 17 and 18 are available to operate.”¹⁶

9. The Emergency Order provided substantial support for the Secretary’s continued emergency determination. For instance, the Secretary observed that MISO’s resource adequacy concerns were demonstrated during Winter Storm Fern, noting that MISO declared an Energy Emergency Alert 1, as well as an Energy Emergency Alert 2 “MaxGen”

¹¹ *Schahfer II*, DOE Order No. 202-26-19, at 2 (quoting N. Am. Elec. Reliability Corp., *2024 Long-Term Reliability Assessment*, at 13 (Dec. 2024, corrected July 11, 2025), https://www.nerc.com/globalassets/our-work/assessments/2024-ltra_corrected_july_2025.pdf).

¹² *Id.* at 1–2 (citing *Midcontinent Indep. Sys. Operator, Inc.*, Transmittal Letter, Dkt. No. ER22-495-000, at 3 (filed Nov. 30, 2021)). The approval request in this letter was granted by FERC on Aug. 31, 2022. *Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,141 (2022).

¹³ *Schahfer II*, DOE Order No. 202-26-19, at 3.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 3.

¹⁶ *Id.*, Ordering Para. A.

event for MISO’s North and Central Regions due to generation outages, high demand, and transfer capability limits during the storm, and that, from January 21 through February 1, 2026, Schahfer operated at over 285 MW every day, providing vital generation capacity to the region and reducing the risk of substantial harm from an inadequate electricity supply.¹⁷

10. Next, the Secretary noted that MISO’s December 2023 Attributes Roadmap and its 2024 report entitled, *MISO’s Response to the Reliability Imperative* (2024 Reliability Response), further confirmed growing risk in non-summer months due to “[w]idespread retirements of dispatchable resources, lower reserve margins, more frequent and severe weather events, and increased reliance on weather-dependent renewables.”¹⁸ The Secretary concluded that these MISO studies indicate that the emergency conditions caused by the loss of generation capacity in MISO extend past the summer season and that there is also a potential longer term resource adequacy emergency in MISO.¹⁹

11. The Secretary further noted that NERC’s subsequent 2025 LTRA identified the MISO assessment area as being at a high risk of energy shortfalls over the next five years, including because projected resource additions are not keeping pace with escalating demand forecasts and announced generator retirements.²⁰ Similarly, the Secretary emphasized that, while NERC’s 2025–2026 Winter Reliability Assessment found the MISO region to be at normal risk in 2026 and elevated risk in 2027, NERC’s 2023–2024 and 2024–2025 Winter Reliability Assessments were more critical, characterizing the region as at an elevated risk for insufficient operating reserves.²¹

12. The Secretary also stated that the results of MISO’s Planning Resource Auction (PRA) for the 2025–2026 Planning Year indicated that “new capacity additions were

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3–4 (citing MISO, *MISO’s Response to the Reliability Imperative* (Feb. 2024), <https://cdn.misoenergy.org/2024+Reliability+Imperative+report+Feb.+21+Final504018.pdf>).

¹⁹ *Id.* at 4.

²⁰ *Id.* (quoting N. Am. Elec. Reliability Corp., *2025 Long-Term Reliability Assessment* (Jan. 2026) [hereinafter NERC, 2025 LTRA], https://www.nerc.com/globalassets/our-work/assessments/nerc_ltra_2025.pdf).

²¹ *Id.* at 4–5 (quoting N. Am. Elec. Reliability Corp., *2023–2024 Winter Reliability Assessment*, at 5 (Nov. 2023), https://www.nerc.com/globalassets/programs/rapa/ra/nerc_wra_2023.pdf; *id.*, *2024–2025 Winter Reliability Assessment*, at 15 (Nov. 2024), https://www.nerc.com/globalassets/programs/rapa/ra/nerc_wra_2024.pdf).

insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources” in the northern and central zones, which include Indiana.²²

13. The Secretary further referenced the 2025 Organization of MISO States (OMS)-MISO Survey Results, which projected that at least 3.1 GW of additional generation capacity beyond currently committed generation capacity must be added to meet the projected planning reserve margin requirements.²³ The 2025 OMS-MISO Survey Results also projected insufficient capacity to meet peak demand for electricity in each of the following four summers, with deficits increasing from 1.4 GW in 2027 to 8.2 GW in 2030, and with similar estimates projected for MISO’s winter seasons.²⁴ The Secretary discussed that the primary reasons for these projected deficits are the continued retirement of large quantities of existing generation capacity each year and accelerating electricity demand.²⁵ The Secretary acknowledged that MISO has been taking steps to address these projected deficits, including through the Expedited Resource Addition Study (ERAS) process approved by FERC in July 2025. However, the Secretary further assessed that the resources considered under the ERAS process would have commercial operation dates at least three years away, and that supply chain constraints impeding the acquisition of critical grid components are likely to further hinder rapid construction.²⁶ Concluding that MISO will not be able to take timely steps to avert unacceptable risk to reliability, the Secretary determined that it was not at all clear that the new ERAS process would result in the addition of new capacity to meet present demand.²⁷

14. As discussed further below, the Emergency Order also observed that in 2025 President Donald Trump issued executive orders which underscored the severity of the

²² *Id.* at 5 (quoting MISO, *Planning Res. Auction: Results for Planning Year 2025–26*, at 13 (Apr. 2025, corrected May 29, 2025) [hereinafter MISO, 2025–2026 PRA], https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250529_Corrections694160.pdf).

²³ *Id.* at 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>).

²⁴ *Id.* at 3 (citing OMS and MISO, *2025 OMS-MISO Survey Results*, at 7).

²⁵ *Id.*

²⁶ *Id.* at 6 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,064 (2025)).

²⁷ *Id.*

current energy emergency in the United States.²⁸ In this respect, the Secretary noted DOE’s July 2025 Resource Adequacy Report²⁹ which was prepared specifically in response to Executive Order 14262, “Strengthening the Reliability and Security of the United States Electric Grid.”³⁰ DOE’s July 2025 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.”³¹

15. The Secretary also observed that grid operators, including MISO itself, have acknowledged the Nation’s current energy crisis. During a March 25, 2025 hearing before the House Committee on Energy and Commerce, Jennifer Curran, MISO’s Senior Vice President for Planning and Operations, testified that MISO 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.³² Ms. Curran further noted that “the rapid retirement of existing

²⁸ *Id.* at 6–7 (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/>).

²⁹ U.S. Dep’t of Energy, *Res. Adequacy Rep.: Evaluating the Reliability & Sec. of the U.S. Elec. Grid* (July 2025) [hereinafter Resource Adequacy Report], <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf>.

³⁰ 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 FERC).

³¹ *Schahfer II*, DOE Order No. 202-26-19, at 7 (quoting Resource Adequacy Report, *supra* note 29, at 1).

