

UNITED STATES OF AMERICA
Department of Energy
Washington, DC 20585

PJM Interconnection, L.L.C.	Order Nos.	202-26-02B and 202-26-06B
Electric Reliability Council of Texas	Order Nos.	202-26-01B and 202-26-04A
ISO New England, Inc.	Order No.	202-26-03B
Duke Energy Carolinas, LLC and Duke Energy Progress, LLC	Order Nos.	202-26-05B and 202-26-07B
Homestead Public Services Energy	Order No.	202-26-09A
New York Independent Service Operator, Inc.	Order No.	202-26-08A
Duke Energy Florida, LLC	Order No.	202-26-10A
Orlando Utilities Commission	Order Nos.	202-26-11A and 202-26-15A
Florida Municipal Power Agency	Order Nos.	202-26-12A and 202-26-13A
City of Lakeland, FL and Lakeland Electric	Order No.	202-26-14A (not consolidated)

ORDER GRANTING REHEARING

(February 4, 2026)

1. On January 25, 2026, 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 “a statutory emergency exists within the PJM Interconnection, L.L.C. (PJM) service territory due to a shortage of electric energy, a shortage of

¹ 16 U.S.C. § 824a(c).

² 42 U.S.C. § 7151(b).

facilities for the generation of electric energy, and other causes.”³ In the Emergency Order, the Secretary determined that “additional dispatch of the Specified Resources is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c).”⁴ On January 29, 2026, the Secretary extended the Emergency Order through February 2, 2026.⁵

2. On January 30, 2026, NRG Energy, Inc. (NRG) filed a request for clarification or, in the alternative, rehearing.⁶ NRG explains that it is the indirect owner of Specified Resources and that several Specified Resources are subject to environmental permit conditions or regulations that limit their emissions, hours of operation, or fuel burned during a specified period, usually on a 12-month rolling average. NRG requests that the Department of Energy (DOE) confirm that, under section 202(c)(3) of the FPA, the emissions from, hours of operation of, and fuel burned by Specified Units while the Emergency Order is in effect will not be counted towards these limits.⁷

3. DOE grants NRG’s Request for Rehearing to clarify the Emergency Order and Extension Order. As NRG notes in its Request for Rehearing, Section 202(c)(3) provides:

To the extent any omission or action taken by a party, that is necessary to comply with an order issued under this subsection, including any omission or action taken to voluntarily comply with such order, results in noncompliance with, or causes such party to not comply with, any Federal, State, or local environmental law or regulation, such omission or action shall not be considered a violation of such environmental law or regulation, or subject such party to any requirement, civil or criminal liability, or a citizen suit under such environmental law or regulation.^[8]

4. DOE confirms NRG’s interpretation of FPA section 202(c)(3).⁹

³ Department of Energy Order No. 202-26-02, at 1 (Jan. 25, 2026) (Emergency Order).

⁴ *Id.* at 3.

⁵ Department of Energy Order No. 202-26-02A (Jan. 29, 2026) (Extension Order).

⁶ *Motion to Intervene and Request for Rehearing of NRG Energy* (NRG Request for Rehearing).

⁷ *Id.* at 2.

⁸ 16 U.S.C. § 824a(c)(3).

⁹ In addition to the Emergency Order and Extension Order referenced above, DOE also confirms that its interpretation applies with respect to the additional following orders: PJM Interconnection, L.L.C., Order Nos. 202-26-06 (Jan. 26, 2026), and 202-26-06A (Jan. 29, 2026); Electric Reliability Council of Texas, Order Nos. 202-26-01 (Jan. 24, 2026), 202-26-01A (Jan. 25, 2026), and 202-26-02-04 (Jan. 25, 2026); ISO New England, Inc., Order Nos. 202-26-03

5. First, FPA section 202(c)(3) covers “*any* omission or action taken by a party” that is necessary to comply with an order issued under FPA section 202(c).¹⁰ FPA section 202(c) authorizes the Secretary “to require by order . . . such generation . . . as in [his] judgment will best meet the emergency and serve the public interest.”¹¹ In the Emergency Order, pursuant to this authority, the Secretary directed PJM to “dispatch [Specified Resources] and to order their operation only as needed to maintain reliability.”¹² Any party’s dispatch and operation of a Specified Resource pursuant to the Secretary’s directive is covered by FPA section 202(c)(3).

