

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 16

DESANTIS PRESS RELEASE ON SB 484



EXECUTIVE OFFICE OF THE
GOVERNOR

RON DESANTIS

46TH GOVERNOR OF FLORIDA



FLAG

STATUS:

FULL

STAFF



NEWSROOM

[Home](#) | [Newsroom](#) | [Press Releases](#) | 2026

| Governor Ron DeSantis Signs Law To Pr...

Category

All ▾

Headed By

All ▾

Sort

Agency Name A → Z ▾

Search

Reset

 Search

GOVERNOR RON DESANTIS SIGNS LAW TO PROTECT FLORIDIANS

FROM SUBSIDIZING DATA CENTERS

May 7, 2026

LAKELAND, Fla. —Today, Governor Ron DeSantis signed SB 484, which protects ratepayers, the environment, and local communities from harm caused by hyperscale data centers.

“Today in Lakeland, I signed legislation to protect our citizens and communities from hyperscale data centers. These are much-needed protections for taxpayers and our natural resources,” **said Governor Ron DeSantis**. “SB 484 ensures that local governments maintain the authority to reject data center development in their communities, prevents data center costs from being passed on to consumers, including electricity costs, and protects Florida’s water resources from data center consumption.”

Governor Ron DeSantis signed SB 484. The bill:

- **Protects Ratepayers**
 - Prohibits utilities from passing data center costs, including electricity costs, onto residential and small business customers.
 - Requires large-scale users to pay their full cost of service.
 - Prevents financial risk from being shifted to the public.
- **Empowers Local Communities**
 - Preserves local authority over zoning, permitting, and land use.
 - Allows communities to set stricter standards or deny projects.
 - Ensures data centers are properly classified and regulated.
- **Increases Transparency and Security**
 - Requires public disclosure of data center development deals after the exemption period.
 - Establishes clear definitions in law to prevent loopholes.
 - Prohibits utilities from serving data centers owned or controlled by foreign countries of concern.
- **Strengthens Infrastructure and Environmental Standards**
 - Creates a dedicated permitting process for large-scale data centers.
 - Allows use of reclaimed water as part of permitting.
 - Requires major modifications to be treated as new applications.

###

###



BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 17

DOE ORDER PURSUANT TO SECTION 202(C) OF THE FEDERAL POWER
ACT



Department of Energy
Washington, DC 20585

December 14, 2000

Order Pursuant to Section 202(c) of the Federal Power Act

Pursuant to Section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and 10 C.F.R. § 205.370, in this order I consider the question of whether an emergency exists in California by reason of 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 other causes, and whether to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as will best meet the emergency and serve the public interest. Because of a shortage of currently operational electric generation facilities, a shortage of water used to generate electricity, unusual volatility of electricity and natural gas markets, and for other reasons, California is experiencing an unexpected shortage of electric energy. Therefore, pursuant to Section 202(c) of the Federal Power Act, I find an emergency exists in California by reason of the shortage of electric energy.

Accordingly, I hereby order the entities listed in Attachment A to make arrangements to generate, deliver, interchange, and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator (California ISO), acting as agent for and on behalf of Scheduling Coordinators (as that term is defined in the California ISO tariff on file at the Federal Energy Regulatory Commission), consistent with the terms of this order. The entities listed in Attachment A are only required to sell electricity to the California ISO that is available in excess of electricity needed by each entity to render service to its firm customers.

This order is effective immediately and expires at 3:00 a.m., EST, December 21, 2000, unless altered or revoked by further order. However, the entities in Attachment A are not required to deliver energy or services under the terms of this order until 12 hours after the California ISO has filed with the Department of Energy (DOE) a signed certification that it has been unable to acquire in the market adequate supplies of electricity to meet system demand, and, as a consequence, it has, or reasonably anticipates, an "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375. In order to continue to avail itself of this order, the California ISO is required to submit to DOE a further certification as set forth in the preceding sentence every twenty-four hours until the expiration of the order. The California ISO shall provide a signed copy of all certifications to the entities in Attachment A at the time it provides them to DOE.

The California ISO must inform each entity subject to this order of the amount and type of energy or services requested by 9:00 p.m., EST, the day before the requested service. In making requests for power pursuant to this order, to the extent feasible, the California ISO is directed to



allocate those requests among the entities listed in Attachment A in proportion to each entity's available excess power.

The terms of any arrangement made between the entities subject to this order and the California ISO pursuant to this order are to be as agreed to by the parties. If no agreement as to terms can be reached, I will immediately prescribe the conditions of service and refer the rate issue to the Federal Energy Regulatory Commission for a determination at a later date by that agency in accordance with its standards and procedures, and will prescribe by supplemental order such rates as it finds to be just and reasonable.

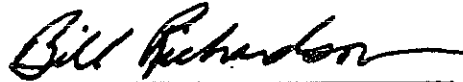
ORDER

For the reasons set forth above, pursuant to Section 202(c) of the Federal Power Act, it is ordered that:

- A. Consistent with the requirements set forth below, the entities listed on Attachment A will make arrangements to generate, deliver, interchange, and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator (California ISO), acting as agent for and on behalf of Scheduling Coordinators (as that term is defined in the California ISO tariff on file at the Federal Energy Regulatory Commission).
- B. The entities listed in Attachment A are only required under the terms of this order to sell electricity to the ISO that is available in excess of electricity needed by each entity to render service to its firm customers.
- C. This order is effective immediately and expires at 3:00 a.m., EST, December 21, 2000, unless altered or revoked by further order.
- D. The entities in Attachment A are not required to deliver energy or services under the terms of this order until 12 hours after the California ISO has filed with the Department of Energy (DOE) a signed certification that it has been unable to acquire in the market adequate supplies of electricity to meet system demand, and, as a consequence, it has, or reasonably anticipates, an "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375. In order to continue to avail itself of this order, the California ISO is required to submit to DOE a further certification as set forth in the preceding sentence every twenty-four hours until the expiration of the order. This certification should be submitted to Paul Carrier, Department of Energy, Office of Energy Emergencies, Office of Policy, PO-5, 1000 Independence Avenue, S. W., Washington, D.C. 20585, (202) 586-5659, fax: (202) 586-5391, e-mail: Paul.Carrier@hq.doe.gov. The California ISO shall provide a copy of all certifications to the entities in Attachment A at the time it provides them to DOE.

- E. The California ISO must inform each entity subject to this order of the amount and type of energy or services requested by 9:00 p.m., EST, the day before the requested service. In making requests for power pursuant to this order, to the extent feasible, the California ISO is directed to allocate those requests among the entities listed in Attachment A in proportion to each entity's available excess power.
- F. The terms of any arrangement made between the entities subject to this order and the California ISO pursuant to this order are to be as agreed to by the parties. If no agreement as to terms can be reached, I will immediately prescribe the conditions of service and refer the rate issue to the Federal Energy Regulatory Commission for a determination at a later date by that agency in accordance with its standards and procedures, and will prescribe by supplemental order such rates as it finds to be just and reasonable.

Issued in Washington, D. C., on December 14, 2000



Bill Richardson
Secretary

Attachment

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 18

DOE ORDER NO. 202-03-01



Department of Energy

Washington, DC 20585

Order No. 202-03-1

Pursuant to the authority vested in me by section 202(c) of the Federal Power Act, 16 U.S.C. 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. 7151(b), I hereby determine that an emergency exists due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes, and that issuance of this order will alleviate the emergency and serve the public interest. Based on this determination, I hereby order:

From the effective date and time of this order until 12:01 a.m. Eastern Daylight Time, September 1, 2003, or until such earlier or later time as I may order, the New York Independent System Operator (NYISO) and ISO New England, Inc. (NEISO) are directed to require Cross-Sound Cable Company, LLC (CSC) to operate the Cross-Sound Cable and related facilities connecting substations in New Haven, Connecticut and Shoreham, Long Island, New York, when the NYISO and NEISO determine it necessary to alleviate the current disruptions in electric transmission service, to transmit and deliver electric capacity and/or energy when, as and in such amounts as may be scheduled and purchased, and to take such actions as are necessary in order to enable it to do so, including but not limited to energizing and continuing to energize the facilities of CSC to transmit and deliver electric capacity and/or energy from Long Island to Connecticut or from Connecticut to Long Island, all in accordance with the operating and scheduling protocols of the NYISO and NEISO. The NYISO and NEISO must mutually agree prior to issuing any directive to CSC pursuant to this order, and are directed to consult with each other and with appropriate reliability organizations to ensure that all actions pursuant to this order, and the scheduling of such electric capacity and/or energy, will not violate system operating criteria. If necessary, just and reasonable terms for the transmission and delivery of electric capacity and/or energy pursuant to this order, including the compensation therefor, shall be established by a supplemental order issued pursuant to Federal Power Act section 202(c).

This order shall be effective upon its issuance.

Issued in Washington, D.C. at 11:42 am this 14th day of August, 2003.

Spencer Abraham
Secretary of Energy



Printed with soy ink on recycled paper

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 19

DOE ORDER NO. 202-05-01

Order No. 202-05-1

Pursuant to the authority vested in me by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in Texas due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes, and that issuance of this order will serve to alleviate the emergency and serve the public interest.

As a result of the massive devastation caused by Hurricane Rita, which further exacerbated the dire conditions caused by Hurricane Katrina, large portions of the areas affected by the hurricanes are without electricity, posing a threat to human life and health. It is my judgment that in these circumstances, the order I am issuing today will meet the emergency and serve the public interest because it will alleviate electricity shortages and protect the life and health of the people in the affected areas.

Based on my determination set forth above, I hereby order:

Effective immediately, CenterPoint Energy is authorized and directed to temporarily connect at distribution and transmission level voltages such as 12.5kV, 13.2kV, 25kV, 69kV, 138kV, and 230kV to restore power to Entergy Gulf States, Inc. as well as electric cooperatives and municipal customers within the State of Texas. Pursuant to section 202(d) of the Federal Power Act, during the continuance of this order, any person engaged in the transmission and sale of electric energy and not otherwise subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) may make such temporary connections with any public utility subject to the jurisdiction of FERC and shall not become subject to FERC jurisdiction as a result of that temporary connection.

This order shall be effective upon its issuance and shall expire at 12:01 a.m., November 1, 2005.

Issued in Washington, D.C. at 12:40 pm this 28th day of September, 2005.



Samuel W. Bodman
Secretary of Energy

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 20

DOE ORDER NO. 202-05-02



Department of Energy
Washington, DC 20585

September 30, 2005

Order No. 202-05-2

Pursuant to the authority vested in me by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in the State of Texas due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes, and that issuance of this order will serve to alleviate the emergency and serve the public interest.

As a result of the massive devastation caused by Hurricane Rita, which further exacerbated the dire conditions caused by Hurricane Katrina, large portions of the areas affected by the hurricanes are without electricity, posing a threat to human life and health. It is my judgment that in these circumstances, the order I am issuing today will meet the emergency and serve the public interest because it will alleviate electricity shortages and protect the life and health of the people in the affected areas.

Based on my determination set forth above, I hereby order:

Effective immediately, TXU Electric Delivery is authorized and directed to temporarily connect and energize its existing Huntington to Etoile 138kV line for the purpose of delivering electricity to Deep East Texas Electric Cooperative, a utility that under normal conditions is served by Entergy Gulf States, Inc. Pursuant to section 202(d) of the Federal Power Act, during the continuance of this order, any person engaged in the transmission and sale of electric energy and not otherwise subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) may make such temporary connections with any public utility subject to the jurisdiction of FERC and shall not become subject to FERC jurisdiction as a result of that temporary connection.

This order shall be effective upon its issuance and shall expire at 12:01 a.m., November 1, 2005.

Issued in Washington, D.C. at 3:45 PM this 30th day of September, 2005.

Samuel W. Bodman
Secretary of Energy



Printed with soy ink on recycled paper

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 21

DOE ORDER NO. 202-08-1



The Secretary of Energy
Washington, DC 20585

Order No. 202-08-1

Pursuant to the authority vested in me by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in Texas due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes, and that issuance of this order will serve to alleviate the emergency and serve the public interest.

As a result of the massive devastation caused by Hurricane Ike, large portions of the areas affected by the hurricane are without electricity, posing a threat to human life and health. It is my judgment that in these circumstances, the order I am issuing today will meet the emergency and serve the public interest because it will alleviate electricity shortages and protect the life and health of the people in the affected areas.

Based on my determination set forth above, I hereby order:

Effective immediately, CenterPoint Energy is authorized and directed to temporarily connect at distribution and transmission level voltages such as 12.5kV, 13.2kV, 25kV, 69kV, 138kV, and 230kV to restore power to Entergy Gulf States, Inc. as well as electric cooperatives and municipal customers within the State of Texas. Pursuant to section 202(d) of the FPA, 16 U.S.C. 824a(d), during the continuance of this order, any person engaged in the transmission and sale of electric energy and not otherwise subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) may, pursuant to this order, make such temporary connections with any public utility subject to the jurisdiction of FERC and shall not become subject to FERC jurisdiction as a result of that temporary connection.

This order shall be effective upon its issuance and shall expire at 12:01 a.m., November 1, 2008.

Issued in Washington, D.C. at 1600 this 14th day of September, 2008.

A handwritten signature in black ink, reading "Sam Bodman", is positioned above the printed name of the Secretary of Energy.

Samuel W. Bodman
Secretary of Energy



BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 22

DOE ORDER NO. 202-20-1



The Secretary of Energy

Washington, DC 20585

Order No. 202-20-1

Pursuant to the authority vested in me by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in Texas due to Hurricane Laura (13L) making landfall the morning of August 27th as a strong Category 4 Hurricane. Large portions of the areas affected by Hurricane Laura are and will be without reliable electricity for a period of time, posing a threat to human life and health. It is my judgment that in these circumstances, the order I am issuing today will meet the emergency and serve the public interest because it will alleviate electricity shortages and protect the life and health of the people in the affected areas.

On August 23 and 24, 2020, the President issued Emergency Declarations for Louisiana (EM-3538) and Texas (EM-3540), ordering Federal assistance to supplement State and local response efforts due to the emergency conditions resulting from Hurricane Laura. On August 25, 2020, the President amended the emergency declarations for Louisiana and Texas, expanding the declarations to cover emergency protective response actions that State, local, and tribal officials take in the areas affected by Hurricane Laura.

On August 26, 2020, CenterPoint Energy Houston Electric, LLC (CEHE) filed an application requesting that the Secretary of Energy determine that an emergency exists in Texas within the meaning of FPA section 202(c), and issue an order authorizing a temporary connection as necessary for CEHE to assist in the restoration of power to Entergy Texas, Inc. (Entergy) and electric cooperatives and municipal customers within the State of Texas, and for CEHE to receive similar assistance due to the devastating effects of Hurricane Laura making landfall near the Texas-Louisiana border as a dangerous Category 4 hurricane on the Saffir-Simpson Hurricane Wind Scale. The proposed connection would occur via an existing, permanent tie-line authorized by the Federal Power Commission for emergency use only pursuant to section 202(d) of the FPA.¹ The tie-line is maintained in "open" condition on both ends and is only closed in emergency situations that necessitate its use consistent with the FPA and applicable orders. Without this emergency service, restoration of electric service to customers in the area could be delayed.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the "hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable," be consistent with any applicable environmental law and minimize any adverse environmental impacts. As any temporary connection would affect an existing tie-line, it should not result in generation that would exceed emissions limitations. Therefore, this order is not anticipated to result in a conflict with a requirement of any Federal, State, or local environmental law or regulation.

Based on my determination set forth above, I hereby order:

¹ See *Houston Lighting & Power Co.*, 19 FPC 819 (1958).

Effective immediately, CEHE is authorized and directed to temporarily connect, at transmission and distribution levels such as 12.5 kilovolts (kV), 13.2-kV, 25-kV, 34.5-kV, 69-kV, 138-kV, and 230-kV to the system of Entergy so that CEHE and Entergy may provide emergency assistance to each other if necessary to restore electric service. CEHE will utilize an existing, permanent 138-kV tie-line located between Dayton, Texas and Crosby, Texas, to accomplish the interconnection.

Pursuant to section 202(d) of the Federal Power Act, during the continuance of this order, any person or municipality engaged in the transmission and sale of electric energy and not otherwise subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) may make such temporary connections with any public utility subject to the jurisdiction of FERC, and shall not become subject to FERC jurisdiction as a result of that temporary connection.

CEHE is directed to report all dates that temporary connection of distribution and transmission lines occurred, the location of the temporary connection of distribution or transmission lines, and the quantity of energy delivered (in watt-hours) by October 26, 2020.

This order shall be effective upon its issuance and shall expire at 23:59 Central Daylight Time on October 12, 2020.

Issued in Washington, D.C. at 5:00 PM Eastern Daylight Time on this 27th day of August 2020.

A handwritten signature in black ink, appearing to read "Dan Brouillette", is written over a horizontal line.

Dan Brouillette
Secretary of Energy

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 23

DOE ORDER NO. 202-24-1



Department of Energy
Washington, DC 20585

Order No. 202-24-1

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in Florida due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

Emergency Situation

On October 9, 2024, Duke Energy Florida, LLC (Duke), an investor-owned utility, whose service territory includes electric customers in Florida, filed a *Request for Emergency Order Under Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department) “to preserve the reliability of the bulk electric power system.” As of 4 PM EDT on October 9, 2024, Hurricane Milton is a Category 3 storm forecast to remain a major hurricane and expand in size as it approaches the west coast of Florida. The center is likely to make landfall along the west-central coast of Florida during the night on Wednesday, October 9, 2024, or in the early morning on Thursday, October 10, 2024, and move east-northeastward across central Florida through October 10, 2024. Hurricane Milton follows the landfall of Hurricane Helene in Florida on September 26, 2024, which resulted in over 230 deaths in the southeast United States and for which recovery and restoration efforts remain ongoing. As of 5:00 PM EDT on October 9, 2024, Florida was experiencing 118,000 outages related to the approaching Hurricane Milton, with the number increasing rapidly.

On October 7, 2024, President Biden declared that an emergency exists in the State of Florida and ordered Federal assistance to supplement State, tribal, and local response efforts due to the emergency conditions resulting from Hurricane Milton beginning on October 5, 2024, and continuing.

Duke has indicated that its service territory is being impacted by Hurricane Milton. Duke expects that Hurricane Milton will cause hurricane-force-gusts across the St. Petersburg/Tampa metropolitan region at the height of the storm overnight into early Thursday, October 10, 2024. Elsewhere, strong tropical-storm to near hurricane-force-gusts are projected to impact highly populated zones along the I-4 corridor served by Duke. The combination of damaging winds,

torrential rain and subsequent flooding, storm surge at the coast, and possible tornadoes, will result in major power outages, damaging distribution and transmission infrastructure, and threaten several generation stations along the path. Application at 1.

While many generating units in the Duke service territory continue to function adequately under these stressed conditions, several of Duke's generating units are expected to be forced to shut down due to facility limits on wind speeds and storm surge, as well as staffing issues caused by mandatory evacuations. Additionally, Crystal River Units 4 and 5 remain in forced outage from storm surge impacts from Hurricane Helene. Specifically, approximately 4,000 MW of generating units are currently offline and will remain offline during Hurricane Milton. Application at 2.

Additionally, several units at Citrus Combined Cycle, the subject of this Order, may be forced offline by conditions in its Title V operating permit. With projected outages and low demand, in order to keep the Citrus Combined Cycle units online, they would potentially need to operate at low load for an extended period of time, which could result in noncompliance with its Title V permit. If these units are brought offline due to these compliance requirements, they may not be able ramp up quickly enough to meet demand as load increases following power restoration, particularly in light of the amount of generation predicted to be offline due to hurricane impacts. For example, ramp-up times from a cold start could be eight or nine hours, and could be further delayed by pre-generation start-up checks. Additionally, shutting down also increases the risk of equipment failure, as well as the risk of water intrusion due to thermal and pressure gradient changes. If equipment fails or is damaged by Hurricane Milton, units may not be able to start without additional maintenance. In that case, Duke may have to declare an Energy Emergency Alert (EEA) Level 3 and institute rotating load shed. Such impacts would hinder post-hurricane restoration and recovery activities and overall grid reliability. Although Duke would attempt to mitigate such impacts through alternative generation as well as power purchases, it is unknown what will be available following Hurricane Milton and whether the necessary transmission infrastructure will remain for this purpose. Application at 2.