³² *Id.* (quoting *Keeping the Lights On: Examining the State of Reg’l Reliability; Hearing Before the House Comm. on Energy & Com., Subcomm. on Energy*, 119th Cong. 5 (2025) (testimony of Ms. Jennifer Curran, Senior Vice President for Planning and Operations, MISO)) [hereinafter Curran Test.], 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).

coal and gas power plants threatens to outpace the ability of new resources with the necessary operational characteristics to replace them.”³³

16. In view of this evidence, the Secretary therefore determined that ensuring the Schahfer Units are available to operate was 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, risk public health and safety by threatening the 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 section 202(c), the Secretary authorized only the necessary additional generation subject to specified conditions.³⁴

II. Discussion

17. As an initial matter, DOE observes that the rehearing petitions filed in response to the Emergency Order largely reiterate arguments previously raised in connection with Order No. 202-25-12. For instance, the States’ petition expressly “incorporates by reference . . . all applicable arguments, exhibits and other reference materials” from their petition for rehearing of Order No. 202-25-12.³⁵ Although DOE has previously considered and addressed these arguments,³⁶ DOE addresses them again here in full for completeness.

18. DOE acknowledges that on September 11, 2026, the United States Court of Appeals for the District of Columbia Circuit issued an opinion interpreting DOE’s FPA section 202(c) authority.³⁷ DOE disagrees with the *Michigan v. U.S. Dep’t of Energy* decision and will be filing a petition for rehearing en banc in the Court of Appeals.

³³ *Id.* at 8.

³⁴ *Id.* at 5–6 (quoting Resource Adequacy Report, *supra* note 29, at 1).

³⁵ States *Schahfer II* Pet. at 2. The States’ January 22, 2026 Petition for Rehearing of Order No. 202-25-12 is cited herein as States *Schahfer I* Pet. The States’ April 22, 2026 Petition for Rehearing of Order No. 202-26-19 (the Emergency Order) is cited herein as States *Schahfer II* Pet.

³⁶ See *Schahfer I*, Order on Reh’g, DOE Order No. 202-25-12B (2026).

³⁷ *Michigan v. U.S. Dep’t of Energy*, No. 25-1159, 2026 WL 2671756, (D.C. Cir. Sept. 11, 2026).

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

19. PIOs and the States 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 PIOs and the States cite 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.³⁹ PIOs⁴⁰ also cite to various dictionary definitions of “emergency” to assert the same point. PIOs⁴¹ and the States⁴² further assert that the Emergency Order is “wholly novel” and contravenes DOE’s historic use of section 202(c) to address natural disasters and specific capacity crises, or retirements “only when requested.”⁴³

20. Further, PIOs and the States each rely on *Richmond Power and Light v. FERC* and *Otter Tail Power Co. v. Federal Power Commission* for the proposition that courts have interpreted section 202(c) narrowly to apply only to temporary emergencies requiring an imminent response.⁴⁴

DOE’s Determination

21. 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.”⁴⁵ Next, the statute sets forth three

³⁸ PIOs Pet. § V.A; States *Schahfer I* Pet. § V.B.

³⁹ PIOs Pet. § V.A.1.iii; States *Schahfer I* Pet. § V.B.

⁴⁰ PIOs Pet. § V.A.1.i.

⁴¹ *Id.* § V.A.1.v.

⁴² States *Schahfer I* Pet. § V.B.

⁴³ *Id.*

⁴⁴ PIOs Pet. § V.A.1.iv (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. 1970)); States *Schahfer I* Pet. § V.B (same).

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

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.”⁴⁶

22. 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.”⁴⁷ 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,⁴⁸ 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 “due to a shortage of electric energy, a shortage of facilities for the generation of electricity, and other causes.”⁴⁹

23. The argument that the Secretary can act only when a blackout is “imminent” does not comport with the statutory authority conferred by section 202(c). The word imminent does not appear in the statute. Further, the Secretary acted in response to the imminent shutdown of Schahfer Units 17 and 18 in December 2025. Were the Secretary to be required to wait until a blackout is “imminent” before addressing a shortage of generation facilities, his ability to take meaningful action under section 202(c) to prevent the blackout would be gravely impaired. The imminent shutdown of Schahfer Units 17 and 18 required immediate action. Once a power plant like the Schahfer Units 17 and 18 shuts down, it cannot feasibly be brought back online in response to a severe weather event or other circumstances requiring maximum generation.⁵⁰ Section 202(c) must be interpreted in the context of the electric energy 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. For

⁴⁶ *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”).

⁴⁷ 16 U.S.C. § 824a(c)(1).

⁴⁸ *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 for this statute) used FPA section 202(c) to prevent an anticipated power shortage despite noting that the current power supply was adequate).

⁴⁹ *Schahfer II*, DOE Order No. 202-26-19, at 1.

⁵⁰ *Id.* at 1 n.4.

example, in 2024, the time from interconnection request to the beginning of commercial operations for the typical completed project was 55 months.⁵¹

24. MISO has taken steps to expedite the addition of new generation, reinforcing the need for immediate action to remedy the shortage. But MISO's reforms will not yield immediate results to avert blackouts. On June 6, 2025, MISO submitted a proposal to FERC to establish the ERAS process, which provides a framework for the expedited study of interconnection requests in order to address urgent, near-term resource adequacy and reliability needs. This proposal was approved by FERC on July 21, 2025.⁵² Though the ERAS process should accelerate the construction of additional generation, the resources studied under the ERAS have commercial operation dates that are at least three years in the future, along with an additional three-year grace period to commence commercial operations.⁵³ Moreover, supply chain constraints impeding the acquisition of critical grid components, including large natural gas turbines and transformers, are likely to further hinder rapid construction and exacerbate reliability concerns.⁵⁴ Consequently, MISO's ERAS process is unlikely to result in the addition of any new generation capacity in the next few years.

25. The Secretary determined that emergency conditions in MISO could lead to the loss of power to homes and businesses. The Secretary made this determination with knowledge that, but for his prior emergency order, which took immediate action in response to the imminent shutdown of Schahfer Units 17 and 18 in December 2025, the

⁵¹ Joseph Rand et al., *Characteristics of Power Plants Seeking Transmission Interconnection as of the End of 2024*, LAWRENCE BERKELEY NAT'L LAB'Y (Dec. 2025), at 47, <https://perma.cc/2287-MSXU>.

⁵² *Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,064 (2025).

⁵³ *Id.* P 84.

⁵⁴ See generally Jared Anderson, *US Gas-Fired Turbine Wait Times as Much as Seven Years; Costs Up Sharply*, S&P GLOBAL (May 2025) ("With demand for natural gas-fired turbines in the US rapidly accelerating amid power demand growth forecasts driven by AI, manufacturing, and electrification, wait times for turbines are anywhere between one and seven years depending on the model, and costs have increased considerably, experts told Platts."), <https://www.spglobal.com/commodity-insights/en/news-research/latest-news/electric-power/052025-us-gas-fired-turbine-wait-times-as-much-as-seven-years-costs-up-sharply>.

Schahfer plant would not have been available during Winter Storm Fern in January 2026, when it operated at over 285 MW every day.⁵⁵

26. The 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.”⁵⁶ 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 *sua sponte* to “determine[] that an emergency exists.” Accordingly, the Secretary’s emergency determination is entirely consistent with the governing statutory requirements in section 202(c), DOE’s regulations, and established precedent.

27. Similarly, the dictionary definitions cited by PIOs are not persuasive.⁵⁷ Those dictionary definitions cannot limit the discretion Congress expressly delegated to the Secretary in 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 permanent condition of insufficiency of service or of facilities resulting in social disturbance or distress.”⁵⁸ The fact that dictionary definitions in existence at the time section 202(c) was drafted and ratified acknowledge that emergencies may be of varying duration further undercuts Petitioners’ selective reliance on their preferred definitions.