6. Second, FPA section 202(c)(3) protects any such party from “noncompliance with . . . *any* Federal, State, or local environmental law or regulation . . .”¹³ The statute’s use of “any” necessarily includes limitations on a generating unit’s “emissions, hours of operation, or fuel burned” during the pendency of the Emergency Order.¹⁴

7. Third, DOE clarifies that any “emissions, hours of operation, or fuel burned” to comply with the Secretary’s orders cannot be counted towards rolling average-based limitations. FPA section 202(c)(3) 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.”¹⁵ This clarification is also consistent with the United States Environmental Protection Agency’s pronouncement that “there would be no limit on the emergency stationary engines’ use during the period of the emergency” and that “any hours of engine operation pursuant to these emergency orders would **not** count toward the 50 hours that emergency engines are allowed to operate in non-emergency situations.”¹⁶

(Jan. 25, 2026), and 202-26-03A (Jan. 30, 2026); Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, Order Nos. 202-26-05 (Jan. 26, 2026), 202-26-05A (Jan. 29, 2026), 202-26-07 (Jan. 26, 2026), and 202-26-07A (Jan. 30, 2026); Homestead Public Services Energy, Order No. 202-26-09 (Jan. 30, 2026); New York Independent Service Operator, Inc., Order No. 202-26-08 (Jan. 26, 2026); Duke Energy Florida, LLC, Order No. 202-26-10 (Jan. 31, 2026); Orlando Utilities Commission, Order Nos. 202-26-11 (Jan. 31, 2026), and 202-26-15 (Jan. 31, 2026); Florida Municipal Power Agency, Order Nos. 202-26-12 (Jan. 31, 2026), and 202-26-13 (Jan. 31, 2026); and City of Lakeland, FL and Lakeland Electric, Order No. 202-26-14 (Jan. 31, 2026).

¹⁰ 16 U.S.C. § 824a(c)(3). (emphasis added).

¹¹ 16 U.S.C. § 824a(c)(1).

¹² Emergency Order at 3; Extension Order at 4.

¹³ 16 U.S.C. § 824a(c)(3) (emphasis added).

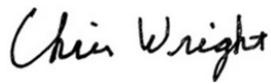
¹⁴ See Request for Rehearing at 2. The Emergency Order went into effect on 1:25 AM EST on January 25, 2026, and, unless otherwise specified, expired at 11:59 PM EST on February 2, 2026. Emergency Order at 4; Extension Order at 5.

¹⁵ Extension Order (emphasis added).

¹⁶ *Clean Air Act Resources for Data Centers*, United States Environmental Protection

8. For these reasons, NRG's Request for Rehearing is granted.

Issued at 4:54 PM EST on this 4th day of February 2026.



Chris Wright
Secretary of Energy

Agency (Jan. 26, 2026), <https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-resources-data-centers> (emphasis in original). EPA referred to Secretary Wright's January 22 letter stating that “[i]n anticipation of Winter Storm Fern, the Department of Energy (DOE) announced that it is prepared to take action to prevent blackouts by issuing one or more emergency orders pursuant to section 202(c) of the Federal Power Act. These orders would require data centers and other owners of backup generators to operate their backup generators to maintain the reliability of the electric grid. *See Letter from Secretary Wright (Jan. 22, 2026).*” *Id.* EPA explained that “For stationary emergency engines subject to the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (40 CFR part 63 subpart ZZZZ) and Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines (40 CFR part 60 subparts IIII and JJJJ), operation under such emergency orders would be considered operation in an emergency situation, so there would be no limit on the emergency stationary engines’ use during the period of the emergency. *See* 40 CFR 63.6640(f)(1); 40 CFR 60.4211(f)(1); 40 CFR 60.4243(d)(1).” *Id.* EPA further explained that “[t]herefore, any hours of engine operation pursuant to these emergency orders would **not** count toward the 50 hours that emergency engines are allowed to operate in non-emergency situations under 40 CFR 63.6640(f)(3)-(4), 40 CFR 60.4211(f)(3), and 40 CFR 60.4243(d)(3).” *Id.*