The Florida Reliability Coordinating Council, Inc. (FRCC), the Reliability Coordinator for Duke's service territory and others, filed a formal endorsement on October 9, 2024, of Duke's Application, specifically the need to continue operation of the Specified Resources in Application Exhibit A at low load operation to help reduce the likelihood of any firm load shedding during the hurricane event. FRCC Letter at 1. The endorsement explains:

It is the FRCC's firm opinion that granting this relief request will provide an immeasurable benefit to this mission and in turn, the public served by the FRCC and its member entities. Allowing this relief will not only serve the reliability of [Duke's] service territory, but also the many local electric cooperatives served by [Duke] and other interconnected electric utilities and service providers.

FRCC Letter at 2.

Description of Mitigation Measures

Duke has indicated that it will attempt to keep the Citrus Combined Cycle units operating at a load level compliant with its Title V permit whenever possible, including attempting to sell power to keep load higher. Duke anticipates needing to continue these efforts through October 13, 2024. Subject to the exceptions included in this Order, Duke has committed to continuing to take such actions, including attempting to sell power, before operating any units in a manner that will result in a conflict with a requirement of any federal, state, or local environmental statute or regulation, including requirements in permits issued pursuant to such laws or regulations.

Request for Order

Duke requests that the Secretary issue an order immediately, effective October 9, 2024, through 00:00 EDT on October 13, 2024, authorizing “continued operation of the Specified Resources” in the Duke service territory. Application at 3. The generating units (Specified Resources) that this Order pertains to are listed on the Order 202-24-1 Resources List, as described below.

ORDER

Given the emergency nature of the expected load stress, the responsibility of Duke to ensure maximum reliability on its system, and the ability of Duke to identify and dispatch generation necessary to meet load requirements, I have determined that, under the conditions specified below, 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). This determination is based on, among other things:

- The emergency nature of the expected load stress caused by the current extreme weather event and its aftermath threatens to cause loss of power to homes and local businesses in the areas that may be affected by curtailments, presenting a risk to public health and safety.
- The expected shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes in the State of Florida and within the region demonstrate the need for the Specified Resources to contribute to system reliability.
- Duke’s responsibility to ensure maximum reliability on its system, and, with the authority granted in this Order, its ability to identify and dispatch generation, including the Specified Resources, necessary to meet the load resulting from the extreme weather event and its aftermath.

In line with the anticipated circumstances precipitated by Hurricane Milton, this Order is limited to the period beginning with the issuance of this Order on October 9, 2024, through 00:00 EDT on October 13, 2024. Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation on the conditions contained in this Order, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the “hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,” be consistent with any applicable environmental law and minimize any adverse environmental impacts. Duke anticipates that this Order may result in exceedance of emissions of Volatile Organic Compounds (VOC), specifically formaldehyde. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by Duke for reliability purposes.

Based on my determination of an emergency set forth above, I hereby order:

- A. From the time this Order is issued on October 9, 2024, to 00:00 EDT on October 13, 2024, in the event that Duke determines that generation from the Specified Resources is necessary to meet the electricity demand that Duke anticipates in Florida during and immediately following this event, I direct Duke to dispatch such unit or units and to order their operation only as needed to maintain the necessary expected generation in the Duke service territory. Specified Resources are those generating units set forth on the Order 202-24-1 Resource List, which the Department shall post on www.energy.gov. Duke is directed to provide updates, if any, to Exhibit A to its Application with the anticipated category of environmental impact(s) (i.e., formaldehyde, sulfur dioxide, nitrogen oxide, mercury, carbon monoxide emissions, wastewater release, other air pollutants) by 21:00 EDT on October 10, 2024.
- B. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by Duke for maintaining grid reliability to avoid adverse health and safety impacts to customers from shedding firm customer load. Duke shall exhaust all possible measures to run the Specified Units at a load level in compliance with permit requirements, including attempting to sell power. Duke shall provide a daily notification to the Department (via AskCR@hq.doe.gov) reporting each generating unit that has been designated to use the allowance and operated in reliance on the allowances contained in this Order.
- C. All operation of the Specified Resource 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. This Order does not provide relief from any obligation to pay fees or purchase offsets or allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators.
- D. Duke shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department of Energy from time to time. By October 20, 2024, Duke shall report all dates between October 9, 2024, and October 13, 2024, inclusive, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting

limits, including formaldehyde, sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and other air pollutants, as well as exceedances of wastewater release limits. Duke shall submit a final report by November 20, 2024, with any revisions to the information reported on October 20, 2024. The environmental information submitted in the final report shall also include the following information:

- (i) Emissions data in pounds per hour for each Specified Resource unit, for each hour of the operational scenario, for CO, NO_x, PM₁₀, formaldehyde, VOC, and SO₂;
- (ii) Emissions data must include emissions (lbs/hr) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits;
- (iii) The number and actual hours each day that each Specified Resource unit operated in excess of permit limits or conditions, e.g. “Generator #1; October 10, 2024; 4 hours; 04:00-08:00 EDT”;
- (iv) Amount, type and formulation of any fuel used by each Specified Resource;
- (v) All reporting provided under the Specified Resource’s operating permit requirements over the last three years to the United States Environmental Protection Agency or local Air Quality Management District for the location of a Specified Resource that operates pursuant to this Order;
- (vi) Additional information requested by DOE as it performs any environmental review relating to the issuance of this Order; and
- (vii) Information provided by the Specified Resource describing how the requirements in paragraph C above were met by the Specified Resource while operating under the provisions of this Order.

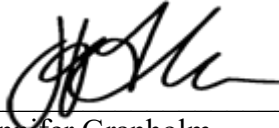
In addition, Duke shall provide information to the Department quantifying the net revenue associated with generation in excess of environmental limits accruing to the Specified Resources in connection with any order issued by the Department pursuant to Section 202(c) of the Federal Power Act.

- E. Duke shall take reasonable measures to inform affected communities where all Specified Resources operate that Duke has been issued this Order, in a manner that ensures that as many members of the community as possible are aware of the Order, and explains clearly what the Order allows Duke to do. At a minimum, Duke shall post a description of this Order on its website (with a link to this Order) and identify the name, municipality or other political subdivision, and zip code of any Specified Resource covered by this Order. In addition, in the event that a Specified Resource operates pursuant to this Order, a general description of the action authorized by this Order will be included in any press release issued by Duke with respect to the extreme weather event and will include a reference to the website posting required by the preceding sentence for further information. Duke shall describe the actions taken to comply with this paragraph in the

reports delivered to the Department pursuant to paragraph D above.

- F. This Order shall not preclude the need for the Specified Resource to comply with applicable state, local, or Federal law or regulations following the expiration of this Order.
- G. Duke shall be responsible for the reasonable third-party costs of performing analysis of the environmental and environmental justice impacts of this Order, including any analysis conducted pursuant to the National Environmental Policy Act.
- H. This Order shall be effective upon its issuance, and shall expire at 00:00 EDT on Sunday, October 13, 2024, with the exception of the reporting requirements in paragraph D. Renewal of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 8:00 PM Eastern Daylight Time on this 9th day of October 2024.

A handwritten signature in black ink, appearing to read 'J. Granholm', is written over a horizontal line.

Jennifer Granholm
Secretary of Energy

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 24

DOE ORDER NO. 202-21-1



Department of Energy
Washington, DC 20585

Order No. 202-21-1

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in Texas due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

On February 14, 2021, the Electric Reliability Council of Texas (ERCOT), the Independent System Operator (ISO) whose service territory includes 90 percent of the electric customers in the state of Texas, filed a *Request for Emergency Order Under Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department) “to preserve the reliability of bulk electric power system.”

ERCOT is in the beginning stages of an unprecedented cold weather event brought on by a rare, southward excursion of the jet stream into the South Central United States. Temperatures for Sunday and Monday in many parts of Texas are forecasted to drop well below the lowest temperatures experienced in several decades, and abnormally low temperatures are expected to persist for several more days. This weather event is expected to result in record winter electricity demand that will exceed even ERCOT’s most extreme seasonal load forecasts.

On February 12, 2021, Greg Abbott, the Governor of the State of Texas declared a [state of disaster](#) in all 254 Texas counties due to severe weather posing an “imminent threat of widespread and severe property damage, injury, and loss of life due to prolonged freezing temperatures, heavy snow, and freezing rain statewide.” On the morning of February 14, ERCOT issued a system-wide conservation [notice](#) addressing the expected system emergency and describing steps that homeowners and businesses can take to reduce system demand.¹ ERCOT has also worked with state agencies to take measures that maximize generation availability in Texas. For example, on February 12, the Railroad Commission of Texas issued an [Emergency Order](#) pursuant to Texas Utilities Code affecting the gas utility systems in the state. The order specified increasing the priority of gas supplies to ERCOT generators. ERCOT’s application also noted that the “Texas Commission on Environmental Quality has indicated that it will provide enforcement discretion to generators in the ERCOT region that may exceed state emissions requirements during emergency conditions.”

According to ERCOT, the measures taken by ERCOT and other state agencies may not prove sufficient to avoid rotating outages of as much as 4,000 MW. Moreover,

¹ ERCOT, *Grid Operator Requests Energy Conservation for System Reliability*, www.ercot.com/news/releases/show/225151.

ERCOT has been alerted that numerous generation units will be unable to operate at full capacity without violating federal air quality or other permit limitations.

ERCOT requests that the Secretary issue an order immediately, effective February 14, 2021 through February 19, 2021, authorizing “the provision of additional energy from all generation units subject to emissions or other permit limits” in the ERCOT region. The generating units (Specified Resources) that this Order pertains to are listed on the Order 202-21-1 Resources List, as described below.

Given the emergency nature of the expected load stress, the responsibility of ERCOT to ensure maximum reliability on its system, and the ability of ERCOT to identify and dispatch generation necessary to meet the additional load, I have 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). Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the “hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,” be consistent with any applicable environmental law and minimize any adverse environmental impacts. ERCOT anticipates that this Order may result in exceedance of emissions of sulfur dioxide, nitrogen oxide, mercury, and carbon monoxide emissions, as well as wastewater release limits. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by ERCOT for reliability purposes.

Based on my determination of an emergency set forth above, I hereby order:

A. From February 14, to February 19, 2021, in the event that ERCOT determines that generation from the Specified Resources is necessary to meet the electricity demand that ERCOT anticipates in Texas during this event, I direct ERCOT to dispatch such unit or units and to order their operation only as needed to maintain the reliability of the power grid in the ERCOT region when the demand on the ERCOT system exceeds expected energy and reserve requirements. Specified Resources are those natural gas, coal, or distillate fuel oil generating units set forth on the Order 202-21-1 Resource List, subject to updates directed here and as described in paragraph D, which the Department shall post on www.energy.gov. ERCOT is directed to update Exhibit A to its Application with the anticipated category of environmental impact (i.e. sulfur dioxide, nitrogen oxide, mercury, carbon monoxide emissions, wastewater release, other air pollutants) by 21:00 Central Standard Time on February 15, 2021.

B. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by ERCOT for reliability purposes. Consistent with good utility practice, ERCOT shall exhaust all reasonably and

practically available resources, including available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions, to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Specified Resources. ERCOT shall provide a daily notification to the Department reporting each generating unit that has been designated to use the allowance and operated in reliance on the allowances contained in this Order.

In furtherance of the foregoing and, in each case, subject to the exhaustion of all available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions available to support grid reliability:

- (i) with respect to any Specified Resource that is an ERCOT Generation Resource or Settlement Only Generator whose operator notifies ERCOT that the unit is unable, or expected to be unable, to produce at its maximum output due to an emission or effluent limit in any federal environmental permit, ERCOT shall ensure that such Specified Resource is only allowed to exceed any such limit during a period for which ERCOT has declared an Energy Emergency Alert (EEA) Level 2 or Level 3. This incremental amount of restricted capacity would be offered at a price no lower than \$1,500/MWh. Once ERCOT declares that such an EEA Level 2 or Level 3 event has ended, the unit is required to immediately return to operation within its permitted limits; and
- (ii) with respect to any Specified Resource that is an ERCOT Generation Resource whose operator notifies ERCOT that the unit is offline or would need to go offline due to an emission or effluent limit in any federal environmental permit, and to which ERCOT has issued a Reliability Unit Commitment (RUC) instruction, the operator may make all of the unit's capacity available to ERCOT for dispatch during a period for which ERCOT has declared an EEA Level 2 or Level 3. This incremental amount of restricted capacity would be offered at a price no lower than \$1,500/MWh. Once ERCOT declares that such an EEA Level 2 or Level 3 event has ended, the unit is required to immediately return to operating at a level below the higher of its minimum operating level or the maximum output allowable under the permitted limit.

In the event ERCOT identifies the need to exceed other relevant environmental permitting levels, ERCOT shall specifically identify such permitting levels and DOE will consider ERCOT's request in good faith.

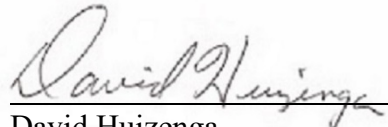
C. All entities must comply with environmental requirements to the maximum extent necessary to operate consistent with the emergency conditions. This Order does not provide relief from an entity's obligations to purchase allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators.

D. In the event that ERCOT identifies additional generation units that it deems necessary to operate in excess of federal environmental permitting limits in order to maintain the reliability of the power grid in the ERCOT region when the demand on the ERCOT system exceeds expected energy and reserve requirements, including any such entity to which ERCOT intends to issue a Reliability Unit Commitment (RUC), ERCOT shall provide prompt written notice to the Department of Energy at AskOE@hq.doe.gov identifying in an updated Exhibit A to its Application such additional generation units, the fuel type of such unit, and the anticipated category of environmental impact, at 9:00 Central Standard Time or 21:00 Central Standard Time, whichever follows closest in time to the unit identification by ERCOT to the greatest extent feasible. Such additional generation unit shall be deemed a Specified Resource for the purpose of this Order for the hours prior to the required written notice to the Department, and ERCOT may dispatch such additional generation units, provided that if the Department of Energy notifies ERCOT that it does not approve of such generation unit being designated as a Specified Resource, such generation unit shall not constitute a Specified Resource upon notification from the Department. The Department shall post an updated Order 202-21-1 Resource List as soon as practicable following notification from ERCOT under this paragraph.

E. ERCOT shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department of Energy from time to time. By March 1, 2021, ERCOT shall report all dates between February 14, 2021, and February 19, 2021, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and other air pollutants, as well as exceedances of wastewater release limits. ERCOT shall submit a final report by March 31, 2021, with any revisions to the information reported on March 1, 2021. In addition, ERCOT shall provide information to the Department quantifying the net revenue associated with generation in excess of environmental limits accruing to non-RUC units in connection with orders issued by the Department pursuant to Section 202(c) of the Federal Power Act.

F. This Order shall be effective upon its issuance, and shall expire at 11:59 p.m. Central Standard Time Friday, February 19, 2021, with the exception of the reporting requirements in paragraph E. Renewal of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 8:51 PM Eastern Standard Time on this 14th day of February, 2021.


David Huizenga
Acting Secretary of Energy

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 25

DOE ORDER NO. 202-22-3



Department of Energy

Washington, DC 20585

Order No. 202-22-3

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and delegated by email correspondence (Dec. 23, 2022), and for the reasons set forth below, I hereby determine that an emergency exists in Texas due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

Emergency Situation

On December 23, 2022, the Electric Reliability Council of Texas, Inc. (ERCOT), the Independent System Operator (ISO) whose service territory includes 90 percent of the electric customers in the state of Texas, filed a *Request for Emergency Order Under Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department) “to preserve the reliability of the bulk electric power system.”

ERCOT, like many regions across the country, is currently being impacted by a severe winter weather system. For Texas, this severe winter weather system has caused a significant drop in temperatures over the last day. This temperature drop, accompanied by high winds in excess of 40 mph, has resulted in wind chill values across the state generally below ten degrees Fahrenheit, with some areas of Texas experiencing wind chills values well below zero degrees. As a consequence, the demand for electricity in ERCOT rose to an all-time winter peak on the morning of Friday, December 23, 2022, in excess of 74,000 MW. This severely cold weather is expected to last through Sunday morning.

While the vast majority of generating units in the ERCOT region continue to operate without any problem, a small number of units have experienced operating difficulties due to cold weather or gas curtailments. Specifically, approximately 11,000 MW of thermal generating units, 4,000 MW of wind generating units, and 1,700 MW of solar generating units are currently outaged or derated to the weather conditions. Most of these units are expected to return to service before anticipated demand peak through Saturday, December 24, 2022. However, if these units do not return to service, or if ERCOT experiences additional generating unit outages, it is possible that ERCOT would need to curtail some amount of firm load until 10:00 Central Time on December 25, 2022 in order to maintain the security of the ERCOT system.

Description of Mitigation Measures

ERCOT is taking measures to ensure the supply of generation will continue to be sufficient to meet system demand and reserve requirements. On December 22, 2022, at ERCOT's request, the Texas Commission on Environmental Quality announced that it will provide [enforcement discretion](#) to generators in the ERCOT region that may exceed state emissions requirements during emergency conditions. On December 23, 2022, ERCOT directed certain dual-fuel units enrolled in ERCOT's new Firm Fuel Supply Service to begin operating on fuel oil due to natural gas delivery limitations. Moreover, if generating reserves do eventually diminish to a level that requires ERCOT to declare an Energy Emergency Alert (EEA), ERCOT will take additional measures to provide additional reserves prior to exceeding air quality and other federal permit limitations as authorized under this Order, including:

- Utilizing all available DC Tie import capacity
- Issuing a public conservation appeal
- Deploying capacity enrolled in ERCOT's Emergency Response Service
- Instructing transmission and distribution service providers to implement distribution voltage reduction measures and to deploy customers enrolled in load management programs
- Instructing Load Resources providing Responsive Reserve Service (RRS) to curtail their demand, and instruct Generation Resources providing RRS to make their provide additional capacity available for ERCOT's dispatch
- Instructing Energy Storage Resources to suspend charging

According to ERCOT, the measures taken by ERCOT and other state agencies may not prove sufficient to avoid the need to curtail firm load to ensure system reliability.

Request for Order

ERCOT requests that the Secretary issue an order immediately, effective December 23, 2022, through 10:00 Central Time on December 25, 2022, authorizing "the provision of additional energy from the units identified in Exhibit A, as well as any other generating units subject to emissions or other permit limitations" in the ERCOT region. The generating units (Specified Resources) that this Order pertains to are listed on the Order 202-22-3 Resources List, as described below.

ORDER

Given the emergency nature of the expected load stress, the responsibility of ERCOT to ensure maximum reliability on its system, and the ability of ERCOT to identify and dispatch generation necessary to meet the additional load, I have determined that, under the conditions specified below, 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). This determination is based on, among other things:

- The emergency nature of the expected load stress caused by the current cold weather event threatens to cause loss of power to homes and local businesses in the areas that may be affected by curtailments, presenting a risk to public health and safety.
- The expected shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes in the State of Texas and within the ERCOT region demonstrate the need for the Specified Resources to contribute to the reliability of ERCOT.
- ERCOT's responsibility to ensure maximum reliability on its system, and, with the authority granted in this Order, its ability to identify and dispatch generation, including the Specified Resources, necessary to meet the additional load resulting from the cold weather event.

In line with the anticipated circumstances precipitated by the cold weather event, this Order is limited to the period beginning with the issuance of this Order on December 23, 2022 through 10:00 Central Time on December 25, 2022. Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation on the conditions contained in this Order, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the "hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable," be consistent with any applicable environmental law and minimize any adverse environmental impacts. ERCOT anticipates that this Order may result in exceedance of emissions of sulfur dioxide, nitrogen oxide, mercury, and carbon monoxide emissions, as well as wastewater release limits. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by ERCOT for reliability purposes.

Based on my determination of an emergency set forth above, I hereby order:

A. From the time this Order is issued on December 23, 2022 to 10:00 Central Time on December 25, 2022, in the event that ERCOT determines that generation from the Specified Resources is necessary to meet the electricity demand that ERCOT anticipates in Texas during this event, I direct ERCOT to dispatch such unit or units and to order their operation only as needed to maintain the reliability of the power grid in the ERCOT region when the demand on the ERCOT system exceeds expected energy and reserve requirements. Specified Resources are those generating units set forth on the Order 202-22-3 Resource List, subject to updates directed here and as described in paragraph D, which the Department shall post on www.energy.gov. ERCOT is directed to update Exhibit A to its Application with the anticipated category of environmental impact(s) (i.e., sulfur dioxide, nitrogen oxide, mercury, carbon monoxide emissions, wastewater release, other air pollutants) by 21:00 Central Time on December 25, 2022.

B. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by ERCOT for reliability purposes. Consistent with good utility practice, ERCOT shall exhaust all reasonably and practically available resources, including available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions, to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Specified Resources. ERCOT shall provide a daily notification to the Department reporting each generating unit that has been designated to use the allowance and operated in reliance on the allowances contained in this Order.

In furtherance of the foregoing and, in each case, subject to the exhaustion of all available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions available to support grid reliability:

- (i) For any Generation Resource or Settlement Only Generator whose operator notifies ERCOT that the unit is unable, or expected to be unable, to produce at its maximum output due to an emissions or other limit in any federal environmental permit at any point before 12:00 Central Time on Saturday, December 24, 2022, and between 18:00 Central Time on Saturday, December 24, 2022 and 10:00 Central Time on Sunday, December 25, 2022, the unit will be allowed to exceed any such limit only during any period for which ERCOT has declared an Energy Emergency Alert (EEA) Level 2 or Level 3. This incremental amount of restricted capacity would be offered at a price no lower than \$1,500/MWh. Once ERCOT declares that the EEA Level 2 event has ended, the unit would be required to immediately return to operation within its permitted limits. And at all other times, the unit would be required to operate within its permitted limits.
- (ii) For any Generation Resource whose operator notifies ERCOT that the unit is offline or would need to go offline at any point before 12:00 Central Time on Saturday, December 24, 2022, and between 18:00 Central Time on Saturday, December 24, 2022 and 10:00 Central Time on Sunday, December 25, 2022 due to an emissions or other limit in any federal environmental permit, ERCOT may issue a Reliability Unit Commitment (RUC) instruction directing the unit operator to bring the unit online, or to keep the unit online, and to operate at the minimum level at which the Resource can be sustainably operated. In this circumstance, the operator would be allowed to make all of the unit's capacity available to ERCOT for dispatch during any period for which ERCOT has declared an Energy Emergency Alert (EEA) Level 2 or Level 3. This incremental amount of restricted capacity would be offered at a price no lower than \$1,500/MWh. Once ERCOT declares that such an EEA Level 2 event has ended, the unit would be required to immediately return to operating at a level below the higher of its minimum operating level or the maximum output allowable under the permitted limit.

C. All operation of the Specified Resource 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. This Order does not provide relief from any obligation to pay fees or purchase offsets or allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators.

D. In the event that ERCOT identifies additional generation units that it deems necessary to operate in excess of federal environmental permitting limits in order to maintain the reliability of the power grid in the ERCOT region when the demand on the ERCOT system exceeds expected energy and reserve requirements, including any such entity to which ERCOT intends to issue a Reliability Unit Commitment (RUC), ERCOT shall provide prompt written notice to the Department of Energy at AskCR@hq.doe.gov with the name and location of those units that ERCOT has identified, as well as notice by the same means as an updated Exhibit A to its Application such additional generation units, the fuel type of such unit, and the anticipated category of environmental impact, at 09:00 Central Time or 21:00 Central Time, whichever follows closest in time to the unit identification by ERCOT to the greatest extent feasible. Such additional generation unit shall be deemed a Specified Resource for the purpose of this Order for the hours prior to the required written notice to the Department, and ERCOT may dispatch such additional generation units, provided that if the Department of Energy notifies ERCOT that it does not approve of such generation unit being designated as a Specified Resource, such generation unit shall not constitute a Specified Resource upon notification from the Department. The Department shall post an updated Order 202-22-3 Resource List as soon as practicable following notification from ERCOT under this paragraph.

E. ERCOT shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department of Energy from time to time. By January 25, 2023, ERCOT shall report all dates between December 23, 2022 and December 25, 2022, inclusive, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and other air pollutants, as well as exceedances of wastewater release limits. ERCOT shall submit a final report by February 25, 2023, with any revisions to the information reported on January 25, 2023. The environmental information submitted in the final report shall also include the following information:

- (i) Emissions data in pounds per hour for each Specified Resource unit, for each hour of the operational scenario, for CO, NOx, PM10, VOC, and SO2;
- (ii) Emissions data must include emissions (lbs/hr) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits;

- (iii) The number and actual hours each day that each Specified Resource unit operated in excess of permit limits or conditions, e.g. “Generator #1; December 24, 2022; 4 hours; 04:00-08:00 CT”;
- (iv) Amount, type and formulation of any fuel used by each Specified Resource;
- (v) All reporting provided under the Specified Resource’s operating permit requirements over the last three years to the United States Environmental Protection Agency or local Air Quality Management District for the location of a Specified Resource that operates pursuant to this Order;
- (vi) Additional information requested by DOE as it performs any environmental review relating to the issuance of this Order; and
- (vii) Information provided by the Specified Resource describing how the requirements in paragraph C above were met by the Specified Resource while operating under the provisions of this Order.

In addition, ERCOT shall provide information to the Department quantifying the net revenue associated with generation in excess of environmental limits accruing to non-RUC units in connection with orders issued by the Department pursuant to Section 202(c) of the Federal Power Act.

F. ERCOT shall take reasonable measures to inform affected communities where all Specified Resources operate that ERCOT has been issued this Order, in a manner that ensures that as many members of the community as possible are aware of the Order, and explains clearly what the Order allows ERCOT to do. At a minimum, ERCOT shall post a description of this Order on its website (with a link to this Order) and identify the name, municipality or other political subdivision, and zip code of Specified Resources covered by this Order, as the Specified Resources may be updated pursuant to paragraph D above. In addition, in the event that a Specified Resource operates pursuant to this Order, a general description of the action authorized by this Order will be included in any press release issued by ERCOT with respect to the cold weather event and will include a reference to the website posting required by the preceding sentence for further information. ERCOT shall describe the actions taken to comply with this paragraph in the reports delivered to the Department pursuant to paragraph E above.

G. This Order shall not preclude the need for the Specified Resource to comply with applicable state, local, or Federal law or regulations following the expiration of this Order.

H. ERCOT shall be responsible for the reasonable third-party costs of performing analysis of the environmental and environmental justice impacts of this Order, including any analysis conducted pursuant to the National Environmental Policy Act.

I. This Order shall be effective upon its issuance, and shall expire at 10:00 Central Time on Sunday, December 25, 2022, with the exception of the reporting requirements in

Department of Energy Order No. 202-22-3

paragraph E. Renewal of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 9:30 PM Eastern Standard Time on this 23rd day of December 2022.

Undersecretary of Energy for Infrastructure

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 26

DOE ORDER NO. 202-22-4



Department of Energy

Washington, DC 20585

Order No. 202-22-4

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and delegated by email correspondence (Dec. 23, 2022), and for the reasons set forth below, I hereby determine that an emergency exists in the electricity grid operated by PJM Interconnection, LLC (PJM) due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

Emergency Situation

On December 24, 2022, PJM, the Regional Transmission Operator (RTO) for 65 million people in thirteen states and the District of Columbia (the PJM Region), filed a *Request for Emergency Order Under Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department) “to preserve the reliability of the bulk electric power system.”

The PJM Region, like many regions across the country, is currently being affected by a severe winter weather system. PJM states that this weather system caused a significant drop in temperatures across the PJM Region on December 23, 2022, accompanied by high winds in excess of 40 mph. As a consequence of the impact of wind and decreasing temperatures, the demand for electricity in the PJM Region rose to an unusually high peak load on the evening of December 23, 2022, in excess of 135,000 MW. This severely cold weather is expected to last through Sunday morning.

While the vast majority of generating units in the PJM Region continue to function adequately under these stressed conditions, some units have experienced operating difficulties due to cold weather or fuel limitations, primarily gas. Specifically, approximately 45,000 MW of generating units (the majority of which are thermal) are currently outaged or derated. PJM has expressed its concern that these units will be unable to return to service over at least the next 48 hours, which coincides with the time period for which PJM is requesting this Order. Since these units may not promptly return to service, and in the event PJM experiences additional generating unit outages, PJM states that it may need to curtail some amount of firm load on December 24, December 25, or December 26, 2022 in order to maintain the security and reliability of the PJM system.

Description of Mitigation Measures

In its Application, PJM identifies the measures it is taking to ensure the supply of generation will continue to be sufficient to meet system demand and reserve requirements. On December 20, 2022, PJM issued a cold weather advisory in the PJM Region in anticipation of the forecasted weather conditions. Then on December 23, 2022, PJM issued

a PJM Region-wide cold weather alert which further highlighted PJM's expected need to call higher-than-normal generation resources in light of the anticipated weather.

On December 23, 2022, generating reserves diminished to a level that required PJM to declare an Energy Emergency Alert (EEA) Level 2 and take other emergency actions. PJM states that after having exhausted economic operation, PJM triggered a Maximum Generation Emergency Action to increase the PJM Region generation above the maximum economic level. Further, PJM triggered its load management reduction actions to provide additional load relief by using PJM-controllable load management programs. PJM called on demand response providers and curtailment service providers to reduce load. PJM also issued public appeals for consumers to reduce usage. PJM has continued to employ these emergency actions through December 24, 2022, and anticipates needing to continue them through the order end date that it has requested.

Since December 23, 2022, PJM has also taken additional measures to provide additional reserves, including:

- Reducing exports to neighboring regions and requested shared reserves for neighboring regions; consistent with joint operating agreements and other regulatory requirements, PJM has continued to communicate and collaborate with its interconnected neighboring systems when the demand on the PJM system has exceeded expected energy and reserve requirements and when emergency transfers were required to support PJM's interconnected neighboring systems;
- Issuing additional public conservation appeals;
- Running uneconomic generation during lower load periods to ensure their availability during peak conditions;
- Utilizing its Emergency Procedures to assist in maximizing the pumped storage hydro generation levels;
- Communicating and preparing transmission and distribution service providers to implement distribution voltage reduction measures; and
- Communicating and preparing transmission and distribution service providers to implement firm load shed.

In its Application, PJM committed to continue to take such actions, including utilizing other supply resources before calling upon any generators to operate in excess of permitting levels. According to PJM, it is nevertheless possible that the measures it has and will take may not be sufficient to avoid the need to curtail firm load in order to ensure system reliability.

Request for Order

PJM requests that the Secretary issue an order immediately, effective today, December 24, 2022, through 12:00 p.m. Eastern Time on Monday, December 26, 2022, authorizing the electric generating units identified in Exhibit A, as well as any other

generating units subject to emissions or other permit limitations in the PJM Region to operate up to their maximum generation output levels under the limited circumstances described in this Order, notwithstanding air quality or other permit limitations. The generating units (Specified Resources) that this Order pertains to are listed on the Order 202-22-4 Resources List, as described below.

ORDER

Given the emergency nature of the expected load stress, the responsibility of PJM to ensure maximum reliability on its system, and the ability of PJM to identify and dispatch generation necessary to meet the additional load, I have determined that, under the conditions specified below, 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). This determination is based on, among other things:

- The emergency nature of the expected load stress caused by the current cold weather event threatens to cause loss of power to homes and local businesses in the areas that may be affected by curtailments, presenting a risk to public health and safety.
- The expected shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes in the PJM Region demonstrate the need for the Specified Resources to contribute to the reliability of the PJM Region.
- PJM is responsible to ensure maximum reliability on its system, and, with the authority granted in this Order, its ability to identify and dispatch generation, including the Specified Resources, necessary to meet the additional load resulting from the cold weather event is enhanced.

In line with the anticipated circumstances precipitated by the cold weather event, this Order is limited to the period beginning with the issuance of this Order on December 24, 2022 through 12:00 pm Eastern Time on December 26, 2022. Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation on the conditions contained in this Order, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the “hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,” be consistent with any applicable environmental law and minimize any adverse environmental impacts. PJM anticipates that this Order may result in exceedance of emissions of sulfur dioxide, nitrogen oxide, mercury, and carbon monoxide emissions, as well as wastewater release limits. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by PJM for reliability purposes.

Based on my determination of an emergency set forth above, I hereby order:

A. From the time this Order is issued on December 24, 2022, to 12:00 pm Eastern Time on December 26, 2022, in the event that PJM determines that generation from the Specified Resources is necessary to meet the electricity demand that PJM anticipates in the PJM Region during this event, I direct PJM to dispatch such unit or units and to order their operation only as needed to maintain the reliability of the power grid in the PJM Region when the demand on the PJM system exceeds expected energy and reserve requirements. Specified Resources are those generating units set forth on the Order 202-22-4 Resource List, subject to updates directed here and as described in paragraph D, which the Department shall post on www.energy.gov.

B. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by PJM for reliability purposes. Consistent with good utility practice, PJM shall exhaust all reasonably and practically available resources, including available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions, to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Specified Resources. PJM shall provide a daily notification to the Department reporting each generating unit that has been designated to use the allowance and operated in reliance on the allowances contained in this Order.

In furtherance of the foregoing and, in each case, subject to the exhaustion of all available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions available to support grid reliability:

- (i) For any generation resource whose operator notifies PJM that the unit is unable, or expected to be unable, to produce at its maximum output due to an emissions or other limit in any federal environmental permit, and during the pendency of a PJM-triggered Maximum Generation Emergency Action, at any point before 12:00 Eastern Time on Monday, December 26, 2022, the unit will be allowed to exceed any such limit only during any period for which PJM has declared an Energy Emergency Alert (EEA) Level 2 or Level 3 (during which time PJM will have triggered a Maximum Generation Emergency Action), except as described in item (iii) below in certain limited circumstances in anticipation of an EEA Level 2. Once PJM declares that the EEA Level 2 event has ended, the unit would be required to immediately return to operation within its permitted limits. And at all other times, the unit would be required to operate within its permitted limits, except for the limited exceptions provided herein for operations in anticipation of an EEA Level 2 to prevent the cycling of units or facilitate the charging or pumping of other resources necessary for the EEA Level 2.
- (ii) For any generation resource whose operator notifies PJM that the unit is offline or would need to go offline at any point before 12:00 Eastern Time on Monday, December 26, 2022, due to an emissions or other limit in any

federal environmental permit, PJM may direct the unit operator to bring the unit online, or to keep the unit online, and to operate at the level consistent with its permits but subject to the exceptions set forth in this Order. In this circumstance, the operator is allowed to make all of the unit's capacity available to PJM for dispatch during any period for which PJM has declared an EEA Level 2 or 3 (during which time PJM has triggered a Maximum Generation Emergency Action), except as described in item (iii) below in certain limited circumstances in anticipation of an EEA Level 2. Once PJM declares that such an EEA Level 2 event has ended and the Maximum Generation Emergency Action is discontinued, the unit would be required to immediately return to operating at a level below the higher of its minimum operating level or the maximum output allowable under the permitted limit.

- (iii) PJM is hereby granted authority to operate the Specified Units that are combined cycle generating units in certain limited circumstances in advance of declaring an EEA Level 2, Maximum Generation Emergency, or in between such events, where such operation or continued operation of the Specified Resource is reasonably necessary to avoid shutting down and restarting the Specified Unit. PJM has represented that such cycling of units can cause reliability issues regarding restarting, delays, and increased emissions during startup. PJM is further authorized to operate the Specified Units in certain limited circumstances in advance of the declaring an EEA Level 2, Maximum Generation Emergency where such operation or continued operation of the Specified Resource is reasonably necessary to facilitate charging storage resources or pumping for pumped storage facilities that will be needed during an anticipated EEA Level 2. PJM is required to take measures to dispatch units for which cycling would otherwise be required in a manner reasonably intended to limit the duration and operating level of those units in such a way as to minimize exceedance of permit limitations consistent with the security and reliability of the PJM Region.
- (iv) To minimize adverse environmental impacts as set forth herein, this Order limits operation of dispatched units to the times and within the parameters determined by PJM for reliability purposes. Consistent with good utility practice, and notwithstanding standard merit order dispatch, PJM shall exhaust all reasonably and practically available resources, including available imports, demand response and identified behind-the-meter generation resources selected to minimize an increase in emissions to the extent that such resources provide support to maintain grid reliability prior to dispatching the Specified Resources at levels above their permitted emissions levels. PJM shall provide a daily notification to the Department reporting each generating unit that has been designated to use the allowance and operated in reliance on the allowances contained in this Order.

C. All operation of the Specified Resource 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. This Order does not provide relief from any obligation to pay fees or purchase offsets or allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators.

D. In the event that PJM identifies additional generation units that it deems necessary to operate in excess of federal environmental permitting limits in order to maintain the reliability of the power grid in the PJM Region when the demand on the PJM system exceeds expected energy and reserve requirements, PJM shall provide prompt written notice to the Department of Energy at AskCR@hq.doe.gov with the name and location of those units that PJM has identified, as well as additional notice by the same means through updating Exhibit A to its Application with such additional generation units, the fuel type of such unit, and the anticipated category of environmental impact, at 09:00 Eastern Time or 21:00 Eastern Time, whichever follows closest in time to the unit identification by PJM to the greatest extent feasible. Such additional generation unit shall be deemed a Specified Resource for the purpose of this Order for the hours prior to the required written notice to the Department updating Exhibit A, and PJM may dispatch such additional generation units, provided that if the Department of Energy notifies PJM that it does not approve of such generation unit being designated as a Specified Resource, such generation unit shall not constitute a Specified Resource upon notification from the Department. The Department shall post an updated Order 202-22-4 Resource List as soon as practicable following notification from PJM under this paragraph.

E. PJM shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department of Energy from time to time. By January 26, 2023, PJM shall report all dates between December 24, 2022, and December 26, 2022, inclusive, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and other air pollutants, as well as exceedances of wastewater release limits. PJM shall submit a final report by February 27, 2023, with any revisions to the information reported on January 26, 2023. The environmental information submitted in the final report shall also include the following information:

- (i) Emissions data in pounds per hour for each Specified Resource unit, for each hour of the operational scenario, for CO, NO_x, PM₁₀, VOC, and SO₂;
- (ii) Emissions data must include emissions (lbs/hr) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits;

- (iii) The number and actual hours each day that each Specified Resource unit operated in excess of permit limits or conditions, e.g., “Generator #1; December 25, 2022; 4 hours; 04:00-08:00 CT”;
- (iv) Amount, type and formulation of any fuel used by each Specified Resource;
- (v) All reporting provided under the Specified Resource’s operating permit requirements over the last three years to the United States Environmental Protection Agency or local Air Quality Management District for the location of a Specified Resource that operates pursuant to this Order;
- (vi) Additional information requested by DOE as it performs any environmental review relating to the issuance of this Order; and
- (vii) Information provided by the Specified Resource describing how the requirements in paragraph C above were met by the Specified Resource while operating under the provisions of this Order.

In addition, PJM shall provide information to the Department quantifying the net revenue in aggregate associated with generation in excess of environmental limits in connection with orders issued by the Department pursuant to Section 202(c) of the Federal Power Act.

F. PJM shall take reasonable measures to inform affected communities where all Specified Resources operate that PJM has been issued this Order, in a manner that ensures that as many members of the community as possible are aware of the Order, and explains clearly what the Order allows PJM to do. At a minimum, PJM shall post a description of this Order on its website (with a link to this Order) and identify the name, municipality or other political subdivision, and zip code of Specified Resources covered by this Order, as the Specified Resources may be updated pursuant to paragraph D above. In addition, in the event that a Specified Resource operates pursuant to this Order, a general description of the action authorized by this Order will be included in any press release issued by PJM with respect to the cold weather event and will include a reference to the website posting required by the preceding sentence for further information. PJM shall describe the actions taken to comply with this paragraph in the reports delivered to the Department pursuant to paragraph E above.

G. This Order shall not preclude the need for the Specified Resource to comply with applicable state, local, or Federal law or regulations following the expiration of this Order.

H. PJM shall be responsible for the reasonable third-party costs of performing analysis of the environmental and environmental justice impacts of this Order, including any analysis conducted pursuant to the National Environmental Policy Act.

I. This Order shall be effective upon its issuance, and shall expire at 12:00 Eastern Time on Monday, December 26, 2022, with the exception of the reporting requirements in

Department of Energy Order No. 202-22-4

paragraph E. Renewal of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 5:30 PM Eastern Standard Time on this 24th day of December 2022.