28. The arguments made by PIOs and the States based on the *Otter Tail* and *Richmond Power & Light* decisions are likewise misguided.⁵⁹ *Otter Tail* 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* involved

⁵⁵ *Schahfer II*, DOE Order No. 202-26-19, at 3.

⁵⁶ 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).

⁵⁷ PIOs Pet. § V.A.1.i.

⁵⁸ *Emergency*, BLACK’S LAW DICTIONARY 654 (3d ed. 1933).

⁵⁹ *See, e.g.*, PIOs Pet. at § V.A.1.iv; States *Schahfer I* Pet. § V.B.

⁶⁰ *See Otter Tail*, 429 F.2d at 234.

section 202(b) of the FPA and not an “emergency” within the meaning of section 202(c).⁶¹ In *Richmond Power & 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

29. An informative decision is *Board of Trade 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 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

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 & Light*, 574 F.2d at 614–15.

⁶³ *Id.*

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

⁶⁵ *Id.*

⁶⁶ *Id.* at 1018–19.

⁶⁷ *Id.* at 1019.

⁶⁸ *Id.* at 1019–20.

⁶⁹ *Id.* at 1023–25.

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 supports 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

30. 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 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.⁷³ Congress also mandated that, prior to renewal of a section 202(c) order, DOE was to consult with the primary Federal agency with expertise in the environmental interest protected by the law or regulation implicated.⁷⁴ 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.”⁷⁵ This decision affirms longstanding interpretations of the term “emergency” by the FPC and DOE and ratifies their prior use of section 202(c) emergency authority.⁷⁶

31. Further, DOE is not persuaded by the argument that the Emergency Order is “novel” and contravenes prior practice wherein section 202(c) was used to address natural

⁷⁰ *Id.* at 1025.

⁷¹ *Id.* at 1023.

⁷² *See id.* at 1023–25.

⁷³ 16 U.S.C. § 824a(c)(4)(A).

⁷⁴ *Id.* § 824a(c)(4)(B).

⁷⁵ H.R. Rep. No. 113-86 at 5–6 (2013) (legislative history showing Congressional awareness of the *Mirant Corp.* order before 2015 amendments).

⁷⁶ *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”).

disasters and specific capacity crises, or retirements “only when requested.”⁷⁷ On its face, section 202(c)(1) authorizes the Secretary to act “*either upon its own motion or upon complaint.*”⁷⁸ As such, under the statute, there does not need to be a request for the Secretary to take this action. Moreover, it is undisputed that section 202(c) has been used in the past to address generation retirements.⁷⁹

32. 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. The Secretary’s expert determination is 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, creates a substantial energy supply shortfall that calls for immediate action by DOE in particular, as opposed to a State or MISO, because without DOE action public health and safety will be affected by curtailments or outages.

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

33. PIOs and the States argue that the Emergency Order impermissibly exceeds the Secretary’s statutory authority under FPA section 202(c) in various respects.⁸⁰ For instance, PIOs and the States argue that the Emergency Order, in effect, impermissibly asserts authority to further DOE’s policy decisions by addressing issues unrelated to an emergency but rather addressing resource adequacy and electric generation facilities—issues which are reserved for the states and FERC, pursuant to other provisions in the FPA.⁸¹ PIOs further argue that DOE is invoking a transformative expansion of authority over the Nation’s energy generation mix without clear congressional authorization, in contravention of *West Virginia v. EPA*.⁸²

34. In a related argument, the States assert that the Secretary did not adequately consult with nor incorporate the findings of MISO and other stakeholders, whom the States

⁷⁷ See States *Schahfer I* Pet. § V.B.

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

⁷⁹ See, e.g., *PJM Interconnection, L.L.C.*, DOE Order No. 202-17-2 (June 16, 2017) (authorizing Dominion Energy Virginia to operate Yorktown Power Station Units 1 and 2 as needed for reliability purposes despite their planned deactivation).

⁸⁰ PIOs Pet. § V.A.; States *Schahfer I* Pet. § V.B.

⁸¹ PIOs Pet. § V; States *Schahfer I* Pet. § V.E.

⁸² PIOs Pet. § V.A.2.i (citing *West Virginia v. EPA*, 597 U.S. 697 (2022)).

claim have primary jurisdiction over resource planning, siting, and cost recovery for applicable utilities.⁸³ The States additionally invoke cooperative federalism, arguing that the Emergency Order contravenes the principles underlying FPA section 209(b) and FERC’s long-standing policy on Federal-state collaboration.⁸⁴

35. PIOs further contend that the Emergency Order impermissibly overrides FERC decisions requiring an operating resource to be a capacity resource.⁸⁵ The States argue that the Emergency Order impermissibly intrudes on the States’ authority to make decisions concerning generation facility retirements.⁸⁶ PIOs also refer to the FPA’s statutory structure, contending that in enacting FPA section 215,⁸⁷ 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.⁸⁸ 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 215.⁸⁹

DOE’s Determination

36. 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. The States and PIOs claim that the Secretary exceeded that authority in certain respects. As explained below, DOE is not persuaded by these claims.

37. 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.*”⁹⁰ 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

⁸³ States *Schahfer I* Pet. § V.E.

⁸⁴ *Id.*

⁸⁵ PIOs Pet. § V.C.2.

⁸⁶ *See, e.g.,* States *Schahfer I* Pet. § V.E.

⁸⁷ 16 U.S.C. § 824o.

⁸⁸ PIOs Pet. § V.A.1.ii.

⁸⁹ *Id.*

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

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.”⁹¹ Congress thus purposely provided discretion in section 202(c) to require changes to the operations of electric generation facilities to meet the emergency.

38. PIOs and the States attempt to avoid this clear grant of authority by arguing that the Emergency Order addresses issues unrelated to emergencies and instead concerns the issues of resource adequacy and long-term reliability.⁹² But placing a different label on the Secretary's action cannot change the fact that the 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.⁹³ 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.⁹⁴

39. 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.”⁹⁵ Similarly, the fact that many previous section 202(c) emergency orders lasted for years, or were even of indefinite duration,⁹⁶ undermines Petitioners' assertions that use of this power must be limited to short-term emergencies. As such, longstanding precedent reinforces the conclusion that the scope of permissible action under section 202(c) encompasses measures to address long-term structural problems, not simply responses to 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 breadth

⁹¹ 16 U.S.C. § 824a(c)(1).

⁹² See PIOs Pet. § V; States *Schahfer I* Pet. § V.E.

⁹³ 16 U.S.C. § 824a(c)(1).

⁹⁴ *Id.*

⁹⁵ 10 C.F.R. § 205.371.

⁹⁶ See *supra* note 79.

of the Secretary's authority under section 202(c) to order such generation that will, in his judgment, "best meet the emergency and serve the public interest."⁹⁷

40. Contrary to the assertions of PIOs and the States,⁹⁸ the Secretary is not addressing matters otherwise delegated to the states or FERC, nor is he exceeding his statutory authority under section 202(c). Specifically, the Secretary took action to address the emergency in MISO because coordinated state and regional resource adequacy planning, available per section 202(a) and (b), has proven inadequate to timely address delays in the construction of new generation assets.⁹⁹ As described in the Emergency Order, MISO's resource crisis arises, among other reasons, from the mismatch between resource retirements, such as the Schahfer Units, and heightened energy demand.¹⁰⁰ If not for the Emergency Order, the Schahfer Units would have been retired on December 31, 2025, further decreasing the available dispatchable generation within MISO and deepening the reliability crisis. The Emergency Order 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.