Undersecretary of Energy for Infrastructure

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 27

DOE ORDER NO. 202-20-2



Department of Energy

Washington, DC 20585

Order No. 202-20-2

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and delegated to the Deputy Secretary of Energy by paragraph 1.11(A) of Delegation Order No. 00-001.00G (Apr. 10, 2018), and re-delegated to the Assistant Secretary for Electricity on September 6, 2020, and for the reasons set forth below, I hereby determine that an emergency exists in California due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

On September 6, 2020, the California Independent System Operator (CAISO), the Regional Transmission Organization whose service territory includes California and a portion of Nevada, filed a *Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department) “to preserve the reliability of bulk electric power system.”

Since August, California has experienced several periods of extreme heat, some of which have resulted in rolling blackouts. On September 2, 2020, California Governor Gavin Newsom issued an [emergency proclamation](#) to help alleviate the stress on the state’s power grid due to an “Extreme Heat Event.” In declaring a statutory emergency, the proclamation cited a number of factors and observations, including the following:

- “[B]eginning on September 2, 2020, a significant heat wave struck California, bringing widespread temperatures well in excess of 100 degrees throughout the State;”
- “[T]he National Weather Service [has] issued multiple Excessive Heat Warnings within [California];”
- “[T]he Extreme Heat Event has and will continue to put significant demand and strain on California’s energy grid; and”
- “[T]he Extreme Heat Event is expected to last through at least September 7, 2020.”

The proclamation authorizes emergency use of stationary generators, portable generators, and “auxiliary engines by ocean-going vessels berthed in California ports,” and directs the state’s Air Resources Board to “exercise maximum discretion to permit the use of stationary and portable generators or auxiliary ship engines to reduce the strain on the energy infrastructure and increase energy capacity.” The proclamation also

suspends “[a]ny permit, regulation or law prohibiting, restricting or penalizing the use of stationary or portable generators or auxiliary ship engines” as allowed by the proclamation order.

On September 3, the CAISO issued a statewide [flex alert](#) for September 5-7, encouraging voluntary load reduction between 3:00 p.m. and 9:00 p.m. local time each day. The alert warns that consumers should “be prepared for potential power outages, both planned and unplanned during heat waves, especially in extremely high temperatures that last multiple days,” noting that “[h]ot weather can also impact generation and transmission equipment, as it runs harder and longer with less time to cool, which can cause machinery failure.” The alert explains that there is little energy available to import due to high heat predicted throughout the West, and that the wildfires in the state may take out transmission lines or cause lines to be shut down for the safety of firefighters in the area.

The CAISO notes that “[e]lectric demand forecasts have continued to increase since the issuance of the California Governor’s emergency proclamation and the CAISO balancing authority area has lost additional generation supply because of wildfires.” Application at 3. To address the situation, the “CAISO has started to direct all generators in its balancing authority area to produce to their maximum capability during certain times of the day,” and has gone so far as to allow, when reliable and safe based on currently operating conditions, “certain generators to generate more than their interconnection capacity to provide additional power to the grid.” *Id.* at 3. The impetus for the Application, however, arose on September 5, 2020, when the operator of the natural gas-fired resources identified in Exhibit A of the Application informed the CAISO that it could not produce to its maximum generation capability without exceeding its federal air quality or other permit limitations. *Id.* “The CAISO is informed and believes these limitations involve both permit limitations under federal law for nitrogen oxide emissions and ammonia releases as well as a limitations regarding fuel and ammonia throughput.” *Id.*

The CAISO requests “that the Secretary issue an order immediately, effective September 6, 2020, authorizing specific electric generating units located within the CAISO balancing authority area to operate at their maximum generation output levels when directed to do so by the CAISO, notwithstanding air quality or other permit limitations.” *Id.* at 1. The generating units specified are units 1 - 5 at the Walnut Creek Energy Park in the City of Industry, California; units 5/6 and 7/8 at the El Segundo Energy Center in El Segundo, California; and units 1 - 4 at the Long Beach Generating Station located in Long Beach, California. *Id.* For purposes of this Order, these units are referred to as the “Specified Resources.” Collectively, they represent up to as much as 100 MW. The CAISO requests “such order be entered today, September 6, 2020, and remain effective for a period of seven (7) days, without prejudice to the possible issuance of further orders as necessary to address the emergency...[to] ensure additional supply is

available during a period in which California may continue to experience extreme weather and wildfires that have forced generation out of service.” *Id.* at 2.

Given the emergency nature of the expected load stress, the responsibility of the CAISO to ensure maximum reliability on its system, and the ability of the CAISO to identify and dispatch generation necessary to meet the additional load, I have 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). Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the “hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,” be consistent with any applicable environmental law and minimize any adverse environmental impacts. The CAISO anticipates that this Order may result in exceedance of National Ambient Air Quality Standards under the Clean Air Act and notes that the Specified Resources are located in different communities within California and should not result in any disproportionate impact on a single community. *Id.* at 4. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by the CAISO for reliability purposes.

Based on my determination of an emergency set forth above, I hereby order:

- A. From September 6, 2020, to September 13, 2020, in the event that the CAISO determines that generation from the Specified Resources is necessary to meet the exceptional levels of electricity demand that the CAISO anticipates in California, I direct the CAISO to dispatch such unit or units and to order their operation only as needed to maintain the reliability of the power grid in California between the hours of 14:00 Pacific Daylight Time and 22:00 Pacific Daylight Time on days when the demand on the CAISO system exceeds expected energy and reserve requirements.
- B. The CAISO shall select the combination of units that meets the reliability emergency and minimizes environmental impact. Consistent with good utility practice, the CAISO shall exhaust all reasonably and practically available resources, including demand response and identified behind-the-meter generation resources to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Specified Resources.
- C. By September 21, 2020, the CAISO shall report all dates between September 6, 2020, and September 13, 2020, on which the Specified Resources were

operated, the hours of operation, and the estimated air emissions (including nitrogen oxides and ammonia releases) and fuel and ammonia throughput associated with operating each unit. The CAISO shall submit a final report by October 13, 2020, with any revisions to the information reported on September 21.

- D. This Order shall be effective upon its issuance, and shall expire at 23:59 Pacific Daylight Time on September 13, 2020, with the exception of the reporting requirements in paragraph C. Renewal of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. this 6th day of September, 2020.

Bruce Walker
Assistant Secretary for Electricity

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 28

DOE ORDER NO. 202-21-2



Department of Energy

Washington, DC 20585

Order No. 202-21-2

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and delegated to the Deputy Secretary of Energy by paragraph 1.12(A) of Delegation Order No. 00-001.00H (Oct. 2, 2020), and for the reasons set forth below, I hereby determine that an emergency exists in California due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

Emergency Situation

On September 7, 2021, the California Independent System Operator Corporation (CAISO), the Independent System Operator whose service territory includes California and a portion of Nevada, filed a *Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department or DOE) “to preserve the reliability of [the] bulk electric power system in California.”

California has experienced several periods of extreme heat, drought conditions, and wildfires. Such conditions are expected to occur over the next 60 days and threaten the reliable operation of the bulk electric power system in California. Application at 2-3.

Since June 2021, California Governor Gavin Newsom has issued three proclamations of a state of emergency regarding electricity. In declaring a statutory emergency, the proclamations cited a number of factors and observations, including the following as set forth in the July 30 proclamation:

- As a result of drought conditions, “water supplies in California's reservoirs have dropped to levels so low that hydroelectric power plants have had to reduce or cease production, leading to a reduction of nearly 1,000 megawatts of capacity and further exacerbating the drought’s impact on California”
- In June and July 2021, states of emergencies were proclaimed due to “record-breaking extreme heat events that hit California and other Western states, increasing residents’ demand and putting significant demand and strain on California’s energy grid”
- “[A]t the same time as the July 2021 Extreme Heat Event, the Bootleg Fire in Southern-Central Oregon threatened the California-Oregon Intertie, which delivers power from the Pacific Northwest into California, and reduced electricity supply into California by almost 4,000 megawatts”

- Due to “continuing wildfires, ongoing drought, and extreme heat conditions caused by climate change, California currently faces an additional projected energy supply shortage of up to 3,500 megawatts during the afternoon-evening ‘net-peak’ period of high power demand on days when there are extreme weather conditions, which is even greater than projected in May 2021”

The July 30, 2021 emergency proclamation further describes the extreme climate impacts across the West and their ongoing impacts on electric reliability. The “proclamation identifies an energy supply shortage in California this summer and in the summer of 2022.” *Id.* at 4. The proclamation authorizes several measures aimed at mitigating the emergency, including authorizing the California Energy Commission (CEC) “to expedite amendments to existing power plant licenses and issue new licenses to emergency and temporary generators.” *Id.* The proclamation also directs the California Air Resources Board (CARB) “to develop and implement a plan to mitigate the effects of additional emissions authorized by the proclamation. The mitigation plan must include plans to invest in programs to improve air quality in communities, with a particular focus on disadvantaged communities, and to reduce risk to sensitive populations.” *Id.*

The Application includes a letter from the CARB to DOE regarding the environmental mitigation plan. *Id.* at Exhibit F. In its letter, the CARB confirms to the Department that the state-funded environmental mitigation plan will address emissions authorized by the Order and that the CARB will determine details of environmental mitigation options through a public process. *Id.* Further, the CARB will gather “local perspectives on how best to mitigate the effects of local increases of emissions to potential and historically affected parties.” *Id.* The CARB letter also supports the continued application of the requirements under its Mandatory Reporting of Greenhouse Gas Emissions Regulation (MRR) and California’s Cap-and-Trade Regulation during the pendency of an order under FPA section 202(c). *Id.*

Description of Mitigation Measures

In its Application, the CAISO described actions it has taken in order to alleviate the generation shortfall, including: 1) denying requests of five existing generating facilities that notified the CAISO of their intent to mothball or retire and designating those facilities as Reliability Must-Run units; 2) declaring a capacity procurement mechanism significant event that triggers authority to procure additional electric generating capacity under its tariff approved by Federal Energy Regulatory Commission; 3) working to accelerate energization of projects in its interconnection queue; and 4) consulting with other California stakeholders in “implementing a utility load reduction program that provides some relief to the bulk power system during stressed grid conditions.” *Id.* at 4-5. In addition, the Application explains that the California Department of Water Resources (CDWR) has “undertaken procurement efforts to deploy mobile, modular General Electric TM2500 aero-derivative gas turbine generators at existing generating facility sites,” four of which are included as Covered Resources (defined below). *Id.* at 5.

California is also engaged in long term efforts to mitigate the supply shortfall and address the reliability of the bulk electric power system in California. In June 2021, the California Public Utility Commission (CPUC) “issued an order directing its jurisdictional load serving entities to procure 11,500 MW of new electricity resources to come online between the years 2023 and 2026.” *Id.* The CPUC order includes requirements that this additional capacity come solely from zero-emission sources, including specific requirements for long-duration storage and clean firm generation. CPUC Decision No. 21-06-035 - Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026), 35-38, 46-48.

The Application describes emergency procedures the CAISO can use to meet insufficient supply in the day-ahead market, such as “restricting transmission and generator maintenance activities, calling for voluntary conservation, requesting additional supply bids to meet expected energy and reserve requirements, seeking emergency assistance from neighboring balancing authorities, and deploying emergency demand response.” Application at 5. The CAISO plans to “direct generators to produce more MW than their interconnection capacity for specific hours and day(s) during the emergency event if reliability studies find the transmission system can support their increased output.” *Id.* at 5-6. However, the CAISO Application indicates “that these measures may not be sufficient to avoid load curtailments absent issuance of an emergency order.” *Id.* at 6.

Request for Order

The CAISO “requests that the Secretary issue the requested emergency order by September 10, 2021, or a[s] soon as possible thereafter, authorizing specific electric generating resources (Covered Resources) located within California to test and operate at their maximum generation output levels when directed to do so by the CAISO, notwithstanding air quality or other permit limitations.” *Id.* at 1. The Covered Resources that this Order pertains to are listed below and more fully described in Application Exhibit A – List of Covered Resources:

- Midway Sunset Cogeneration Facility Unit C in Fellows, California (Midway Sunset Unit C);
- The Alamitos Energy Center in Long Beach, California;
- The Huntington Beach Energy Project in Huntington Beach, California;
- The Walnut Creek Energy Park in the City of Industry, California;
- Greenleaf Unit 1 in Yuba City, California (Greenleaf Unit 1); and
- The Roseville Energy Park in Roseville, California (Roseville Energy Park).

The CAISO indicates that “the owners of the Covered Resources will not make additional identified capacity available absent an order from the Secretary under FPA section 202(c).” *Id.* at 6. The CAISO noted that the electric generating units identified in its Application “have de-rated their facilities based on conditions set forth in their permits regarding nitrogen oxide emissions, heat output as well as fuel throughput.” Accordingly, the CAISO anticipates that the emergency order it requested “may result in exceedance of National Ambient Air Quality Standards (NAAQS) under the Clean Air Act.” *Id.* In addition, the Midway Sunset Unit C is unable to satisfy a permit requirement that it operate in support of an industrial host. *Id.* The new General Electric TM2500 aero-derivative gas turbine generators deployed at the Greenleaf Unit 1 site and Roseville Energy Park do not yet have required best available control technology to control emissions and have not completed permitting processes to obtain their pre-construction permits under Title I, or operating permits under Title V, of the Clean Air Act. *Id.* The CAISO expects that, in the absence of an order under FPA section 202(c), over 200 megawatts of available generating capacity will not be available for dispatch as a result of these constraints. *Id.* “Authorizing these facilities to operate, notwithstanding permit and other limitations, would help mitigate shortages of expected energy and reserve requirements.” *Id.*

ORDER

Given the emergency nature of the expected load stress, the responsibility of the CAISO to ensure maximum reliability on its system, and the ability of the CAISO to identify and dispatch generation necessary to meet the additional load, I have determined that additional dispatch of the Covered Resources is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c). These factors, including as declared in the Governor’s July 30 emergency proclamation and as described in the Application, have led to my determination that an emergency exists in California due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest. In line with the emergency proclamation’s anticipation of energy shortages this summer, this Order is limited to a 60-day period. Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any order that may result in a conflict with a requirement of any environmental law be limited to the “hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,” be consistent with any applicable environmental law and minimize any adverse environmental impacts. The CAISO anticipates that this Order may result in exceedance of NAAQS under the Clean Air Act and other conflicts with environmental law. Based on the CAISO Application, the distance between the Covered Resources is large enough that no two of the Covered Resources are expected to impact the same community. *Id.* at 6-7. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by the CAISO for reliability purposes, and subject to the conditions set forth in this Order.

Based on my determination of an emergency set forth above, I hereby order:

- A. From September 10, 2021 to November 9, 2021, in the event that the CAISO determines that generation from the Covered Resources is necessary to preserve the reliability of the bulk electric power system in California, I direct the CAISO to dispatch such unit or units and to order their operation solely under the following conditions:
- i. the issuance and continuation of an Energy Emergency Alert Level 2¹ condition or greater between the hours of 14:00 Pacific Daylight Time and 22:00 Pacific Daylight Time after exhausting all reasonably and practically available resources;
 - ii. a transmission emergency² that requires operation of the Covered Resource to prevent or mitigate load curtailment during any operating hour; or
 - iii. limited testing directed by the CAISO or synchronization of Midway Sunset Unit C, Greenleaf Unit 1, and Roseville Energy Park during periods of lowest electric demand for natural gas resources, as determined by the CAISO.
- B. Consistent with good utility practice, the CAISO shall exhaust all reasonably and practically available resources, including demand response and identified behind-the-meter generation resources to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Covered Resources.
- C. All operation of the Covered Resources 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. This Order does not provide relief from any obligation to purchase offsets or allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators. Covered Resources must comply with the requirements of the CARB MRR and California's Cap-and-Trade regulation, to the extent applicable.
- D. The CAISO shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department from time to time. By December 1, 2021, the CAISO shall report source specific data for all dates

¹ For the purposes of this Order, "Energy Emergency Alert Level 2" has the meaning set forth in Section 3.6.4 of the California ISO System Emergency Operating Procedure Version 13.1, Effective Date August 20, 2021 (CAISO Emergency Operating Procedure).

² For the purposes of this Order, "transmission emergency" has the meaning set forth in Section 3.5 of the CAISO Emergency Operating Procedure.

between September 10, 2021 and November 9, 2021, on which the Covered Resources were operated, including, for each unit, (1) the hours of operation, as well as the hours in which any permit limit was exceeded and (2) a preliminary description of each permit term that was exceeded and the manner in which such exceedance occurred. The CAISO shall also submit a final report by January 7, 2022, with any revisions to the information reported on December 1, 2021. The environmental information submitted in the final report shall also include the following information:

- i. Emissions data in pounds per hour for each Covered Resource unit, for each hour of the operational scenario, for CO, NO_x, PM_{2.5}, PM₁₀, volatile organic compounds (VOC), and SO₂;
 - ii. Emissions data must include the actual emissions (lbs/hr), permitted operating/emission limits, and the actual incremental emissions above the permit limits, except that for emissions units not equipped with continuous emission monitoring systems, actual emissions shall be calculated using source test data;
 - iii. Stack parameters for each Covered Resource unit: stack height, exit diameter, exit gas temperature, and exit velocity (or volumetric flow rate). Temperature and velocity must be the values applicable to the operations above permit limits;
 - iv. The actual hours that each Covered Resource unit operated in excess of permit limits or operated without otherwise-required permits;
 - v. Information provided to the CARB in response to the CARB's development and implementation of the plan to mitigate the effects of additional emissions authorized by the July 30, 2021 proclamation; and
 - vi. Additional information requested by DOE as it performs any environmental review relating to the issuance of this Order.
- E. The CAISO shall inform all affected communities where all Covered Resources operate that the CAISO has been issued this Order, in a manner that ensures that as many members of the community as possible are aware of the Order, and explains clearly what the Order allows the CAISO to do. The CAISO shall describe the actions taken to comply with this paragraph in the reports delivered to the Department pursuant to paragraph D above.
- F. This Order shall not preclude the need for any Covered Resource to comply with applicable state, local, or Federal law or regulations following the expiration of this Order.
- G. The CAISO shall be responsible for the reasonable third-party costs of performing analysis of the environmental and environmental justice impacts of this Order, including any analysis conducted pursuant to the National Environmental Policy Act.

- H. This Order shall be effective upon its issuance, and shall expire at 23:59 Pacific Daylight Time on November 9, 2021, with the exceptions of paragraphs F and G and the reporting and analysis requirements in paragraphs D and E. Renewal or amendment of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 16:26 Eastern Time on this 10th day of September, 2021.

A handwritten signature in blue ink, reading "David M. Turk", is positioned above a horizontal line.

David M. Turk
Deputy Secretary of Energy

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 29

DOE ORDER NO. 202-22-1



Department of Energy

Washington, DC 20585

Order No. 202-22-1

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and delegated to the Deputy Secretary of Energy by paragraph 1.12(A) of Delegation Order No. S1-DEL-S2-2022 (Mar. 14, 2022), and further delegated by the Deputy Secretary by email correspondence (Sept. 2, 2022), and for the reasons set forth below, I hereby determine that an emergency exists in California due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

Emergency Situation

On September 1, 2022, the California Independent System Operator Corporation (CAISO), the Independent System Operator whose service territory includes most of California and a portion of Nevada, filed a *Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department) “to preserve the reliability of the bulk electric power system in California.”

California has experienced several periods of extreme heat, drought conditions, and threat of wildfires. Such conditions are expected to occur over the next several days and threaten the reliable operation of the bulk electric power system in California. Application at 2-3.

On August 31, 2022, California Governor Gavin Newsom issued a proclamation declaring a state of emergency regarding electricity from September 2 through September 7, 2022. In declaring a statutory emergency, the proclamation cited a number of factors and observations, including the following:

- A significant heat wave will bring temperatures “in excess of 100 degrees throughout the State and is forecast to bring record temperatures 10–20 degrees above normal throughout the State, exceeding 110 degrees in some areas”
- The extreme heat will put a significant demand and strain on California’s energy grid and is forecast to be a “West-wide event” meaning that energy demand will be high across the region and “California will have limited ability to import energy from [out of state]”
- The CAISO issued a Heat Bulletin forecasting high electric demand during the extreme heat event that will “stress the energy grid, with peak load for electricity projected to reach its highest level of the year, exceeding 48,000 megawatts on September 5, 2022”

- The CAISO is forecasting supply deficiencies of “over 3,000 megawatts during evening hours from September 4, 2022, through September 6, 2022” and advised that emergency interventions would allow energy customers to make contingency plans ahead of the Labor Day holiday weekend.

The proclamation authorizes several measures aimed at mitigating the emergency and avoiding jeopardizing public health or safety, including directing the California Air Resources Board (CARB) to “implement its State-funded Climate Heat Impact Response Program (CHIRP) to mitigate emissions from any operation pursuant to this Proclamation.” The proclamation also directs the California Energy Commission (CEC) to “provide information requested by [CARB] to assist with its implementation” of CHIRP.

The Application includes a statement that the CAISO prepared its request in consultation with both CEC and CARB. Application at 2. Furthermore, the CAISO states that both state entities have informed the CAISO they will support any reporting DOE may require under an emergency order. *Id.*

Description of Mitigation Measures

In its Application, the CAISO described actions it has taken in order to alleviate the generation shortfall, including: 1) utilizing its day-ahead market to ensure it has secured sufficient supply to meet its demand for the next operating day and its real-time market to increase incremental supply to meet changes in the day-ahead demand forecast; 2) directing generators to produce more megawatts than their interconnection capacity for specific hours and day(s) during the emergency event if reliability studies find the transmission system can support their increased output; 3) denying requests of generating facilities that notified the CAISO of their intent to mothball or retire and designating those facilities as Reliability Must-Run units to run as cost-of-service units under the terms of the CAISO tariff; and 4) working with the owner of Midway Sunset Cogeneration under its Reliability Must Run agreement to deploy emission controls at one of its units and make an additional 80 megawatts available to the CAISO system. *Id.* at 4-5. In addition, the Application explains that the California Department of Water Resources (CDWR) has “deployed [four] mobile, modular General Electric TM2500 aero-derivative gas turbine generators at existing generating facility sites.” *Id.* at 4.

California is also engaged in long-term efforts to mitigate the supply shortfall and address the reliability of the bulk electric power system in California in response to increasing climate change-induced heat waves and drought conditions. The California Public Utilities Commission (CPUC) has issued an order directing its jurisdictional load serving entities to procure 11,500 megawatts of new electricity resources to come online between the years 2023 and 2026. *Id.*; see also CPUC Decision No. 21-06-035, Decision Requiring Procurement To Address Mid-Term Reliability (2023-2026), June 30, 2021. Additionally, California enacted Assembly Bill 205 this year, which adopts various measures to enhance electric grid reliability, including the creation of a strategic reserve for use to meet electric demand in extreme events, such as heatwaves. Application at 4–5.

The Application describes emergency procedures the CAISO can use to meet insufficient supply in the day-ahead market, such as “restricting transmission and generator maintenance activities, calling for voluntary conservation, requesting additional supply bids to meet expected energy and reserve requirements, seeking emergency assistance from neighboring balancing authorities, and deploying emergency demand response.” *Id.* at 5. The CAISO plans to “direct generators to produce more MW than their interconnection capacity for specific hours and day(s) during the emergency event if reliability studies find the transmission system can support their increased output.” *Id.* However, the CAISO Application indicates “that these measures may be insufficient to avoid load curtailments in the coming days” and issuing an emergency Order will “provide another tool for the CAISO to help mitigate this risk.” *Id.*

Request for Order

The CAISO “requests that the Secretary issue the requested emergency order by Friday, September 2, 2022, or a[s] soon as possible thereafter, authorizing specific electric generating resources (Covered Resources) located within California to operate at their maximum generation output levels between 2:00 p.m. and 10:00 p.m., when directed to do so by the CAISO, notwithstanding air quality or other permit limitations.” *Id.* at 1. The Covered Resources that this Order pertains to are the three natural gas-fired electric generating facilities listed below and more fully described in Application Exhibit A – List of Covered Resources:

- The Alamitos Energy Center in Long Beach, California;
- The Huntington Beach Energy Project in Huntington Beach, California;
- The Walnut Creek Energy Park in the City of Industry, California;

The CAISO indicates that “the owners of the Covered Resources cannot make additional identified capacity available absent an order from the Secretary under FPA [section] 202(c).” *Id.* at 5. The CAISO noted that the electric generating units identified in its Application “have de-rated their facilities based on conditions set forth in their permits regarding nitrogen oxide emissions, heat output, and fuel throughput.” *Id.* Accordingly, the CAISO anticipates that, if the Covered Resources are dispatched in exceedance of their permit limits pursuant to the emergency order it has requested, there will be an increase in nitrogen oxide, ammonia, and carbon monoxide emissions that “may result in exceedance of National Ambient Air Quality Standards (NAAQS) under the Clean Air Act.” *Id.* The CAISO expects that, in the absence of an order under FPA section 202(c), these constraints will collectively preclude CAISO dispatch of approximately 28 megawatts of available generating capacity. *Id.* “Authorizing these facilities to operate, notwithstanding permit and other limitations, would help mitigate shortages of expected energy and reserve requirements.” *Id.*

ORDER

Given the emergency nature of the expected load stress and generation shortfall, the responsibility of the CAISO to ensure maximum reliability on its system, and the ability of the CAISO to identify and dispatch generation necessary to meet additional load if an order is issued, I have determined that additional dispatch of the Covered Resources is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c). These factors, including as declared in the Governor's August 31 emergency proclamation and as described in the Application, have led to my determination that an emergency exists in California due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest. In line with the emergency proclamation's anticipation of near-term energy shortages, this Order is limited to a 7-day period. Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation, under the conditions and with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any order that may result in a conflict with a requirement of any environmental law be limited to the "hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable," be consistent with any applicable environmental law and minimize any adverse environmental impacts. The CAISO anticipates that this Order may result in exceedance of NAAQS under the Clean Air Act and other conflicts with environmental law. Based on the CAISO Application, while all three Covered Resources are located in Southern California—two in Los Angeles County and one in Orange County—no two Covered Resources are located in the same community. This will limit the cumulative burden of the Order on any one community. *See Id.* at 6. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by the CAISO for reliability purposes, and subject to the conditions set forth in this Order.

Based on my determination of an emergency set forth above, I hereby order:

- A. From September 2, 2022, to September 8, 2022, in the event that the CAISO determines that generation from the Covered Resources is necessary to preserve the reliability of the bulk electric power system in California, I direct the CAISO to dispatch such unit or units and to order their operation solely under the following conditions:
 - i. the issuance and continuation of an Energy Emergency Alert Level 2¹ condition or greater between the hours of 14:00 Pacific Daylight Time and 22:00 Pacific Daylight Time after exhausting all reasonably and practically available resources; or,

¹ For the purposes of this Order, "Energy Emergency Alert Level 2" has the meaning set forth in Section 3.6.3 of the California ISO System Emergency Operating Procedure, Procedure No. 4420, Version 14.0, Effective Date May 1, 2022 (CAISO Emergency Operating Procedure).

- ii. a transmission emergency² that requires operation of the Covered Resource to prevent or mitigate load curtailment during any operating hour.
- B. Consistent with good utility practice, the CAISO shall exhaust all reasonably and practically available resources, including demand response and identified behind-the-meter generation resources to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Covered Resources.
- C. All operation of the Covered Resources 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. This Order does not provide relief from any obligation to purchase offsets or allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators. Covered Resources must comply with the requirements of the CARB MRR and California's Cap-and-Trade regulation, to the extent applicable.
- D. The CAISO shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department from time to time. By October 10, 2022, the CAISO shall report source-specific data for all dates between September 2, 2022, and September 8, 2022, on which the Covered Resources were operated, including, for each unit, (1) the hours of operation, as well as the hours in which any permit limit was exceeded, and (2) a preliminary description of each permit term that was exceeded and the manner in which such exceedance occurred. The CAISO shall also submit a final report by November 14, 2022, with any revisions to the information reported on December 12, 2022. The environmental information submitted in the final report shall also include the following information:
 - i. Emissions data in pounds per hour for each Covered Resource unit, for each hour of the operational scenario, for CO, NO_x, PM_{2.5}, PM₁₀, volatile organic compounds (VOC), and SO₂;
 - ii. Emissions data must include the actual emissions (lbs/hr), permitted operating/emission limits, and the actual incremental emissions above the permit limits, except that for emissions units not equipped with continuous emission monitoring systems, actual emissions shall be calculated using source test data;
 - iii. Stack parameters for each Covered Resource unit: stack height, exit diameter, exit gas temperature, and exit velocity (or volumetric flow

² For the purposes of this Order, "transmission emergency" has the meaning set forth in Section 3.5 of the CAISO Emergency Operating Procedure.

- rate). Temperature and velocity must be the values applicable to the operations above permit limits;
- iv. The actual hours that each Covered Resource unit operated in excess of permit limits or operated without otherwise-required permits;
 - v. Information provided to the CARB in response to the CARB's development and implementation of the plan to mitigate the effects of additional emissions authorized by the August 31, 2022 proclamation;
 - vi. Additional information requested by DOE as it performs any environmental review relating to the issuance of this Order; and
 - vii. Information provided by Covered Resources describing how these requirements were met by the Covered Resources while operating under the provisions of this Order.
- E. The CAISO shall inform all affected communities where all Covered Resources operate that the CAISO has been issued this Order, in a manner that ensures that as many members of the community as possible are aware of the Order, and explains clearly what the Order allows the CAISO to do. The CAISO shall describe the actions taken to comply with this paragraph in the reports delivered to the Department pursuant to paragraph D above.
- F. This Order shall not preclude the need for any Covered Resource to comply with applicable state, local, or Federal law or regulations following the expiration of this Order.
- G. The CAISO shall be responsible for the reasonable third-party costs of performing analysis of the environmental and environmental justice impacts of this Order, including any analysis conducted pursuant to the National Environmental Policy Act.
- H. This Order shall be effective upon its issuance, and shall expire at 23:59 Pacific Daylight Time on September 8, 2022, with the exceptions of paragraphs F and G and the reporting and analysis requirements in paragraphs D and E. Renewal or amendment of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 16:00 Eastern Time on this 2nd day of September, 2022.



Kathleen Hogan
Acting Under Secretary for
Infrastructure

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 30

DOE ORDER NO. 202-22-1 AMENDMENTS



Department of Energy

Washington, DC 20585

Amendment Number 1 to Order No. 202-22-1

On September 2, 2022, because of a shortage of currently operational electric generation facilities, high demand for electricity, and other adverse conditions resulting from an extreme heat event in California, I issued Order No. 202-22-1. Order No. 202-22-1 authorizes the California Independent System Operator (CAISO) to direct the operation of the Covered Resources identified in Order No. 202-22-1 and on the terms set forth therein.

On September 7, 2022, the CAISO submitted a *Request for Modification of Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Request for Modification) in which it requested that Order No. 202-22-1 be amended to add two units at Calpine's Greenleaf Unit 1 site in Yuba City, California (the Greenleaf Units) as additional Covered Resources and that the Greenleaf Units be permitted to operate through September 9, 2022, and otherwise in accordance with the terms of Order No. 202-22-1. The two Greenleaf Units are aero-derivative gas turbine generators. Each unit has a nameplate capacity of approximately 30 MW. CAISO reports that the water injection pump failed at the Greenleaf Units on September 6, 2022. Operation of the Greenleaf Units could cause exceedance of their permitted emissions limits, and thus could result in suspension of their operation absent the issuance of an emergency order permitting operation of the Greenleaf Units during specified conditions. CAISO reports that it continues to forecast high electric demand and supply deficiencies during peak demand hours for the next several days.

I find that the circumstances which led to my previous determination that California was experiencing a shortage of electric energy continue and that this Amendment Number 1 to Order No. 202-22-1 will help to meet the emergency conditions in the CAISO control area and serve the public interest as required by FPA section 202(c).

ORDER

For the reasons set forth above, pursuant to Section 202(c) of the Federal Power Act, it is ordered that Order No. 202-22-1 is hereby amended to add the Greenleaf Units as Covered Resources subject to the terms of Order No. 202-22-1, except that the Greenleaf Units may be operated through September 9, 2022. All other terms of Order No. 202-22-1 remain the same and in effect, including Ordering Paragraphs A-H.

Issued in Washington, D.C. on this 7th day of September, 2022.

A handwritten signature in cursive script, appearing to read "Kathleen Hogan", is positioned above a horizontal line.

Kathleen Hogan
Acting Under Secretary for
Infrastructure

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 31

DOE ORDER NO. 202-22-2



Department of Energy

Washington, DC 20585

Order No. 202-22-2

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and delegated to the Deputy Secretary of Energy by paragraph 1.12(A) of Delegation Order No. S1-DEL-S2-2022 (Mar. 14, 2022), and further delegated by the Deputy Secretary by email correspondence (Sept. 2, 2022), and for the reasons set forth below, I hereby determine that an emergency exists in California due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

Emergency Situation

On September 2, 2022, the Balancing Authority of Northern California (BANC) filed a *Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department or DOE) “to preserve the reliability of the bulk electric power system in California,” and more specifically to allow the BANC Balancing Authority Area (BAA) to request the dispatch of generation within the BANC BAA “that may be necessary for BANC to meet demand in the face of extreme heat.” BANC is a joint powers authority whose members include the Sacramento Municipal Utility District and other municipalities, irrigation districts, and public utilities districts. BANC is a registered Balancing Authority with the North American Electric Reliability Corporation and operates as a neighboring BAA to the California Independent System Operator Corporation (CAISO) BAA. On September 4, 2022, BANC filed an *Amended, Supplemented and Clarified Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Amended Application) in response to questions from DOE.

California has experienced several periods of extreme heat, drought conditions, and threat of wildfires. Such conditions are expected to occur over the next several days and threaten the reliable operation of the bulk electric power system in California. The loads from the forecasted heat wave over the next week are expected to push demand for electric energy by BANC members to at or over historical peaks and higher than normally expected planning targets for this time of year. Amended Application at 2.

On August 31, 2022, California Governor Gavin Newsom issued a proclamation declaring a state of emergency regarding electricity from September 2 through September 7, 2022.¹ In declaring a statutory emergency, the proclamation cited a number of factors and observations, including the following:

- A significant heat wave will bring temperatures “in excess of 100 degrees throughout the State and is forecast to bring record temperatures 10–20 degrees

¹ [GSS 9534-1E-20220831133826 \(ca.gov\)](https://www.ca.gov/govpress/2022/09/05/gov-proclamation-2022-00011)

above normal throughout the State, exceeding 110 degrees in some areas (the ‘Extreme Heat Event’);”

- The extreme heat will put a significant demand and strain on California’s energy grid and is forecast to be a “West-wide event” meaning that energy demand will be high across the region and “California will have limited ability to import energy from out-of-state;”
- The CAISO issued a Heat Bulletin forecasting high electric demand during the extreme heat event that will “stress the energy grid, with peak load for electricity projected to reach its highest level of the year, exceeding 48,000 megawatts on September 5, 2022;” and
- The CAISO is forecasting supply deficiencies of “over 3,000 megawatts during evening hours from September 4, 2022, through September 6, 2022” and advised that emergency interventions would allow energy customers to make contingency plans ahead of the Labor Day holiday weekend.

The proclamation authorizes several measures aimed at mitigating the emergency and avoiding jeopardizing public health or safety, including directing the California Air Resources Board (CARB) to “implement its State-funded Climate Heat Impact Response Program (CHIRP) to mitigate emissions from any operation pursuant to this Proclamation.” The proclamation also directs the California Energy Commission (CEC) to “provide information requested by [CARB] to assist with its implementation” of CHIRP.

BANC noted that it “has prepared this request in consultation with the California Energy Commission (CEC), the California Governor’s Office, and the CAISO.” Application at 2.

Description of Mitigation Measures

In its Application, BANC described actions it has taken in order to alleviate the generation shortfall. Electric utilities within BANC, in coordination with CEC, CAISO, and the California Governor’s Office, have implemented conservation and other extraordinary efforts to procure additional supply. BANC members have been able to obtain some purchases from the Pacific Northwest (PNW) bilateral wholesale markets to help offset the additional need, but the physical interties with PNW are near physical limits. BANC members have also been making use of demand-side programs, including commercial interruptible load programs, residential peak shaving programs, and public appeals for conservation. Amended Application at 2.

Request for Order

BANC has requested an emergency order to allow the BANC BAA to dispatch the Covered Resource described below within the BANC BAA that may be necessary for

the BANC to meet demand in the face of extreme heat, subject to the terms set forth herein.

The generators for which BANC is seeking this emergency order consist of 24 diesel-fired generator units owned by NTT Global Data Centers Americas (NTT), located at 1312 Striker Ave, Sacramento, CA 95834, known as “CA 2” and more fully described in the Application Exhibit A – List of Covered Resources (NTT Generators or Covered Resource). The Covered Resource plans to participate in the CEC-administered Demand Side Grid Support program that facilitates availability of resources for emergency purposes. Application at 3; Amended Application at 3-4. Therefore, while the Covered Resource has an aggregate installed capacity of 48MW, BANC requests that this emergency order apply only to capacity necessary to supply the load at the NTT facility served by the Covered Resource, up to 26.1 MW (Covered Maximum Output). Amended Application at 3-4.

BANC has requested that the Secretary issue the requested emergency order by Sunday, September 4, 2022, or as soon as possible thereafter, authorizing the Covered Resource to operate at the Covered Maximum Output level between 2:00 p.m. and 10:00 p.m., when directed to do so by BANC, notwithstanding air quality or other permit limitations.

ORDER

Given the emergency nature of the expected load stress and generation shortfall, the responsibility of BANC as the Balancing Authority to balance generation and load in its BAA to ensure maximum reliability on its system, and the ability of BANC to identify and dispatch generation necessary to meet additional load if an order is issued, I have determined that, under the conditions specified below, generation from the Covered Resource is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c) up to the Covered Maximum Output. This determination is based on, among other things:

- The expected shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes in the State of California and within the BANC BAA, including as declared in the Governor’s August 31 emergency proclamation and as described in the Application and Amended Application, demonstrate the need for the Covered Resource to contribute to the reliability of the BANC BAA.
- The availability of 26.1 MW of reduced load as enabled by generation from the Covered Resource up to the Covered Maximum Output provides significant assistance by freeing up system generating resources to help alleviate the shortage of generation and meet demand in the BANC BAA.
- The Covered Resource is enrolled in CEC’s Demand Side Grid Support (DSGS) program. The DSGS program establishes procedures for qualification, operation, and reporting to ensure that enrolled generation such as the Covered Resource

provides verifiable load reduction and thereby increase available system capacity during energy emergency events.

- The conditions in CEC's DSGS and those specified below restrict operation of the Covered Resource to those circumstances necessary to avoid load shed.

In line with the emergency proclamation's anticipation of near-term energy shortages, this Order is limited to a 5-day period, from September 4, 2022, through September 8, 2022. Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation, under the conditions and with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any order that may result in a conflict with a requirement of any environmental law be limited to the "hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable," be consistent with any applicable environmental law, and minimize any adverse environmental impacts. BANC anticipates that this Order may result in exceedance of National Ambient Air Quality Standards (NAAQS) under the Clean Air Act and other conflicts with environmental law. This Order would permit operation of the Covered Resource and corresponding emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_x), sulfur dioxide (SO₂), coarse particles (PM₁₀), and carbon monoxide (CO), in circumstances not contemplated by the units' Title V permit. Namely, under its Title V permits, the Covered Resource is permitted to operate at certain emission rates during maintenance and when electric service from the serving utility is interrupted by an unforeseeable event, but not in order to assist the utility in avoiding service interruptions for other customers. The Order would permit operation under grid emergency conditions; however, under the conditions specified below, it would not permit exceedance of the emission limits otherwise applicable to the units constituting the Covered Resource, including limits on the pounds of VOC, NO_x, SO₂, PM₁₀, and CO emitted per year.

Based on my determination of an emergency set forth above, I hereby order:

- A. From September 4, 2022, to September 8, 2022, in the event that BANC determines that generation from the Covered Resource is necessary to preserve the reliability of the bulk electric power system in California, I direct BANC to dispatch such unit or units and to order their operation solely under the following conditions: the issuance and continuation of an Energy Emergency Alert Level 2² condition or greater between the hours of 14:00 Pacific Time and 22:00 Pacific Time after exhausting all reasonably and practically available resources.
- B. Consistent with good utility practice, BANC shall exhaust all reasonably and practically available resources, including other demand response and

² For the purposes of this Order, "Energy Emergency Alert Level 2" has the meaning set forth in Section 3.6.3 of the California ISO System Emergency Operating Procedure, Procedure No. 4420, Version 14.0, Effective Date May 1, 2022 (CAISO Emergency Operating Procedure).

identified behind-the-meter generation resources to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Covered Resource.