41. Nor is there any requirement under section 202(c), as the States suggest,¹⁰¹ 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."¹⁰² In an emergency situation, it is often not practicable to consult with the 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*."¹⁰³

42. Finally, PIOs' argument that the Emergency Order impermissibly overrides FERC decisions requiring an operating resource to be a capacity resource is incorrect.¹⁰⁴

⁹⁷ 16 U.S.C. § 824a(c)(1).

⁹⁸ PIOs Pet. § V.A.; States *Schahfer I* Pet. § V.B.

⁹⁹ See *Schahfer II*, DOE Order No. 202-26-19, at 6; 16 U.S.C. § 824a(a)-(b).

¹⁰⁰ *Id.* at 6–8.

¹⁰¹ See, e.g., States *Schahfer I* Pet. § V.E.

¹⁰² 42 U.S.C. § 7113.

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

¹⁰⁴ See PIOs Pet. § V.C.2.

The Emergency Order states that, “[b]ecause this Order is predicated on the *shortage* of facilities for generation of electric energy and other causes, [the] Schahfer Units [] shall not be considered capacity resources.”¹⁰⁵ Capacity markets are market constructs designed to ensure that adequate generation exists to serve future electricity demand by providing price signals that incentivize investment in new firm generation. DOE’s recitation that the Schahfer Units would not be a capacity resource reflects DOE’s intent not to interfere with FERC and the regulated capacity market.¹⁰⁶ Accordingly, by ensuring that the Schahfer Units do not participate in the relevant capacity market, the Emergency Order preserves the integrity of the market’s price signals and supports the capacity market’s critical function of attracting the new firm generation necessary to address the region’s resource adequacy needs.

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

43. PIOs and the States raise similar objections that there is no factual basis to support the Emergency Order, and that the Secretary’s emergency determination is not supported by substantial evidence.¹⁰⁷ The States and PIOs dismiss the Emergency Order’s reliance on the 2023 Attributes Roadmap, MISO’s PRA for the 2025–2026 Planning Year, and the 2024 Reliability Response, arguing that such evidence offers no specific information regarding risks during the spring season covered by the Emergency Order.¹⁰⁸ The States and PIOs further contend that MISO’s PRA for the 2025–2026 Planning Year confirmed that sufficient capacity had been procured throughout the region.¹⁰⁹

44. PIOs and the States further assert that the factual evidence cited in the Emergency Order does not demonstrate the existence of an emergency.¹¹⁰ For example, PIOs and the States contend that the 2025 OMS-MISO Survey Results, DOE’s July 2025 Resource

¹⁰⁵ *Schahfer II*, DOE Order No. 202-26-19, at Ordering Para. G (emphasis added).

¹⁰⁶ Under the terms of the MISO tariff, zonal resource credits may only be sold from designated “capacity resources.” *See* MISO, *Res. Adequacy Bus. Pracs. Manual*, BPM-011-r34, § 2.2. Under the Emergency Order, the Schahfer Units shall not be considered a capacity resource and thus cannot sell other capacity market products such as replacement capacity. *Schahfer II*, DOE Order No. 202-26-19, at Ordering Para. G.

¹⁰⁷ PIOs Pet. § V.A.2–3; States *Schahfer I* Pet. § V.A.

¹⁰⁸ PIOs Pet. § V.A.3.ii; States *Schahfer I* Pet. § V.A.

¹⁰⁹ PIOs Pet. §§ IV.B.2, V.A.3.ii; States *Schahfer I* Pet. § V.A.

¹¹⁰ PIOs Pet. § V.A.2.ii; States *Schahfer I* Pet. §§ I, V.A.

Adequacy Report, and NERC’s 2025 LTRA at most identify potential future resource adequacy concerns that are properly addressed through ordinary planning processes.¹¹¹ PIOs additionally assert that MISO has initiated processes to address any projected longer-term shortfalls, including through the FERC-approved ERAS process, and that MISO’s statements confirm that no further intervention is required to ensure sufficient capacity.¹¹²

45. In addition, PIOs and the States 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.”¹¹³ The States further assert 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 support for fossil fuels rather than a good-faith response to an actual emergency, and that the Emergency Order therefore reflects impermissible prejudgment of the outcome.¹¹⁴

46. PIOs and the States also contend that the Emergency Order failed to consider “well-known and readily-accessible” countervailing evidence.¹¹⁵ PIOs specifically argue that the Emergency Order misrepresents the testimony of Jennifer Curran and fails to consider contradicting statements by other MISO executives.¹¹⁶ For example, PIOs and the States cite MISO’s Independent Market Monitor’s assessment that had concluded that MISO’s capacity was “more than adequate.”¹¹⁷ Similarly, PIOs contend that DOE’s export authorizations from parts of MISO into Canada undercut the emergency determination.¹¹⁸

47. PIOs and the States further argue that, although the Emergency Order cites circumstances during Winter Storm Fern to justify the need for increased generation, the Emergency Order does not identify any emergency during the period it actually governs,

¹¹¹ PIOs Pet. § V.A.2; States *Schahfer I* Pet. § V.A.

¹¹² PIOs Pet. § V.A.2.ii.d.

¹¹³ *Id.* § V.A.2.ii.b (discussing Executive Order 14156 and Executive Order 14262); States *Schahfer I* Pet. § V.G.

¹¹⁴ States *Schahfer I* Pet. § V.G.

¹¹⁵ PIOs Pet. §§ V.A.2.ii.f, V.A.3.ii; States *Schahfer I* Pet. § V.A.

¹¹⁶ PIOs Pet. § V.A.2.ii.f.

¹¹⁷ *Id.*; States *Schahfer I* Pet. § V.A.

¹¹⁸ PIOs Pet. § V.A.3.ii.

and it fails to identify any shortfalls, brownouts, or blackouts during Winter Storm Fern that would have specifically required additional capacity from the Schahfer Units.¹¹⁹ The States further contend that the Emergency Order failed to consider MISO's purported history of strong performance in past extreme weather events. According to the States, MISO is not currently afflicted by any unexpected outage or extreme weather event.¹²⁰

DOE's Determination

48. 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 section 202(c) order.¹²¹ The statute's express exclusion of any notice, hearing, or report requirements prior to issuance of a section 202(c) order confirms that the Secretary is authorized to exercise his section 202(c) authority expeditiously and with broad discretion in responding to emergency situations.

49. In any event, the Secretary's determination that an emergency exists in the MISO region 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."¹²² The Emergency Order has met this threshold by citing evidence that reveals substantial harm will occur from inadequate electricity supply, namely rising electricity demand in MISO coupled with a decrease in the availability of dispatchable generation, that calls for immediate action by DOE as opposed to by the States or regional entities.

50. As discussed above, in the Emergency Order the Secretary identified the ongoing emergency in portions of the Midwest region "due to a shortage of electric energy, a shortage of facilities for the generation of electricity, and other causes."¹²³ Consistent with the Secretary's determination, the Emergency Order explains the need to increase

¹¹⁹ *Id.*; States *Schahfer II* Pet. at 7.

¹²⁰ States *Schahfer I* Pet. § V.A.

¹²¹ See 16 U.S.C. § 824a(c)(1).

¹²² 16 U.S.C. § 825l(b).