- C. All operation of the Covered Resource 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. This Order does not provide relief from any obligation to pay fees or purchase offsets or allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators. The Covered Resource must comply with the requirements of the CARB Mandatory Reporting Regulation and California's Cap-and-Trade regulation, to the extent applicable. This Order allows operation of the Covered Resource under operating conditions not otherwise permitted by the Covered Resource's Title V permit but does not provide relief from the obligation to operate the Covered Resource within the equipment-specific or cumulative emission limit requirements specified in the Covered Resource's Title V permit.
- D. BANC shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department from time to time. By October 10, 2022, BANC shall report source-specific data for all dates between September 4, 2022, and September 8, 2022, on which the Covered Resource was operated, including, for each unit, (1) the hours of operation, as well as the hours in which any permit limit was exceeded, and (2) a preliminary description of each permit term that was exceeded and the manner in which such exceedance occurred. BANC shall also submit a final report by November 14, 2022, with any revisions to the information reported on December 12, 2022. The environmental information submitted in the final report shall also include the following information:
 - i. Emissions data in pounds per hour for each Covered Resource unit, for each hour of the operational scenario, for CO, NOx, PM10, VOC, and SO₂;
 - ii. Emissions data must include emissions (lbs/hr) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits;
 - iii. The number and actual hours each day that each Covered Resource unit operated in excess of permit limits or conditions, e.g. "Generator #1; September 5, 2022; 4 hours; 18:00-22:00 PT";
 - iv. Amount, type and formulation of any fuel used by each Covered Resource;

- v. All reporting provided over the last three years to the United States Environmental Protection Agency or Sacramento Metropolitan Air Quality Management District pursuant to operating permit requirements;
 - vi. Information provided to the CARB in response to the CARB's development and implementation of the plan to mitigate the effects of additional emissions authorized by the August 31, 2022 proclamation;
 - vii. Additional information requested by DOE as it performs any environmental review relating to the issuance of this Order; and
 - viii. Information provided by the Covered Resource describing how the requirements in paragraph C above were met by the Covered Resource while operating under the provisions of this Order.
- E. BANC shall inform all affected communities where the Covered Resource operates that BANC has been issued this Order, in a manner that ensures that as many members of the community as possible are aware of the Order, and explain clearly what the Order allows BANC to do, including potential impacts to the community where the Covered Resource is located and communities adjacent to the Covered Resource. BANC shall describe the actions taken to comply with this paragraph in the reports delivered to the Department pursuant to paragraph D above.
- F. This Order shall not preclude the need for the Covered Resource to comply with applicable state, local, or Federal law or regulations following the expiration of this Order.
- G. BANC shall be responsible for the reasonable third-party costs of performing analysis of the environmental and environmental justice impacts of this Order, including any analysis conducted pursuant to the National Environmental Policy Act.
- H. This Order shall be effective upon its issuance, and shall expire at 23:59 Pacific Time on September 8, 2022, with the exceptions of paragraphs F and G and the reporting and analysis requirements in paragraphs D and E. Renewal or amendment of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 16:20 Eastern Time on this 4th day of September, 2022.



Kathleen Hogan
Acting Under Secretary for
Infrastructure

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 32

DOE ORDER NO. 202-22-2 AMENDMENTS



Department of Energy

Washington, DC 20585

Amendment Number 1 to Order No. 202-22-2

On September 4, 2022, because of a shortage of currently operational electric generating facilities, high demand for electricity, and other adverse conditions resulting from the extreme heat event in California, I issued Order No. 202-22-2. Order No. 202-22-2 authorized the Balancing Authority of Northern California (BANC) to direct the identified electric generating resource (Covered Resources) to operate in BANC's Balancing Authority Area (BAA), under specified conditions, to prevent or mitigate potential power disruptions and provide relief to the bulk power system during stressed grid conditions caused by extreme heat until September 8, 2022. Order No. 202-22-2 expires at the end of the day on September 8, 2022, by its own terms.

On September 7, 2022, BANC submitted a *Request for Extension and Limited Amendment of Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Renewal Application) to the Department. In its Renewal Application, BANC requests an extension of Order 202-22-1 through September 11, 2022 and certain modifications to the run time hour limitations contained in Order No. 202-22-2. On September 8, 2022, BANC filed a Revised Request for *Request for Extension and Limited Amendment of Emergency Order Pursuant to Section 202(c) of the Federal Power Act* in response to questions from DOE.

Emergency Situation

In its Renewal Application, BANC states that "the actual heat event has been more severe and records loads have been experienced." The emergency conditions brought about by the ongoing extreme heat event in California have continued and worsened and the supply of electricity is at increased risk for meeting system demand. As stated in its Renewal Application, BANC established a new record peak of approximately 4943 MW on September 6. BANC entered into an EEA-2 as of 1330 hours that same day. During this period BANC had forced outages of significant generation but was able to return units to service in approximately 90 minutes. It is believed that BANC members Roseville and Modesto exceeded their all-time peaks. Consequently, BANC requests the expiration date of Order No. 202-22-2 be extended through September 11, 2022.

In addition to the extension of Order No. 202-22-2, BANC has requested that the Order be modified to remove the 2 PM to 10 PM run time limitation so as to allow additional operational flexibility. BANC specifically requests that the Covered Resource be allowed to run during anytime that they have received notice of an Energy Emergency Alert Level 2 (EEA2) condition or greater. The practical impact of this will be to allow the Covered Resource more notice to follow their protocols for ramping up their diesel-fired generator units. In addition, BANC has requested the ramp down of the Covered Resource could extend beyond the period in which the EEA 2 condition exists. Specifically, the ramp down would commence at the time the EEA 2 condition is declared ended and should be completed as soon as possible consistent with good utility and operational

Consultation

In considering renewal or reissuance of an order under FPA section 202(c) that may conflict with an environmental law or regulation, DOE is required to “consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation” and to include “conditions as such Federal agency determines necessary . . . to the extent practicable.” 16 U.S.C. § 824a(c)(4). The Environmental Protection Agency (EPA) is the primary federal agency in this case with expertise in the protected environmental interest, specifically Title V of the Clean Air Act and the Department consulted with EPA after receiving the Renewal Application and EPA did not request any additional conditions be included in this Order. Email from Acting Assistant Administrator Larry Starfield, EPA Office of Enforcement and Compliance Assurance to Kathleen Hogan, Acting Under Secretary for Infrastructure for DOE, September 7, 2022.

Based on the information submitted to the Department, I have determined that an emergency continues to exist in California due to a shortage of electric energy. I find that the issuance of this Order will help to meet the emergency conditions and serve the public interest as required by FPA section 202(c).

ORDER

For the reasons set forth above, pursuant to Section 202(c) of the FPA, I hereby grant BANC’s Renewal Application and issue this Order, with modifications as explained below, to extend the expiration date of Order No. 202-22-2 through September 11, 2022.

1. Ordering Paragraph A appearing on page 4 of Order No. 202-22-2 is hereby deleted and replaced in its entirety by the following:
 - A. From September 8, 2022, to September 11, 2022, in the event that BANC determines that generation from the Covered Resource is necessary to preserve the reliability of the bulk electric power system in California, I direct BANC to dispatch such unit or units and to order their operation solely under the following conditions: the notification of an Energy Emergency Alert Level 2¹ condition or greater after exhausting all reasonably and practically available resources, together with such reasonable and limited time as is necessary for a Covered Resource to ramp down following an Energy Emergency Alert Level 2 or greater, consistent with good utility practice as directed by the BANC with the goal of limited operation outside of an Energy Emergency Alert Level 2 or greater to the greatest extent possible.

¹ For the purposes of this Order, “Energy Emergency Alert Level 2” has the meaning set forth in Section 3.6.3 of the California ISO System Emergency Operating Procedure, Procedure No. 4420, Version 14.0, Effective Date May 1, 2022 (CAISO Emergency Operating Procedure).

Department of Energy Amendment Number 1 to Order No. 202-22-2

2. The date September 8, 2022 where it appears in Ordering Paragraphs D and H of Order No. 202-22-2 is hereby replaced by the date September 11, 2022.
3. All other terms of Order No. 202-22-2 remain the same and in effect, including Ordering Paragraphs A-H, except as modified herein.
4. This Amendment Number 1 to Order No. 202-22-2 shall be effective upon its issuance, and shall expire at 23:59 Pacific Time on September 11, 2022.

Issued in Washington, D.C. at 16:38 Eastern Time on this 8th day of September, 2022.



Kathleen Hogan
Acting Under Secretary for
Infrastructure

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 33

ROLSMA, *THE NEW RELIABILITY OVERRIDE*, 57 U. CONN. L. REV 789
(2025)

5-2025

The New Reliability Override

BENJAMIN ROLSMA

Follow this and additional works at: https://digitalcommons.lib.uconn.edu/law_review



Part of the [Environmental Law Commons](#)

CONNECTICUT LAW REVIEW

VOLUME 57

MAY 2025

NUMBER 3

Article

The New Reliability Override

BENJAMIN ROLSMA

Section 202(c) of the Federal Power Act grants the Secretary of Energy a sweeping authority to exempt electric generation and transmission facilities from any federal, state, or local environmental laws. When Congress first adopted § 202(c) in 1935, it designed the provision as an emergency power that federal regulators could use to force fractious utilities to work together to preserve electricity reliability in times of war or natural disaster. But in the last decade things changed.

This Article, drawing on a novel catalog of all § 202(c) emergencies from the provision's nearly ninety-year history, is the first to comprehensively describe § 202(c). The Article shows that new pressures on the reliability of the American electrical grid, along with an obscure 2015 amendment to the Federal Power Act, transformed § 202(c). No longer is it used to nudge reluctant utilities into action. Instead, starting in the first Trump administration and continuing in the Biden administration, grid operators facing impending blackouts used § 202(c) orders to allow them to run power plants in excess of Clean Air and Clean Water Act pollution limits. And § 202(c) is set to become even more important. Both the Trump and Biden administrations leaned on the provision in proposed policies for the electrical grid—the former to hinder the energy transition and the latter to push it along. This Article tells § 202(c)'s history, describes its transformation, and critically examines some methods for supervising the Department of Energy's use of § 202(c).

ARTICLE CONTENTS

INTRODUCTION	791
I. FORGED BY WAR: § 202(C)'S PAST.....	796
A. THE GRID AND ITS PARTICIPANTS.....	796
B. ORIGIN AND USE OF § 202(c).....	798
C. SUBSTANCE AND PROCEDURE OF § 202(c)	809
II. THE ENVIRONMENTAL TURN: § 202(C)'S PRESENT.....	817
A. DIFFERENT EMERGENCIES.....	818
B. DIFFERENT ORDERS	821
C. EVOLVING SAFEGUARDS.....	823
III. EMERGENCIES DURING CLIMATE CHANGE: § 202(C)'S FUTURE.....	826
A. NEW CHALLENGES: GREENHOUSE GAS REGULATION AND BEYOND	826
B. PLANNING ON EMERGENCIES?	830
C. SUPERVISING § 202(c)	832
CONCLUSION.....	838
APPENDIX.....	839



The New Reliability Override

BENJAMIN ROLSMA*

INTRODUCTION

In late December 2022, a “polar vortex” sent temperatures plummeting across the Eastern Seaboard.¹ This weather system put extraordinary strain on the electrical grid by driving up electricity demand and making it harder to run many power plants.² On December 23, 2022, PJM Interconnection, the regional transmission organization that manages the grid in most of the Mid-Atlantic, urged customers to “reduce their use of electricity, if health permits, between the hours of 4 a.m. on December 24, 2022 and 10 a.m. on December 25, 2022.”³ In the wee hours of Christmas Eve, PJM initiated emergency procedures to prevent blackouts.⁴

But PJM had a problem. Some power plants that PJM could normally dispatch had mechanical difficulties because of the cold weather, or had

* Harvard Law School, J.D. 2024; University of Wisconsin–Madison, B.S. 2020. For their invaluable feedback and suggestions, I am grateful to Richard Lazarus, Joshua Macey, Andrew Mergen, Ari Peskoe, and Samantha Strimling. I am also thankful to Kenneth Buell and Tertia Speiser at the Office of Cybersecurity, Energy Security, and Emergency Response in the Department of Energy for being so generous with their time and helpful with their answers to my many questions. And a special thanks to the staff of the *Connecticut Law Review* for their meticulous work and thoughtful edits. All errors, of course, are my own. On April 8, 2025, shortly before this article went to print, President Trump signed an executive order directing the Secretary of Energy to “streamline, systemize, and expedite the Department of Energy’s processes for issuing orders under section 202(c) of the Federal Power Act” during “temporary interruption[s] of electricity supply.” Exec. Order No. 14262, 90 Fed. Reg. 15521, 15521 (Apr. 8, 2025). Analyzing the order is beyond the scope of this Article, but at the very least the order underlines § 202(c)’s growing importance.

¹ Henry Fountain, *What Is the Polar Vortex? And Other Cold-Weather Climate Questions.*, N.Y. TIMES (Feb. 4, 2023), <https://www.nytimes.com/2022/12/22/climate/polar-vortex-winter-cold-weather.html>.

² See Letter from Manu Asthana, President & CEO, PJM Interconnection, LLC, to Jennifer Granholm, Sec’y of Energy, Dep’t of Energy 1–3 (Dec. 24, 2022), <https://www.energy.gov/sites/default/files/2022-12/PJM%202022%28c%29%20Request.pdf> [<https://perma.cc/C2N7-BEBC>] [hereinafter 2022 PJM Request] (describing the unusual demand for electricity and the limited generating capacity).

³ Press Release, PJM Interconnection, LLC, PJM Asks Consumers to Conserve Electricity (Dec. 23, 2022), <https://www.pjm.com/-/media/about-pjm/newsroom/2022-releases/20221223-news-release-w1-statement-call-for-conservation.ashx>.

⁴ At 5:00 a.m. on December 24, 2022, PJM declared an Energy Emergency Alert Level 2. Emergency Procedures - Postings, PJM, <https://emergencyprocedures.pjm.com/ep/pages/dashboard.jsf> (enter “12/20/2022” in the “Effective From” box, and enter “12/30/2022” in the “Effective To” box) (last visited Dec. 30, 2024). EEA levels are a standard process, developed by the North American Electricity Reliability Corporation, for announcing and resolving electricity shortages that meet certain criteria. See N. AM. ELEC. RELIABILITY CORP., EOP-011-1 EMERGENCY OPERATIONS 11–12 (Nov. 19, 2015), <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf>. PJM also described its emergency actions in a letter to the Department of Energy. See 2022 PJM Request, *supra* note 2, at 1–3.

been unable to obtain enough natural gas.⁵ Meanwhile, other plants *could* run, but were not legally allowed to because of “permit restrictions on sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, wastewater release, and other air pollutants (including ammonia).”⁶ So, on December 24, PJM sent an urgent letter to the Secretary of Energy requesting permission to operate four different natural gas- and fuel oil-fired power plants in violation of federal environmental laws.⁷ At 5:30 p.m. the Department of Energy granted the request.⁸ PJM then operated two plants in violation of time restrictions imposed by their Clean Air Act permits—although neither plant ended up exceeding air pollution limits.⁹

The Department’s order relied on a little-known emergency authority: § 202(c) of the Federal Power Act.¹⁰ Under § 202(c), the Secretary of Energy has a sweeping power to exempt electric generation and transmission facilities from any federal, state, or local environmental law. During “war” or “an emergency,” the Secretary may order the transmission or generation of “electric energy”—and actions taken in compliance with a § 202(c) order are excused from following “any Federal, State, or local environmental law or regulation.”¹¹ No exercise of this broad authority has ever received meaningful judicial review.¹² And despite its sweeping scope, it has largely

⁵ See 2022 PJM Request, *supra* note 2, at 2 (“[S]ome units have experienced operating difficulties due to cold weather or fuel limitations, primarily gas. Specifically, approximately 45,000 MW of generating units (the majority of which is thermal) are currently outaged or derated.”).

⁶ *Id.* at 4.

⁷ See *id.* at 3–8 (requesting approval to operate natural gas- and fuel oil-fired power plants). At 9 p.m. the same day, PJM added eight additional power plants to the request. See DEP’T OF ENERGY, ORDER NO. 202-22-4, Exhibit A (Dec. 24, 2022), <https://www.energy.gov/sites/default/files/2022-12/PJM%202022%28c%29%20Specified%20Resources%20%28Updated%2012-24-22%209PM%29.pdf> [<https://perma.cc/YG99-2G93>].

⁸ DEP’T OF ENERGY, ORDER NO. 202-22-4 (Dec. 24, 2022), <https://www.energy.gov/sites/default/files/2022-12/PJM%202022%28c%29%20Order.pdf> [<https://perma.cc/5TEC-GKFT>] [hereinafter ORDER NO. 202-22-4].

⁹ See Draft Memorandum from ICF to Tertia Speiser, Acting Logistics, Fin., & Admin. Section Chief, Off. of Cybersecurity, Energy Sec., & Emergency Response, Dep’t of Energy 3–6 (Mar. 6, 2024) [hereinafter Draft Memorandum], <https://www.energy.gov/sites/default/files/2024-08/sea-07-pjm-special-environmental-analysis-2024-03-06.pdf> [<https://perma.cc/LF7J-JBW2>].

¹⁰ ORDER NO. 202-22-4, *supra* note 8, at 1 (describing the order as having been issued “[p]ursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c)”).

¹¹ Federal Power Act § 202(c), 16 U.S.C. § 824a(c). The Federal Power Act is codified at 16 U.S.C. §§ 791a–828c. It began as the Federal Water Power Act, ch. 285, 41 Stat. 1063 (1920), and took on its modern structure in 1935, see Public Utility Act of 1935, tit. II, ch. 687, 49 Stat. 803, 838–63 (current version at 16 U.S.C. §§ 791a–828c). Although § 202(c) bestows the emergency authority on the “Commission” (referring to the now-defunct Federal Power Commission), Congress has since transferred the power to the Secretary of Energy. See Department of Energy Organization Act § 301(b), 42 U.S.C. § 7151a. See also *Town of Massena v. Niagara Mohawk Power Corp.*, 8 FERC ¶ 61,199, 61,199 n.5 (1979) (describing the transfer of authority).

¹² Just three cases discuss § 202(c). Two of the cases comment on what counts as an “emergency” under § 202(c) and are discussed in more detail *infra* Part II.C. See *Otter Tail Power Co. v. Fed. Power Comm’n*, 429 F.2d 232, 234 (8th Cir. 1970); *Richmond Power & Light v. Fed. Energy Regul. Comm’n*,

escaped scholarly attention.¹³

After all, for nearly three quarters of a century, § 202(c) was irregularly invoked. The provision was mostly used to coerce reluctant utilities into supporting electric grid reliability by opening new interconnections. An acute shortage of electricity during the First World War inspired Congress to create § 202(c), passing it into law in 1935.¹⁴ Section 202(c) was used several times during World War II in support of the war effort and a half dozen or so more times from the 1950s through the 2000s.¹⁵ For the most part, § 202(c) appeared in contexts familiar to the Congress that created it: orders requiring interconnection to mitigate electricity shortages caused by “war,” “[d]rought,” and “other natural emergencies.”¹⁶

But in the last decade, things changed. An array of external factors put pressure on the reliability of the national electrical grid. Tightening environmental rules and shifting economic forces drove many large, old,

574 F.2d 610, 613–15 (D.C. Cir. 1978). A third dealt with refunds in a FERC proceeding but included a brief discussion of § 202(c) that was not central to the holding. *See* Pub. Utilities Comm’n of Cal. v. Fed. Energy Regul. Comm’n, 462 F.3d 1027, 1064–65 (9th Cir. 2006).

¹³ Most discussion of § 202(c) has been brief and has appeared in articles focused on broader issues in administrative law or electricity regulation. *See, e.g.,* Richard S. Wirtz, Note, *Electric-Utility Interconnections: Power to the People*, 21 STAN. L. REV. 1714, 1722 (1969); Carl E. Bagge, *The Federal Power Commission*, 11 B.C. INDUS. & COM. L. REV. 689, 713 & n.139 (1970); A. Robert Thorup, *Electric Range War in Texas: A Case Study in Federal-State Energy Regulation*, 48 GEO. WASH. L. REV. 392, 402–04, 415, 417 (1980); Steven Ferrey, *Broken at Both Ends: The Need to Reconnect Energy and Environment*, 65 SYRACUSE L. REV. 53, 59–61, 72–74 (2014); Steven Ferrey, *Subnational Discretion Mediating New Climate Regulatory Challenges*, 7 SAN DIEGO J. CLIMATE & ENERGY L. 31, 39–40 (2016); Thomas O. McGarity, *The Trump Effect on Power Plant Carbon Dioxide Emissions*, 9 SAN DIEGO J. CLIMATE & ENERGY L. 151, 182–83 (2018). A few, while still focused on other topics, have offered a more detailed analysis of § 202(c) and have critically examined what counts as an “emergency.” *See* Jonathan Schneider & Jonathan Trotta, *What We Talk About When We Talk About Resilience*, 39 ENERGY L.J. 353, 387–91 (2018) (describing some uses of § 202(c) and discussing the meaning of “emergency”); James M. Van Nostrand, *Using Emergency Powers to Provide Financial Assistance to Coal and Nuclear Plants*, 11 KY. J. EQUINE AGRIC. & NAT. RES. L. 191, 200–03 (2018) (arguing that closure of coal-fired power plants is not an “emergency”); Sharon B. Jacobs, *The Statutory Separation of Powers*, 129 YALE L.J. 378, 422–27 (2019) (using § 202(c) as an example of congressionally-mandated separation of functions within the executive branch); SHARON JACOBS & ARI PESKOE, HARV. L. SCH. ENV’T & ENERGY L. PROGRAM, ENERGY EMERGENCIES VS. MANUFACTURED CRISES: THE LIMITS OF FEDERAL AUTHORITY TO DISRUPT POWER MARKETS 21–22, 26–31 (June 3, 2019), <https://www.ssrn.com/abstract=3420970> (describing some limitations on § 202(c) and a Trump-era attempt to use the provision to support coal-fired power plants); Amy L. Stein, *Energy Emergencies*, 115 NW. U. L. REV. 799, 839–40, 849, 861, 865–66 (2020) (using § 202(c), and other energy-related emergency powers, as a lens for evaluating delegations of authority to the President). One article provides a detailed description of the context around uses of § 202(c) between 2000 and 2005. *See* Susan E. Taylor, *Energy Emergency Powers in a National Interconnected System*, 21 NAT. RES. & ENV’T 43, 43–48, 69 (2006). This Article is the first to focus exclusively on § 202(c), the first to assemble a full record of its pre-2000 uses, and the first to extensively examine § 202(c)’s ability to override environmental rules.

¹⁴ *See infra* Part I.B.

¹⁵ *See infra* Table 2.

¹⁶ S. REP. NO. 74-621, at 49 (1935) (describing § 202(c) as giving the Federal Power Commission “a much broader and more complete authority . . . during times of war or other emergency” and commenting that “[d]rought and other natural emergencies have created similar crises”).

coal-fired electric generating units out of business.¹⁷ At the same time, extreme weather supercharged by climate change, along with a revolution in sources of electric energy, increased demand for electricity and upped the technical challenges of meeting that demand. Then, in 2015 Congress amended § 202(c), explicitly providing that § 202(c) orders could be used to exempt grid entities from liability under any environmental law.

Amidst those changes, the way the Department of Energy exercised its § 202(c) authority shifted. Section 202(c)'s previous use as a way to require reluctant utilities to resolve temporary shortages of electricity waned.¹⁸ During the first Trump administration and the Biden administration, the Department of Energy has instead used § 202(c) as a "reliability safety valve," exempting electricity generation facilities from certain environmental regulations when grid reliability is threatened.¹⁹ When immediately available options for preserving electric reliability run out, utilities and grid operators (like PJM) now turn to § 202(c), which allows them to squeeze a bit more electricity out of existing infrastructure by lifting limits on air and water pollution.

Some startling figures underline this shift. Between 1970 (just before Congress adopted important federal environmental laws like the modern Clean Air and Clean Water Acts)²⁰ and 2015, only one § 202(c) order across eight emergencies involved a conflict with environmental rules.²¹ Since 2015, the Department of Energy has declared twelve § 202(c) emergencies—and eleven included orders permitting the operation of electric generation units in excess of Clean Air Act or Clean Water Act pollution limits.²²

Section 202(c)'s role is set to expand. Climate change and the ongoing

¹⁷ See *infra* Part III.A.

¹⁸ See *infra* Part I.B; Table 1; Table 2 (discussing historical uses of § 202(c)).

¹⁹ See *infra* Part II; Figure 1. The term "reliability safety valve" was first used in conjunction with § 202(c) during debates about the reliability effects of tightened regulations for mercury emissions from coal plants. These debates focused on a particular reliability mechanism that stakeholders hoped that the Environmental Protection Agency would include in its mercury-pollution final rule. See, e.g., *The American Energy Initiative, Part 12: Impacts of the Environmental Protection Agency's New and Proposed Power Sector Regulations on Electric Reliability: Hearing Before Subcomm. on Energy & Power of the H. Comm. on Energy & Com.*, 112th Cong. 59–60, 63–64 (2011) (statement of Marc Spitzer, Comm'r, Fed. Energy Regul. Comm'n) (discussing the possibility of a "reliability safety valve" in the proposed mercury rule); *id.* at 216 (statement of Jon Wellenhoff, Chairman, Fed. Energy Regul. Comm'n) (same). But a couple of hearing participants noted that § 202(c) was a separate, preexisting reliability tool (although none of them directly called § 202(c) a "reliability safety valve"). See *id.* at 394–96 (statement of Susan F. Tierney, Managing Principal, Analysis Grp.) (discussing § 202(c)); *id.* at 412–13 (statement of John Hanger, President, Hanger Consulting, LLC) (same); *id.* at 526 (statement of Susan F. Tierney, Managing Principal, Analysis Grp.) (same).

²⁰ See RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 81–89 (2d ed. 2023) (summarizing significant environmental legislation passed during the 1970s).

²¹ See *infra* Table 1; Table 2.

²² See *infra* Table 1. Even in that single pre-2015 instance, it is somewhat uncertain that there was, in fact, a conflict between environmental rules and the § 202(c) order. See *infra* note 118 and accompanying text.

energy transition, by disrupting the way the electrical grid has historically operated, will ratchet up the pressure on § 202(c). At the same time, regulators are increasingly relying on § 202(c). In two Biden-era rulemakings, the Environmental Protection Agency (“EPA”) invoked the provision as an important reliability backstop. EPA’s recently finalized rule limiting greenhouse gas emissions from new and existing electric generating units repeatedly cites § 202(c) in response to concerns that the rule could undermine grid reliability.²³ Another rule, this one tightening restrictions on mercury emissions from coal-fired power plants, also cites § 202(c) as a last-ditch way to keep plants open to preserve reliability.²⁴

These are fraught developments. Used judiciously, § 202(c) orders can be an important backstop that help to prevent blackouts. However, over the provision’s ninety-year history, officials have experimented with aggressive § 202(c) orders lasting months or years in response to “emergencies” that were predictable and predicted. This Article argues that text, historical context, and administrative practice indicate that although § 202(c) is a flexible tool, it is limited to grid crises that are acute and *unexpected* or that happen during wartime.²⁵ So, using § 202(c) to keep the lights on during a cold snap is within bounds. EPA’s greenhouse gas rule, on the other hand, anticipates the possibility of reliability impacts, and then suggests that § 202(c) could be used to mitigate those impacts. But expected problems are not in § 202(c)’s wheelhouse.

A narrow reading of what “emergency” means in § 202(c) is not just good statutory interpretation, it is also good climate policy. Broad readings of “emergency” can be leveraged to undercut decarbonization efforts, just as it was used to bolster them. Indeed, in 2018, Trump administration officials seriously considered using § 202(c) to *require* grid operators to purchase capacity from coal-fired power plants that were on the brink of closure.²⁶ Also, emergency authorities are a poor substitute for the capital investments and regulatory reforms that are necessary to achieve climate goals—that’s because § 202(c) orders are a regulatory carve out that allow

²³ See New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39798, 39915, 40012–16 (May 9, 2024) (codified at 40 C.F.R. pt. 60) [hereinafter NSPS Rule] (suggesting that the Department of Energy (DOE) might use § 202(c) to protect grid reliability).

²⁴ See National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38508, 38526 (May 7, 2024) (codified at 40 C.F.R. pt. 63) [hereinafter MATS Revision] (referencing DOE’s § 202(c) authority).

²⁵ See *infra* Part I.C.1.

²⁶ JACOBS & PESKOE, *supra* note 13, at 23, 26–28. The details of the plan appeared in a leaked memorandum. See *id.* at 23 (“A leaked DOR document dated May 29, 2018 outlined the rationale for compensating fuel-secure generation facilities, asserting that ‘resources that have a secure on-site fuel supply . . . are essential’”); Leaked Draft Addendum, Dep’t of Energy (May 29, 2018), <https://www.documentcloud.org/documents/4491203-Grid-Memo.html> (discussing purported grid security challenges).

facilities to (briefly) operate in excess of pollution limits. Using the orders too often will undermine the rules to which they provide exceptions.

This Article has three parts. Part I introduces § 202(c)'s technical and legal context, tells the section's history, and describes § 202(c)'s substantive and procedural requirements—including the contested meaning of “emergency.” Next, Part II shows how the section has taken its new environmental turn. Finally, Part III looks to the future and discusses how new regulations, changes in the grid's resource mix, and severe weather is raising the salience of § 202(c). It also highlights the risks of § 202(c)'s new role in climate policy and introduces the tools that lawyers and policymakers inside and outside the Department of Energy can use to limit misuse of the emergency provision.

I. FORGED BY WAR: § 202(C)'S PAST

This Part introduces § 202(c). It starts by briefly describing § 202(c)'s context: the intricate North American electrical grid. Then it sketches the origin and use of § 202(c) before outlining § 202(c)'s substance and procedure, with a particular focus on what kinds of events are “emergencies” that can justify § 202(c) orders.

A. *The Grid and Its Participants*

The North American electrical grid is composed of the generation facilities that create electricity and the transmission and distribution infrastructure that carries electricity across the country and delivers it to homes and businesses.²⁷ These systems—generation, long distance transmission, and last-mile delivery—are connected into local electrical grids, which are in turn connected with each other into three regional groups that ease the movement of electricity across the country, called the Eastern Interconnection, the Western Interconnection, and the Electric Reliability Council of Texas.²⁸

Originally, vertically integrated utilities, watched over by regulators, controlled generation, transmission, and distribution of electricity in particular regions.²⁹ But, starting in the 1970s, this structure broke down and today power generation prices are mostly set in competitive markets.³⁰ In much of the United States, those markets are run and managed by

²⁷ ASHLEY J. LAWSON, CONG. RSCH. SERV., R47521, *ELECTRICITY: OVERVIEW AND ISSUES FOR CONGRESS* 3–4 (2023).

²⁸ Sara Hoff, *U.S. Electric System Is Made up of Interconnections and Balancing Authorities*, U.S. ENERGY INFO. ADMIN. (July 20, 2016), <https://www.eia.gov/todayinenergy/detail.php?id=27152> [<https://perma.cc/7XRM-QYZY>].

²⁹ Matthew R. Christiansen & Joshua C. Macey, *Long Live the Federal Power Act's Bright Line*, 134 HARV. L. REV. 1360, 1374 (2021) (describing this period).

³⁰ See *id.* at 1374–76 (describing this period of “restructuring” and the role Congress and FERC played in nudging it along); LAWSON, *supra* note 27, at 5 (similar).

consortiums of transmission owners and utilities called independent system operators (“ISOs”) or regional transmission organizations (“RTOs”).³¹

At every moment the grid’s electricity supply must line up perfectly with shifting electricity demand.³² Even the slightest mismatch will cause blackouts and catastrophe.³³ So, organizations called “balancing authorities” maintain the second-to-second match of supply and demand in regional areas.³⁴ Sometimes balancing authorities are standalone organizations, but occasionally they do dual service: RTOs both run wholesale electricity markets and serve as the balancing authorities for the regions where they operate.³⁵

Connections between parts of the grid help maintain that second-to-second balance in a cost-effective way. When electricity infrastructure in different regions of the country is linked or “interconnected,” an uptick in demand in one location can be met by increased generation elsewhere.³⁶ Interconnection also improves economies of scale. A local utility need not make enormous infrastructure investments in anticipation of rare, maximum demand days. Instead, those moments of peak demand can be met through imported power.³⁷ Although the grid started out as a smattering of isolated systems, after World War II interconnection accelerated,³⁸ and today the grid is a (mostly) integrated whole.³⁹

Overseeing all of this is a menagerie of regulators, divided by a jurisdictional “bright line.”⁴⁰ On one side of the line, the federal government,

³¹ See *Electric Power Markets*, FED. ENERGY REGUL. COMM’N, <https://www.ferc.gov/electric-power-markets> [https://perma.cc/V2GU-8S3A] (last updated May 16, 2023) (describing the ISOs/RTOs and their history).

³² See OFF. OF ENERGY POL’Y & INNOVATION, FED. ENERGY REGUL. COMM’N, ENERGY PRIMER 34 (2023), https://www.ferc.gov/sites/default/files/2024-01/24_Energy-Markets-Primer_0117_DIGITAL_0.pdf [https://perma.cc/2UFY-HTC2] [hereinafter ENERGY PRIMER] (“While technology continues to develop and advance, electric markets can only store a portion of the electricity required to serve electric loads. Thus, the vast majority of electricity must be produced instantaneously as needed.”).

³³ See Hoff, *supra* note 28 (“If demand and supply fall out of balance, local or even wide-area blackouts can result.”).

³⁴ See *id.* (explaining how these authorities make sure the grid is “finely balanced”).

³⁵ *Id.*

³⁶ FED. ENERGY REGUL. COMM’N, RELIABILITY PRIMER 10 (2020), https://www.ferc.gov/sites/default/files/2020-04/reliability-primer_1.pdf [https://perma.cc/8N57-Q63B] [hereinafter RELIABILITY PRIMER].

³⁷ See ENERGY PRIMER, *supra* note 32, at 34–35 (“Instead of building and maintaining all of the capacity required to provide energy and sufficient reserves, utilities were able to pool their reserves and could buy power from their neighbors in times of need cutting their costs significantly as a result.”).

³⁸ RELIABILITY PRIMER, *supra* note 36, at 10.

³⁹ See Julie A. Cohn, *Two Years After Devastating Winter Storm, What Can We Say About the Isolated Texas Grid?*, BAKER INST. FOR PUB. POL’Y (Feb. 16, 2023), <https://www.bakerinstitute.org/research/two-years-after-devastating-winter-storm-what-can-we-say-about-isolated-texas-grid> (explaining the history of interstate power exchanges and the Texas grid’s independence); Lincoln L. Davies, Stephanie Lenhart & Anne E. Ralph, *Remaking the Western Grid*, 58 U.C. DAVIS L. REV. ONLINE 61, 84–94 (2025) (describing the ongoing integration of western grid).

⁴⁰ *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 392 (1983). For a more detailed overview of the institutions involved in grid governance, see generally ALEXANDRA KLASS, JOSHUA

through the Federal Energy Regulatory Commission (“FERC”), oversees wholesale electricity markets.⁴¹ On the other side, state public utility commissions regulate generation facilities and the retail electricity market.⁴² A separate entity, the non-profit North American Electric Reliability Corporation (“NERC”), promulgates reliability standards designed to minimize the risk of blackouts.⁴³ FERC reviews and approves NERC-produced reliability standards and, once approved by FERC, the standards are mandatory.⁴⁴ Although most federal control over the grid is exercised through FERC, the Department of Energy also has a few miscellaneous electricity-related powers—including the ability to issue § 202(c) orders.⁴⁵

B. *Origin and Use of § 202(c)*

Today the Department of Energy uses § 202(c) as a way to waive compliance with environmental rules.⁴⁶ But the section’s story begins in 1917, more than fifty years before either the Department of Energy or many federal environmental laws existed.⁴⁷ What happened?

1. *World War I*

It starts with coal. After the United States entered World War I in 1917, military needs drove up the demand for energy and coal prices climbed.⁴⁸ The rise prompted interest from federal regulators in the Wilson administration, who planned to (and eventually did) impose price controls.⁴⁹ With below-market prices in the offing, coal production collapsed in August 1917.⁵⁰ As the fall of 1917 turned to winter, decreased production, unforgiving price controls, and clumsy decision-making by federal

MACEY, SHELLEY WELTON & HANNAH WISEMAN, KLEINMAN CTR. FOR ENERGY POL’Y, *THE KEY TO ELECTRIC GRID RELIABILITY: MODERNIZING GOVERNANCE* (2024), <https://kleinmanenergy.upenn.edu/wp-content/uploads/2024/03/KCEP-Paper-15-Key-to-Electric-Grid-Reliability.pdf>.

⁴¹ 16 U.S.C. § 824(b)(1). *See also* Christiansen & Macey, *supra* note 29, at 1363 (summarizing this jurisdictional division); Jim Rossi, *Energy Federalism’s Aim*, 134 HARV. L. REV. F. 228, 234–44 (2021) (describing complications to the “bright line” doctrine).

⁴² Christiansen & Macey, *supra* note 29, at 1363; *cf.* 16 U.S.C. § 824(b) (excepting from federal control “facilities used for the generation of electric energy or . . . facilities used in local distribution”).

⁴³ RELIABILITY PRIMER, *supra* note 36, at 33–35.

⁴⁴ 16 U.S.C. § 824o. On NERC, its powers, and its peculiar structure, see generally Joshua C. Macey, Shelley Welton & Hannah Wiseman, *Grid Reliability in the Electric Era*, 41 YALE J. ON REGUL. 164, 189–233 (2024). *See also id.* at 205 (describing the “‘unusual’ relationship between FERC and NERC”).

⁴⁵ *See* Jacobs, *supra* note 13, at 415–22 (describing some of the Department of Energy’s authorities, including § 202(c)); *id.* at 415 (characterizing the Department of Energy and FERC as “entangle[d]”).

⁴⁶ *See infra* Part II.

⁴⁷ On the creation of the Department of Energy, see *infra* notes 9191–95 and accompanying text. On the advent of modern federal environmental law, see LAZARUS, *supra* note 20, at 81–89.

⁴⁸ *See* James P. Johnson, *The Wilsonians as War Managers: Coal and the 1917–18 Winter Crisis*, 9 PROLOGUE: J. NAT’L ARCHIVES 193, 196 (1977) (“In the summer of 1917, spot prices for coal sold on the open market began to skyrocket.”).

⁴⁹ *Id.* at 198–202.

⁵⁰ *Id.* at 201–02.

administrators created a desperate shortage of coal.⁵¹ The shortage hammered the country's coal-reliant electrical grid.⁵² Government administrators urged conservation measures to protect wartime industry and utility companies warned of shortages.⁵³ But regulators blamed more than the coal shortage. For example, in March 1918, Charles E. Stuart, a federal Fuel Administration official, criticized the "individualistic way in which fuel is now consumed" and urged construction of larger power plants and more grid interconnections.⁵⁴

A lengthy 1921 investigation of the power shortage—known as the Keller report—zeroed in on insufficient interconnection.⁵⁵ The coal situation, interruptions in hydroelectric supplies, an overreliance on single-customer power plants, and the dramatic increase in demand occasioned by the war had all contributed to a shortage of electricity.⁵⁶ But with more interconnection, the grid could have been nimbler. Summarizing the reports, Charles Keller, an Army Corps of Engineers officer, argued that:

[O]wing to [a] lack of flexible and capacious interconnections between adjacent power systems it was virtually impossible to reduce th[e] shortage by taking advantage of the diversity factor and by releasing for active use part of the installed reserves which interconnection would have rendered safety available⁵⁷

As one history of the electrical grid puts it, by "the eve of the Roaring Twenties, the idea of large-scale interconnected power systems crossing North America fully captured the interest of engineers, executives, and

⁵¹ See *id.* at 201–02, 207–08 (blaming Wilson administration officials for the coal shortage for "fail[ing] the nation as war managers"); DAVID M. KENNEDY, *OVER HERE: THE FIRST WORLD WAR AND AMERICAN SOCIETY* 123 (1982) (ascribing the shortage to "the apparent ineptitude of Fuel Administrator Garfield").