¹²³ See *Schahfer II*, DOE Order No. 202-26-19, at 1.

capacity—specifically, through the continued availability of the Schahfer Units—to meet increasingly high demands and decreasing generation output.¹²⁴

51. As noted, in the Emergency Order the Secretary weighed MISO’s own reports on resource adequacy, which documented MISO’s year-round reliability concerns.¹²⁵ For instance, in 2022, MISO obtained FERC approval to establish seasonal capacity requirements rather than annual requirements based on peak summer demand, reflecting that more than 60% of all “MaxGen” events occurred outside of the summer season.¹²⁶ MISO’s 2023 Attributes Roadmap and its 2024 Reliability Response further confirmed growing risk in non-summer months due to widespread retirements of dispatchable resources, lower reserve margins, more frequent and severe weather events, and increased use of unreliable renewables.¹²⁷ The Secretary concluded that these MISO studies indicated that the emergency conditions caused by the loss of generation capacity in MISO extend beyond the summer season.¹²⁸

52. 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 2025–2026 Planning Year.¹²⁹ Specifically, MISO noted that “new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources” in geographic areas which include Indiana.¹³⁰ The Secretary also cited the 2025 OMS-MISO Survey Results, which projected the need for additional capacity to meet the projected planning reserve margin—principally due to anticipated capacity retirements and increased demand.¹³¹ The Secretary explained that, although MISO had taken steps to reduce this deficit, extended construction timelines and supply chain

¹²⁴ *See id.*

¹²⁵ *See id.*

¹²⁶ *Id.* at 2.

¹²⁷ *Id.* at 3–4.

¹²⁸ *Id.* at 4.

¹²⁹ *Id.*

¹³⁰ *Id.* at 5 (quoting MISO, 2025–2026 PRA, *supra* note 22, at 13).

¹³¹ *Id.*

constraints are likely to hinder this capacity from coming online to meet demand in the coming years.¹³²

53. Furthermore, neither Indiana nor another state within the MISO service territory has taken independent action to curtail the reliability emergency, and the Secretary concluded that no one state alone would or could take appropriate actions to support long term resource capacity needs here. States and their utilities are subject to environmental compliance and other commitments made during decades long resource adequacy planning procedures that are not nimbly adjusted when faced with a sudden increase in the demand for power. Moreover, under the current multi-state electric system, individual states are not incentivized to consider regional reliability needs for resource planning.¹³³ In short, the system conditions and circumstances here necessitated federal action from DOE, in particular.

54. PIOs' and the States' respective criticisms of the Emergency Order's reliance on NERC's reports are unpersuasive.¹³⁴ The 2025 LTRA confirmed that the MISO region was increasing toward "high risk" (NERC's highest risk designation) and that "[e]scalating demand forecasts and uncertainty around new resource commercialization timing contribute to heightened resource adequacy concerns in the MISO area."¹³⁵ Even so, the Secretary did not rely on NERC's 2025 LTRA in isolation, or on its year-specific risk designation alone, to determine the existence of the emergency; rather, the Secretary considered the totality of the evidence. In addition to MISO's own resource adequacy reports and the 2025 OMS-MISO Survey results discussed above, this evidence included NERC's assessment that MISO faces high risk of energy shortfalls over the next five years because projected resource additions do not keep pace with escalating demand forecasts and announced generator retirements. PIOs' contention that the ERAS process will resolve any projected shortfall identified in the 2025 LTRA does not undermine the emergency determination.¹³⁶ Resources studied under ERAS have commercial operation dates that are at least three years away, with an additional three-year grace period to commence

¹³² *Id.*

¹³³ See *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 479 (D.C. Cir. 2009) ("Indeed, cooperation may be necessary to avoid a free rider problem, where some utilities count on the capacity they expect others to buy in order to support their own reliability.").

¹³⁴ PIOs Pet. § V.A.2.ii.e; States *Schahfer II* Pet. at 5–6.

¹³⁵ NERC, 2025 LTRA, *supra* note 20, at 15 (Jan. 2026), https://www.nerc.com/globalassets/our-work/assessments/nerc_ltra_2025.pdf.

¹³⁶ PIOs Pet. § V.A.2.ii.e.

commercial operations, and those projected resources remain subject to supply chain constraints likely to further delay their availability.¹³⁷

55. Petitioners' contention that the Secretary did not consider countervailing evidence is unfounded.¹³⁸ First, the assertions that MISO's Independent Market Monitor found capacity to be "more than adequate" and that MISO's PRA confirmed sufficient capacity was procured do not undermine the Secretary's determination.¹³⁹ The PRA results themselves demonstrated that new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions, and retirements in MISO's northern and central zones.¹⁴⁰ Moreover, the adequacy of cleared capacity in a single auction cycle does not resolve the longer-term structural deficit the Secretary identified. As indicated by the testimony of Jennifer Curran, MISO's Senior Vice President for Planning and Operations, the rapid retirement of existing coal and gas power plants in the MISO region threatens to outpace the ability of new resources with the necessary operational characteristics to replace them,¹⁴¹ confirming the underlying resource adequacy trend the Secretary identified.

56. Second, the fact that MISO approved the retirement of the Schahfer Units upon finding that the retirement "would not result in violations of applicable reliability criteria" does not preclude the Secretary's action under section 202(c).¹⁴² MISO's retirement study evaluated whether a specific retirement would cause violations of NERC reliability standards under defined study conditions; it did not assess the broader resource adequacy emergency that the Secretary identified in the Emergency Order. The Secretary's authority under section 202(c) is independent of, and not constrained by, MISO's generator-deactivation process.

57. Third, PIOs' contention that DOE's authorizations¹⁴³ of electricity exports under FPA section 202(e) contradict the Secretary's emergency determination under FPA section

¹³⁷ See *Schahfer II*, DOE Order No. 202-26-19, at 6.

¹³⁸ See PIOs Pet. §§ V.A.2.ii.f, V.A.3.ii; States *Schahfer I* Pet. § V.A.

¹³⁹ See PIOs Pet. §§ V.A.2.ii.f, V.A.3.ii; States *Schahfer I* Pet. § V.A.

¹⁴⁰ *Schahfer II*, DOE Order No. 202-26-19, at 5 (quoting MISO, 2025–2026 PRA, *supra* note 22, at 13).

¹⁴¹ See Curran Test., *supra* note 32, at 5.

¹⁴² See PIOs Pet. § IV.C.4.ii.

¹⁴³ PIOs Pet. § V.A.3.vii.

202(c) is without merit. 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.

58. Additionally, as DOE has explained in recent export authorization orders, the existing reliability framework ensures that exports cannot compromise the sufficiency of supply or the operational reliability of the domestic transmission system.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ 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, FPA 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).

59. Furthermore, many of DOE’s export authorizations, including those cited by PIOs and the States, are issued to power marketers that do not own generation resources, do not have franchised service areas, and do not have native load obligations.¹⁴⁷ Such entities purchase and sell 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 FPA section 202(e) is fully consistent with the Secretary’s

¹⁴⁴ 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_HQEnergyServicesUSInc_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.”).

¹⁴⁵ See NERC Reliability Standard IRO-001-4, at 1, <https://www.nerc.com/globalassets/standards/reliability-standards/iro/iro-001-4.pdf>.

¹⁴⁶ See NERC Reliability Standard EOP-011-4, at 3, <https://www.nerc.com/globalassets/standards/reliability-standards/eop/eop-011-4.pdf>.

¹⁴⁷ See, e.g., *Rsch. Power Corp.*, Order No. EA-365-C (Oct. 21, 2025), <https://www.energy.gov/sites/default/files/2025-11/EA-365C%20Research%20Power%20Corporation%20-%20Export%20Authorization%20Order.pdf>.

emergency determination under FPA section 202(c), and the Secretary reasonably exercised his judgment in issuing the Emergency Order.

60. Similarly, the States' and PIOs' argument that Schahfer's utilization during Winter Storm Fern does not support the emergency misses the mark.¹⁴⁸ While PIOs and the States contend that the Schahfer Units were not needed to support the "MaxGen" event,¹⁴⁹ Schahfer operated at over 285 MW during this period, providing vital generation capacity to the region.¹⁵⁰ Critically, but for the Emergency Order, the Schahfer Units would have been permanently retired on December 31, 2025, and entirely unavailable during the period of heightened winter demand that followed. Because the Emergency Order prevented that retirement, the Schahfer Units were available to provide needed power to American homes and businesses every day from January 21, 2026, through February 1, 2026, a period during which MISO experienced significant strain on available generation resources due to winter storms and prolonged cold snaps.¹⁵¹

61. In any case, seasonal fluctuations in temperature are only one source of generating demand and must be considered in the context of other strains on the grid. As noted, such strains include the unprecedented energy demand from data centers and premature retirements of existing generation facilities. 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%.¹⁵² 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).¹⁵³ The CEA Report highlighted the rapid energy demand

¹⁴⁸ PIOs Pet. § V.A.3.ii; States *Schahfer II* Pet. at 7.

¹⁴⁹ PIOs Pet. § V.A.3.ii; States *Schahfer II* Pet. at 7.

¹⁵⁰ See U.S. Dep't of Energy, *FACT SHEET: Energy Dep't Prevented Blackouts & Saved Am. Lives During Winter Storms* (Feb. 6, 2026), <https://www.energy.gov/articles/fact-sheet-energy-department-prevented-blackouts-saved-american-lives-during-winter-storms>,

¹⁵¹ *Id.*

¹⁵² 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>.

¹⁵³ Council of Econ. 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>.

increases due to data centers,¹⁵⁴ 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.¹⁵⁵

62. Furthermore, 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 technological advancements, including the expansion of artificial intelligence data centers and increase in domestic manufacturing.”¹⁵⁶

63. 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.”¹⁵⁷ That executive action 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.”¹⁵⁸ 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.”¹⁵⁹ PIOs’ argument that DOE used this methodology as the basis for issuing the Emergency Order is misplaced.¹⁶⁰ The President did not require this methodology for implementation of emergency action pursuant to section 202(c), and the Emergency Order did not purport to rely solely 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.

64. President Trump likewise recognized, in Executive Order 14156, that the “United States’ insufficient energy production, transportation, refining, and generation constitutes

¹⁵⁴ *Id.* at 2–6.

¹⁵⁵ *Id.* at 8–9.

¹⁵⁶ *Schahfer II*, DOE Order No. 202-26-19, at 7 (citing Exec. Order No. 14262, § 1).

¹⁵⁷ Exec. Order No. 14262, § 1.

¹⁵⁸ *Id.* § 3(c)(i) (emphasis added).

¹⁵⁹ *Id.* § 3(b).

¹⁶⁰ *See* PIOs Pet. § V.

an unusual and extraordinary threat to our Nation’s economy, national security, and foreign policy.”¹⁶¹ In declaring such emergency, including pursuant to the National Emergencies Act,¹⁶² 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.”¹⁶³ One such “lawful emergency authorit[y]” is the Secretary’s section 202(c) power. The executive orders informed the Secretary’s decision and action, in addition to the other factors outlined in the Emergency Order and this Order.

65. PIOs’ criticisms of the President’s declaration of a national energy emergency in Executive Order 14156 do not undermine the Secretary’s decision to issue the Emergency Order.¹⁶⁴ As discussed above, in the Emergency Order, the Secretary determined that an emergency exists in the MISO region and undertook lawful action pursuant to his existing emergency authority under section 202(c). The Secretary’s emergency determination is independently supported by substantial factual evidence, as detailed in the Emergency Order and in this Order.

66. The evidence subsequently available further confirms the Secretary’s exercise of his sound discretion and judgment in issuing the Emergency Order. In April 2026, MISO released its PRA for the 2026–2027 Planning Year, which concluded that while “market reforms have helped hold the line amidst tighter reserve margins compared to the prior decades, resource adequacy remains at risk, especially as demand for large load additions accelerate.”¹⁶⁵ The 2026–2027 PRA specifically identified “[m]ore frequent extreme weather, [a]ccelerating demand for electricity and large load interconnections, [l]oss of accredited capacity and reliability attributes as resource mix evolves,” and the “[p]lace of new resources additions,” as ongoing resource adequacy challenges.¹⁶⁶

67. Additionally, in May 2026, NERC released its 2026 Summer Reliability Assessment (2026 SRA), which independently corroborates the resource adequacy

¹⁶¹ Exec. Order No. 14156, § 1.

¹⁶² 50 U.S.C. §§ 1601–1651.

¹⁶³ Exec. Order No. 14156, § 2(a).

¹⁶⁴ See PIOs Pet. § V.A.2.ii.b.

¹⁶⁵ MISO, *Planning Res. Auction: Results for Planning Year 2026–27*, at 7 (Apr. 2026, updated May 2026), <https://cdn.misoenergy.org/2026%20PRA%20Results%20Posting%2020260522%20-%20Corrections754715.pdf>.

¹⁶⁶ *Id.* at 8.

emergency in the MISO region. According to NERC’s 2026 SRA, load growth in the MISO region, led by data centers, “is expected to accelerate in 2027 and beyond, which may lead to increased reliability risk in the future if resource additions cannot keep pace with rising load forecasts.”¹⁶⁷ NERC further noted that “[a]bove-normal summer peak load combined with low resource conditions could result in the need to employ operating mitigations (e.g., load-modifying resources) and EEAs [Energy Emergency Alerts].”¹⁶⁸

68. PIOs and the States maintain that this evidence does not show the existence of an ongoing statutory emergency. But if the Secretary had allowed the Schahfer Units to retire, the units would not have 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

69. The States and PIOs raise similar arguments that the Schahfer Units are neither the best nor an appropriate means of alleviating the capacity shortfall addressed by the Emergency Order.¹⁶⁹ In particular, the States 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.¹⁷⁰ The States and PIOs further argue that alternative means exist through which DOE could have addressed the emergency.¹⁷¹

70. PIOs additionally argue that the Emergency Order fails to consider the various policies of the FPA.¹⁷² Specifically, PIOs argue that the Emergency Order fails to provide a reasoned basis for its determination that additional dispatch of the Schahfer Units is necessary to best meet the emergency.¹⁷³ PIOs further contend that the Emergency Order

¹⁶⁷ N. Am. Elec. Reliability Corp., *2026 Summer Reliability Assessment*, at 16 (May 2026), https://www.nerc.com/globalassets/our-work/assessments/nerc_sra_2026.pdf.

¹⁶⁸ *Id.*

¹⁶⁹ States *Schahfer I* Pet. § V.F; PIOs Pet. § V.B.

¹⁷⁰ States *Schahfer I* Pet. § V.F; PIOs Pet. § V.B.1.

¹⁷¹ States *Schahfer I* Pet. § V.F; PIOs Pet. §§ V.B.2, V.B.4.

¹⁷² PIOs Pet. § V.B.1.

¹⁷³ *Id.* § V.B.2.

does not examine the expense of running the Schahfer Units or address the perceived “technical inability” of the Schahfer Units to meet the emergency.¹⁷⁴

DOE’s Determination

71. The Secretary, in issuing the Emergency Order, adhered to FPA section 202(c) in exercising his judgment by directing MISO and NIPSCO to undertake specific actions as to the Schahfer Units.¹⁷⁵ There is no dispute that the Secretary, as the presidentially-appointed and Senate-confirmed head of DOE,¹⁷⁶ 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.”¹⁷⁷ 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.

72. 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.”¹⁷⁸ Similarly, the fact that section 202(c)(1) permits the Secretary to issue emergency orders “upon [his] own motion . . . with or without notice, hearing, or report” reinforces the wide breadth of his discretionary authority.¹⁷⁹ 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”).¹⁸⁰ Here, the Secretary exercised his judgment in determining that “continued operation” of the Schahfer Units is necessary “to best meet the emergency arising from increased demand, determined shortage, and other causes, and serve the public interest under FPA section 202(c).”¹⁸¹ The Secretary’s determination in the Emergency Order was based on the insufficiency of dispatchable capacity and

¹⁷⁴ *Id.* §§ V.B.2, V.B.3.

¹⁷⁵ *See generally Schahfer II*, DOE Order No. 202-26-19.

¹⁷⁶ 42 U.S.C. § 7131.

¹⁷⁷ 16 U.S.C. § 824a(c)(1).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Schahfer II*, DOE Order No. 202-26-19, at 8.

anticipated demand, 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.¹⁸² The Secretary further determined 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.”¹⁸³

73. What is more, PIOs’ contention that the Schahfer Units are unreliable does not support their requested relief on rehearing.¹⁸⁴ The Emergency Order directs MISO to employ economic dispatch of the Schahfer Units to minimize cost to ratepayers, and directs NIPSCO to comply with all orders from MISO related to the availability and dispatch of the Schahfer Units.¹⁸⁵ The Secretary’s judgment that the continued availability of the Schahfer Units best meets the emergency is not undermined by the facility’s maintenance history—concerns that MISO and NIPSCO are directed to address under the terms of the Emergency Order.¹⁸⁶

74. Indeed, generation from the Schahfer plant was essential to protect public health and safety during Winter Storm Fern and the prolonged cold snap that followed. During the storm, MISO declared an Energy Emergency Alert Level 2 for the region encompassing Indiana, which indicates that energy requirements cannot be met.¹⁸⁷ The Schahfer plant provided critical generation capacity during that time. If generation from the Schahfer plant had not been available, MISO may have been forced to source additional generation capacity from outside its service area that may not have been available. According to EPA data, during Winter Storm Fern and the ensuing cold snap from January 23, 2026, through February 10, 2026, the Schahfer plant generated a total of 148,388 MWh.¹⁸⁸

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ PIOs Pet. § V.B.2.

¹⁸⁵ *Schahfer II*, DOE Order No. 202-26-19, at Ordering Para. A.

¹⁸⁶ *Id.* (directing MISO and NIPSCO to “take all measures necessary to ensure that Schahfer Units 17 and 18 are available to operate”).

¹⁸⁷ See MISO, *Overview of Winter Storm Fern*, at 12 (Feb. 17, 2026), <https://cdn.misoenergy.org/20260217%20RSC%20Item%2005%20Winter%20Storm%20Fern%20Report741721.pdf>.

¹⁸⁸ See U.S. Env’t Prot. Agency, *Custom Data Download*, EPA CAMPD (Clean Air Markets Program Data), <https://campd.epa.gov/data/custom-data-download> (search criteria Emissions >> Daily >> Unit (default) >> Apply >> select “January 23, 2026” as

75. PIOs also identified alternatives they deem to be better and more appropriate solutions to the emergency. But the Secretary’s determination need not consider, or reconsider, this after-the-fact analysis. 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 would defeat the very purpose of the emergency power to act expeditiously and within the judgment of the Secretary.¹⁸⁹

5. Authority to Order Economic Dispatch

76. PIOs and the States assert that the Secretary does not have the authority under FPA section 202(c)(1) to order the use of economic dispatch of the Schahfer Units as a response to an emergency, and that economic dispatch is not, in any case, an effective or rational measure to address resource shortages.¹⁹⁰ According to PIOs and the States, economic dispatch is not in the “public interest” or “rationally related” to addressing the identified emergency.¹⁹¹ PIOs and the States further contend that economic dispatch is a term of art meaning the lowest-cost dispatch option and, therefore, is inherently incompatible with emergency operations—in which uneconomic plants receive cost-of-service payments as “must run” resources rather than bidding into the market.¹⁹²

DOE’s Determination

77. 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”).¹⁹³ In the Emergency Order, the Secretary soundly exercised his judgment to determine that “continued operation” of the Schahfer Units is necessary “to best meet the emergency arising from

Start Date and “February 10, 2026” as End Date. The data can then be filtered to only include the R.M. Schahfer Generating Station (6085)).

¹⁸⁹ 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 . . .”).

¹⁹⁰ States *Schahfer I* Pet. § V.F; PIOs Pet. § V.D.3.i.

¹⁹¹ See PIOs Pet. § V.D.3.i; States *Schahfer I* Pet. § V.F.

¹⁹² See PIOs Pet. § V.D.3.i; States *Schahfer I* Pet. § V.F.

¹⁹³ 16 U.S.C. § 824a(c)(1).

increased demand, determined shortage, and other causes, and serve the public interest under FPA section 202(c).”¹⁹⁴ This determination was based on the Secretary’s finding 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,” as discussed above.¹⁹⁵

78. The Emergency Order therefore directed MISO and NIPSCO to “take all measures necessary to ensure that Schahfer Units 17 and 18 are available to operate.”¹⁹⁶ The Emergency Order then ordered MISO “to take every step to employ economic dispatch of [the facility] to minimize [the] cost to ratepayers.”¹⁹⁷

79. Lastly, DOE disagrees with PIOs’ and the States’ respective arguments that economic dispatch is not effective or rationally related to the emergency identified in the Emergency Order. As a threshold matter, “rationally related” is a low bar, requiring only that the challenged act bear a reasonable connection to the emergency it is designed to address.¹⁹⁸ In any event, that bar is easily met here. The Secretary’s directive regarding economic dispatch ensures that the Schahfer Units can be dispatched instead of more costly generation (if available), reducing electricity costs and serving the public interest. Indeed, the Schahfer Units having been directed to be available proved effective during the Winter Storm Fern cold snap, as discussed above. DOE 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.”¹⁹⁹ DOE clarifies, however, that to the extent operational (including safety) limitations prevent the Schahfer Units from being economically dispatched, offering the Schahfer Units on a must-run basis may be necessary to ensure the units are available to operate. Under those circumstances, such operation would be consistent with minimizing the cost to ratepayers.

¹⁹⁴ *Schahfer II*, DOE Order No. 202-26-19, at 8.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*, Ordering Para. A.

¹⁹⁷ *Id.*

¹⁹⁸ *Cf. Trump v. Hawaii*, 585 U.S. 667, 704–05 (2018) (explaining that rational basis review considers only whether the executive action “is plausibly related to the Government’s stated objective to protect the country” and observing that “the Court hardly ever strikes down a policy as illegitimate under rational basis scrutiny”).

¹⁹⁹ MISO, *MISO Econ. Planning Whitepaper*, at 3 (Oct. 3, 2024), <https://cdn.misoenergy.org/MISO%20Economic%20Planning%20Whitepaper651689.pdf>.

6. Potential Environmental Impacts

80. PIOs and the States argue that the Emergency Order fails to comply with 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.²⁰⁰ Specifically, PIOs contend that the Emergency Order may conflict with multiple environmental requirements applicable to the Schahfer Units, including the expired Schahfer National Pollutant Discharge Elimination System (NPDES) permit, the federal coal combustion residuals (CCR) rule, and Indiana's Environmental Protection Agency (EPA)-approved regional haze state implementation plan (SIP).²⁰¹

81. PIOs further argue that the Emergency Order fails to satisfy the specific conditions imposed by section 202(c)(2) because the directive for economic dispatch contradicts the obligation to limit generation to the hours necessary to meet the emergency, and the Emergency Order therefore fails to ensure maximum practicable consistency with environmental laws and to minimize adverse environmental impacts.²⁰²

82. PIOs further argue that the Emergency Order serves as a renewal or reissuance of DOE Order No. 202-25-12 and is therefore subject to FPA section 202(c)(4)(B)'s requirement that DOE "consult with the primary Federal agency with expertise in the environmental interest protected" by the laws with which the Emergency Order may conflict, with which DOE allegedly fails to comply.²⁰³

DOE's Determination

83. 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."²⁰⁴

²⁰⁰ PIOs Pet. § V.D. (citing 16 U.S.C. § 824a(c)(2)); States *Schahfer I* Pet. § V.D. (citing 16 U.S.C. § 824a(c)(2)).

²⁰¹ PIOs Pet. § V.D.2.

²⁰² *Id.* § V.D.3.

²⁰³ *Id.* § V.D.3.iii (quoting 16 U.S.C. § 824a(c)(4)(B)).

²⁰⁴ 16 U.S.C. § 824a(c)(2).

84. With respect to the potential environmental conflicts identified by PIOs, the Emergency Order expressly recognizes this possibility and responds to it. The Order requires that “[a]ll operation of Schahfer 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.”²⁰⁵

85. As to the purported conflicts identified by PIOs—the expired NPDES permit, the CCR rule closure deadline, and the regional haze SIP—DOE notes that these are matters within the jurisdiction of the relevant permitting authorities, and 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.²⁰⁶ 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.”²⁰⁷ To the extent that continued availability to operate or dispatch the Schahfer Units creates compliance challenges under those requirements, NIPSCO and MISO are directed to comply with applicable environmental requirements to the maximum extent feasible while continuing to fulfill the terms of the Emergency Order.

86. PIOs’ argument that the economic dispatch directive contradicts the obligation to require generation only during hours necessary to meet the emergency is likewise unavailing. The Emergency Order limits operation of the Schahfer Units to the times and within the parameters as determined by MISO pursuant to Ordering Paragraph A, which directs MISO to employ economic dispatch to minimize cost to ratepayers.²⁰⁸ This structure ensures that the Schahfer Units operate only when MISO’s dispatch process determines its output is needed to serve load—which is precisely the circumstance in which generation is necessary to meet the emergency.

87. PIOs provide examples of measures that—in PIOs’ view—would better meet section 202(c)’s requirements.²⁰⁹ These measures, however, are either already included in the Emergency Order or are not required by statute and would not necessarily minimize adverse environmental impacts. Furthermore, Congress did not prescribe in section 202(c)

²⁰⁵ *Schahfer II*, DOE Order No. 202-26-19, at Ordering Para. C.

²⁰⁶ 16 U.S.C. § 824a(c)(2).

²⁰⁷ 16 U.S.C. § 824a(c)(3).

²⁰⁸ *Schahfer II*, DOE Order No. 202-26-19, at Ordering Para. A.

²⁰⁹ PIOs Pet. § V.D.3.ii.

how DOE was to fulfill its obligations concerning consistency with environmental laws and minimization of adverse effects, and the Emergency Order's approach falls within the discretion afforded to the Secretary.

88. 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 in favor of ensuring an adequate supply of electric energy, providing DOE with discretion to fulfill 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 Schahfer Units 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, are sufficient to satisfy the Secretary's obligation under section 202(c)(2).

89. PIOs' argument that DOE did not satisfy the FPA's consultation requirement in reissuing the Emergency Order for an additional 90 days is inapposite.²¹⁰ Specifically, section 202(c)(4)(B) requires that, in renewing or reissuing an emergency order, DOE “shall consult with the primary Federal agency with expertise in the environmental interest protected” by laws or regulations with which the Emergency Order may conflict.²¹¹ Prior to issuing the Emergency Order, DOE consulted with the EPA regarding the Schahfer Units' operations. DOE notes that the EPA did not identify any additional environmental conditions for the Schahfer Units' continued operation pursuant to the Emergency Order.

III. Procedural Issues

1. PIOs' Request for a Stay

90. PIOs move for a stay of the Emergency Order.²¹² In support of their request, PIOs contend that (1) absent a stay, they will be irreparably harmed by the Emergency Order, (2) a stay will not harm any other interested parties, and (3) the public interest favors a stay.²¹³

²¹⁰ *Id.* § V.D.3.iii.

²¹¹ *See* 16 U.S.C. § 824a(c)(4)(B).

²¹² PIOs Pet. § VI.

²¹³ *Id.*

DOE's Determination

91. 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.²¹⁴

92. By its terms, the Emergency Order terminated on June 21, 2026.²¹⁵ Consequently, the stay request is now moot.

93. In any case, DOE finds that a stay is not warranted here based on a broader consideration of the equities at issue. First, PIOs also fail to present evidence of any substantial irreparable harm. Indeed, 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. As discussed above, this determination is based on the insufficiency of dispatchable capacity to meet 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 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

94. The States and PIOs each moved to intervene in this proceeding, citing various alleged interests which may be affected by the outcome of this proceeding.²¹⁶

DOE's Determination

95. The motions to intervene in this administrative proceeding are hereby permissively granted for the States and PIOs to advocate before the agency, but DOE takes no position on whether petitioners are “aggrieved” parties for purposes of FPA section 313.²¹⁷

²¹⁴ See *Nken v. Holder*, 556 U.S. 418, 434–36 (2009); *Ohio v. Env’t Prot. Agency*, 603 U.S. 279, 291 (2024).

²¹⁵ *Schahfer II*, DOE Order No. 202-26-19, at Ordering Para. H.

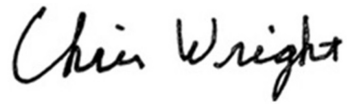
²¹⁶ See States *Schahfer II* Pet. at 1–3; PIOs Pet. § III.

²¹⁷ 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

* * * * *

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 5:05 pm Eastern Standard Time on this 16th day of October 2026.

A handwritten signature in black ink that reads "Chris Wright". The signature is written in a cursive style with a horizontal line underneath it.

Chris Wright
Secretary of Energy

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.”).