⁵² See Robert Suits, Nathan Matteson & Elisabeth Moyer, *Energy Transitions in U.S. History 1800–2019*, at 3 (U. Chi., Ctr. for Robust Decision-making on Climate & Energy Pol'y, Working Paper Series, 2020), https://static1.squarespace.com/static/54dcfad0e4b0eaff5e0068bf/t/5fbeb6ffa04221c71019ccc/1606335091993/Suits_Matteson_Moyer_2020_Energy_Transitions.pdf (showing that, in 1918, most electricity generation in the United States was from coal, with the balance supplied by hydropower).

⁵³ E.g., *Power Plants May Be Taken by Government*, PITTSBURGH POST-GAZETTE, Nov. 11, 1917, at 2.

⁵⁴ *Industry Urged to Use Power of Central Plants*, N.Y. TRIBUNE, Mar. 11, 1918, at 7.

⁵⁵ See CHARLES KELLER, *THE POWER SITUATION DURING THE WAR 18–19* (Gov't Printing Off. 1921) (War Dep't Doc. No. 1039). The document consists of five reports from different Army officers, prefaced by a summary report written by Colonel Charles Keller. See *id.*

⁵⁶ See *id.* at 42 (report of Major Charles F. Lacombe).

The main causes for shortage of power supply . . . were: (1) Shortage of fuel principally caused by lack of storage and in some degree possible by deficient railroad transportation or inadequate production. (2) Shortages of water power due to adverse weather conditions in both the winter and summer of 1917–18. (3) Lack of capacity of central electric-power plants to meet the extraordinary war demand.

⁵⁷ *Id.* at 18.

government officials alike.”⁵⁸ This pro-interconnection agenda would inspire § 202(c).

2. Congress Creates § 202(c)

In 1935 Congress remade the electricity regulatory framework. Before, electricity was mostly a states-only affair.⁵⁹ But the Public Utility Act of 1935⁶⁰—Title II of which created the Federal Power Act⁶¹—granted a pre-existing independent agency, the Federal Power Commission (“FPC”), control over things on the federal side of the jurisdictional “bright line.”⁶² The fortified FPC, previously a sleepy licensing agency,⁶³ now had a sweeping authority to ensure that wholesale electricity rates were “just and reasonable.”⁶⁴

However, the FPC’s interconnection powers were limited. By early 1935, the Keller report’s emphasis on interconnection had developed into a comprehensive critique of the fragmented nature of the American grid.⁶⁵ An influential FPC report endorsed Keller’s diagnosis of the wartime electricity shortage, emphasized the importance of interconnection, and blamed commercial rivalries and overlapping jurisdictions for the slow pace of grid

⁵⁸ JULIE A. COHN, *THE GRID: BIOGRAPHY OF AN AMERICAN TECHNOLOGY* 40 (2017).

⁵⁹ Christiansen & Macey, *supra* note 29, at 1371; Fed. Energy Regul. Comm’n v. Elec. Power Supply Ass’n, 577 U.S. 260, 265–66 (2016) (“In the early 20th century, state and local agencies oversaw nearly all generation, transmission, and distribution of electricity.”).

⁶⁰ Public Utility Act of 1935, ch. 687, 49 Stat. 803 (current version at 16 U.S.C. § 824).

⁶¹ RICHARD J. CAMPBELL, CONG. RSCH. SERV., R44783, *THE FEDERAL POWER ACT (FPA) AND ELECTRICITY MARKETS* 2 (2017) (“Title II of the PUA amended the [Federal Water Power Act] to create the FPA, and granted authority to the FPC to regulate the interstate transmission and sales of electricity and natural gas.”).

⁶² See Public Utility Act of 1935, ch. 687, § 201, 49 Stat. 803, 847–48 (current version at 16 U.S.C. § 824) (“The Commission . . . shall not have jurisdiction . . . over facilities used [only for] intrastate commerce . . .”); *supra* notes 40–42 and accompanying text (describing the “bright line”). Congress also expanded federal jurisdiction over electricity in part because of a Supreme Court decision, *Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927). See Christiansen & Macey, *supra* note 29, at 1371–72 (explaining *Attleboro*’s impact).

⁶³ See Robert D. Baum, *The Federal Power Commission and State Utility Regulation* 22–28 (American Council on Pub. Affs. 1942) (Ph.D. dissertation, Columbia University) (HeinOnline) (describing the early history of the Federal Power Commission and noting that until an earlier reorganization act in 1930, the Commission “was little more than an interdepartmental coordinating committee” with “[w]eak administrative organization, inadequate control of funds and personnel, and administrative sympathy for . . . private power interests”).

⁶⁴ Public Utility Act of 1935, ch. 687, § 205(a), 49 Stat. 803, 851 (current version at 16 U.S.C. § 824d(a)).

⁶⁵ See Horace M. Gray, *The Integration of the Electric Power Industry*, 41 AM. ECON. REV. 538, 538 (1951) (“By 1935, fifteen years of intensive criticism, beginning with the Keller report and terminating with the *National Power Survey*, had exposed the defective organization of the electric power industry and delineated the essential features of an integrated power system.” (footnotes omitted)); *id.* at 541 (discussing the *National Power Survey*); FED. POWER COMM’N, POWER SER. NO. 1, NATIONAL POWER SURVEY INTERIM REPORT 54 (1935) (concluding that “studies . . . have gone far enough to show that interconnection as it exists today in the United States is not the result of any definitely planned program. Its growth has been relatively haphazard, handicapped by intercompany rivalry and prejudices and by artificial barriers”).

integration.⁶⁶ Despite this critique, Congress granted the FPC only modest interconnection authorities.⁶⁷ In § 202 of the Federal Power Act, Congress charged the FPC with “promot[ing] and encourag[ing]” voluntary interconnection,⁶⁸ but the FPC had little authority to require isolated, intrastate utilities to connect with the national grid.⁶⁹

There was an exception. Congress included an emergency provision in the FPC’s section 202 interconnection powers. Section 202(c) provided that:

During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest.⁷⁰

The FPC could issue these emergency interconnection orders to any utility, whether within the Commission’s jurisdiction or not.⁷¹

Congress seems to have drafted § 202(c) with the Keller report in mind.

⁶⁶ See FED. POWER COMM’N, *supra* note 65, at 49–50, 52–54 (discussing interconnection and the restive relationships between utilities).

⁶⁷ Cf. Gray, *supra* note 65, at 544 (“The Act of 1935, as it finally emerged in mutilated form, made certain genuflections toward integration, but this was largely pretense devoid of all substance and reality.”).

⁶⁸ Public Utility Act of 1935, ch. 687, § 202(a), 49 Stat. 803, 848 (current version at 16 U.S.C. § 824a(a)).

⁶⁹ See *id.* § 202(b) (current version at 16 U.S.C. 824a(b)) (giving the FPC the power to order “a public utility . . . to establish physical connection of its transmission facilities”); *id.* § 201(e) (current version at 16 U.S.C. § 824e) (defining “public utility” as “any person who owns or operates facilities subject to the jurisdiction of the Commission”); Thorup, *supra* note 13, at 402 (explaining this limitation). For a more detailed description of the Federal Power Act’s tortured jurisdictional boundaries, see Bagge, *supra* note 13, at 710–11 (summarizing the early history); Jared M. Fleisher, *ERCOT’s Jurisdictional Status: A Legal History and Contemporary Appraisal*, 3 TEX. J. OIL GAS & ENERGY L. 4, 7–10 (2008) (summarizing the current doctrine).

⁷⁰ Public Utility Act of 1935, ch. 687, § 202(c), 49 Stat. 803, 849 (current version at 16 U.S.C. § 824a(c)). A subsequent sentence in the subsection allowed the FPC to set rates in connection with emergency orders. See *id.*

If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

⁷¹ For orders applying to non-jurisdictional entities, see, for example, Texas Elec. Serv. Co., 9 F.P.C. 1373, 1373–74 (1950). For purposes of this article, “F.P.C.” refers to the *Opinions and Decisions of the Federal Power Commission*, the official reporter of the FPC.

Power sector experts emphasized the report in hearings in March and April of 1935. David E. Lilienthal, then director of the Tennessee Valley Authority, endorsed the Keller report as a guide to the shortage of power during the war.⁷² So too Dozier A. DeVane, Solicitor for the FPC, cited the Keller report, asserting that it was the “first report that has any discussion of the matter of the question of regional interconnected systems,”⁷³ and using it as evidence that utility companies were failing to sufficiently integrate when left to their own devices.⁷⁴ DeVane also quoted extensively from the Keller report’s pro-interconnection conclusion.⁷⁵

A Senate committee report offers the most detailed justification for § 202(c) that appears in the formal legislative history. For “[i]nterconnection and the coordination of facilities,” in “this first exercise of Federal power over electric companies,” the report argued, the FPC must rely on “voluntary coordination”—with the exception of § 202(c), which was “appropriately limited to periods of war or other emergency.”⁷⁶ The report explicitly tied the § 202(c) exception to the World War I episode, saying that the provision was “a temporary power designed to avoid a repetition of the conditions during the last war, when a serious power shortage arose.”⁷⁷ The report also claimed that “[d]rought and other natural emergencies have created similar crises.”⁷⁸ This last concern appears to be a reference to drought-fueled power shortages experienced in California from 1918 to 1920, and also in 1924.⁷⁹ California had limited grid interconnection and most of the state’s electricity was produced by hydroelectric plants.⁸⁰ So, when drought came, shortages were difficult to mitigate.⁸¹

3. *The First Eighty Years*

In the decade after its creation, § 202(c) was used to promote interconnection. From 1935 through the summer before the United States

⁷² *Public Utility Holding Companies: Hearings on H.R. 5423 Before the H. Comm. on Interstate and Foreign Com.*, 74th Cong. 1967 (1935) [hereinafter *Hearings on H.R. 5423*] (statement of David E. Lilienthal, Dir., Tenn. Valley Auth.).

⁷³ *Id.* at 492 (statement of Dozier A. DeVane, Solic., Fed. Power Comm’n).

⁷⁴ *See id.* at 541 (“Mr. BULWINKLE. Now, has there been any complaint that any of the utility companies have failed to respond to furnishing their facilities to other companies that you know of? Mr. DEVANE. The strongest complaint you could find in that respect, Mr. Bulwinkle, will be found in Colonel Keller’s report I referred to yesterday.”).

⁷⁵ *Id.* at 2167–68.

⁷⁶ S. REP. NO. 74-621, at 19 (1935).

⁷⁷ *Id.* at 49.

⁷⁸ *Id.*

⁷⁹ *See Hearings on H.R. 5423, supra* note 72, at 272–74 (statement of Comm’r Frank R. McNinch, Chairman, Fed. Power Comm’n) (discussing these drought-related shortages and raising concerns regarding another shortage occurring elsewhere without regulatory authority to resolve it).

⁸⁰ *See id.* (discussing the sources of California’s electricity).

⁸¹ *See id.* (summarizing the problems shortages posed).

entered World War II, the FPC issued not one § 202(c) order.⁸² Starting in June 1941 through the end of the war, the FPC issued § 202(c) orders in twenty-two separate proceedings,⁸³ a pace never to be matched again.⁸⁴ The inaugural June 1941 order announced that the Commission had “completed a comprehensive survey of the many factors involved in meeting the emergency power situation now prevailing.”⁸⁵ The Commission declared that “an emergency . . . exists in the southeastern area of the United States, resulting from a sudden increase in the demand for electric energy to meet the requirements of national defense production.”⁸⁶ Another order, issued the same day, required Florida Power & Light and the Florida Public Service Company to “interconnect” and to “maintain and operate” certain power plants.⁸⁷ Other wartime orders followed a similar pattern.⁸⁸

After the war, the FPC used § 202(c) sparingly.⁸⁹ All told, the FPC declared just seven § 202(c) emergencies after 1944.⁹⁰ Then, in 1977 Congress dissolved the Federal Power Commission and § 202(c) all but

⁸² An index in the back of the FPC’s official reporter listed out emergency § 202(c) and 202(d) orders. *See infra* note 83 (citing volumes of the reporter where orders are listed). The first two volumes of the *Opinions and Decisions of the Federal Power Commission*, which covered 1931–1939 and 1939–1941, respectively, identify zero § 202(c) orders from before the war. *See* Index to Orders of Comm’n in Nature of Opinions, 1 F.P.C. 877, 877–86 (1931–1939) (listing no “EMERGENCY” orders); Index to Orders of Comm’n in Nature of Opinions, 2 F.P.C. 1151, 1156–57 (1939–1941) (listing several orders under “EMERGENCY—Section 202 (c) (F.P.A.),” the earliest of which is “Curtailement of the Use of Electric Energy in the Southeastern States, docket No. IT-5703”); Recommendation for Curtailement of Use of Elec. Energy in Se. States, 2 F.P.C. 990, 990 (1941) (declaring that an “emergency, within the meaning of section 202 (c) of the Federal Power Act, exists”). *See also infra* Table 2 (listing all orders invoking § 202(c) during the FPC’s existence and showing that no §202(c) order was issued between 1935 and when the United States entered World War II).

⁸³ *See infra* Table 2 (listing these orders); Index to Orders of Comm’n in Nature of Opinions, 4 F.P.C. 1181, 1190 (1943–1945) (listing zero § 202(c) orders under “EMERGENCY”); Index to Orders of Comm’n in Nature of Opinions, 5 F.P.C. 1063, 1071 (1946) (listing zero § 202(c) orders under “EMERGENCY”); Gray, *supra* note 65, at 545 (discussing World War II-era interconnection orders); *Federal Power Act: Hearings on H.R. 2972 and H.R. 2973 Before the H. Comm. on Interstate and Foreign Commerce*, 80th Cong. 718–20 (1947) [hereinafter *FPA Hearing*] (listing § 202(c) and 202(d) orders from 1941–42). Some sources appear to include numbers higher than twenty-two. That is either because they are counting the number of separate orders, rather than the number of proceedings (a single proceeding can have multiple orders); or because they are counting both § 202(c) and § 202(d) orders; or both. *E.g.*, Gray, *supra* note 65, at 545 (asserting that there were forty-five emergency “orders” issued during World War II); *FPA Hearing*, *supra*, at 718–20 (listing both § 202(c) and § 202(d) orders). I describe my methodology for identifying § 202(c) orders *infra* note 366. One article claims that there have been just “seventeen orders” under § 202(c) “since 1935.” Stein, *supra* note 13, at 840. But the list of orders cited to support this proposition, *see id.* at 840 n.216, is incomplete. *See infra* Table 2 (listing several orders not included in the Stein footnote).

⁸⁴ *See infra* Figure 1 (displaying the pace of §202(c) emergencies by year).

⁸⁵ Recommendation for Curtailement of the Use of Elec. Energy in the Se. States, 2 F.P.C. 990, 990 (1941).

⁸⁶ *Id.*

⁸⁷ Fla. Power & Light Co., 2 F.P.C. 991, 991 (1941).

⁸⁸ *See, e.g.*, Duke Power Co., 2 F.P.C. 992, 992 (1941) (requiring interconnection); Va. Pub. Serv. Co., 2 F.P.C. 1095, 1095–96 (1941) (declaring a § 202(c) emergency in northern Virginia and requiring interconnection).

⁸⁹ For rare examples of the FPC using § 202(c) during this time, see Texas Elec. Serv. Co., 9 F.P.C. 1373 (1950); City of Cleveland v. Cleveland Elec. Illuminating Co., 47 F.P.C. 747 (1972).

⁹⁰ *See infra* Table 2 (listing these orders).

vanished. The Department of Energy Organization Act⁹¹ split the FPC's functions between two new agencies: the Department of Energy and the Federal Energy Regulatory Commission.⁹² Although most of § 202's interconnection powers went to FERC,⁹³ the emergency § 202(c) power went to the Secretary of Energy.⁹⁴ In October 1977, the first Secretary of Energy conferred the § 202(c) power on the Administrator of the Economic Regulatory Administration ("ERA").⁹⁵ In 1978 and 1979 the ERA issued two curt formal denials of § 202(c) requests.⁹⁶ Although the ERA apparently received other § 202(c) requests,⁹⁷ it granted none and in 1994 the ERA ceased to exist.⁹⁸ No more § 202(c) orders appeared until the turn of the millennium.⁹⁹

⁹¹ See Jacobs, *supra* note 13, at 409–11 (describing a “proliferation of energy agencies” and the “inevitabl[e]” “consolidatory countermovement”); Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (1977) (codified at 42 U.S.C. §§ 7101–352).

⁹² Jacobs, *supra* note 13, at 411.

⁹³ Department of Energy Organization Act, 42 U.S.C. § 7172(a)(1)(B) (“There are transferred to, and vested in, the Commission . . . the interconnection, under section 202(b), of such Act, of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection) . . .”).

⁹⁴ See *id.*; *id.* § 7151(b) (“Except as provided in subchapter IV, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission . . .”).

⁹⁵ DEP’T OF ENERGY, DELEGATION ORDER NO. 0204-4, *reprinted in* 42 Fed. Reg. 60726 (Nov. 29, 1977).

⁹⁶ City of Rensselaer, 43 Fed. Reg. 29027–28 (Econ. Regul. Admin. June 28, 1978) (July 5, 1978); Town of Massena, 44 Fed. Reg. 49292–93 (Econ. Regul. Admin. Aug. 15, 1979) (Aug. 22, 1979).

⁹⁷ See Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power, 46 Fed. Reg. 39984, 39987 (Aug. 6, 1981) (to be codified at 10 C.F.R. pt. 205) (reporting that “[o]nly six applications were filed . . . since the formation of DOE in 1977”).

⁹⁸ Department of Energy. *Economic Regulatory Administration*. (10/01/1977 - 4/01/1993), NAT’L ARCHIVES CATALOG, <https://catalog.archives.gov/id/10556262> [https://perma.cc/AZP8-YFQJ] (last visited Feb. 22, 2025).

⁹⁹ In a congressional hearing in 2012, Patricia Hoffman, an official at the Department of Energy, confirmed that “[s]ince the Department was formed in 1978, the Secretary has exercised this emergency authority for only six events.” *The American Energy Initiative, Part 19: Focus on H.R. 4273, the Resolving Environmental and Grid Reliability Conflicts Act of 2012, and H.R. ———, The Hydropower Regulatory Efficiency Act of 2012: Hearing Before the Subcomm. on Energy & Power of the H. Comm. on Energy and Com.*, 112th Cong. 39 (2012) (statement of Patricia Hoffman, Assistant Sec’y, Off. of Elec. Delivery & Energy Reliability, Dep’t of Energy) [hereinafter *Reliability Hearing*]. The Department of Energy maintains two webpages that list all its uses of § 202(c). See Off. of Cybersecurity, Energy Sec., & Emergency Response, *DOE’s Use of Federal Power Act Emergency Authority*, DEP’T OF ENERGY, <https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority> [https://perma.cc/YZ6W-Y2QA] (last visited Feb. 22, 2025) [hereinafter *DOE Use of FPA Emergency Authority*] (listing emergency orders from 2020 to the present); Off. of Cybersecurity, Energy Sec., & Emergency Response, *DOE’s Use of Federal Power Act Emergency Authority – Archived*, DEP’T OF ENERGY, <https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority-archived> [https://perma.cc/CL2B-MLRA] (last visited Feb. 22, 2025) [hereinafter *DOE Use of FPA Emergency Authority Archive*] (listing emergency orders prior to 2020). The pages list six § 202(c) events through 2012, with the first in 2000. Therefore, the Department issued no § 202(c) orders between 1977 and 2000. See also *infra* Table 1; Table 2 (listing no § 202(c) orders during that time).

Then, in 2000, California's electricity and natural gas markets went haywire, and energy prices climbed dramatically.¹⁰⁰ The crisis was the result of

flawed market rules; inadequate addition of generating facilities in the preceding years; a drop in available hydropower due to drought conditions; a rupture of a major pipeline supplying natural gas into California; strong growth in the economy and in electricity demand; unusually high temperatures; an increase in unplanned outages of extremely old generating facilities; and market manipulation.¹⁰¹

A FERC investigation blamed the market manipulation on Enron,¹⁰² but during the crisis, the Department of Energy turned to § 202(c). Energy generators were reluctant to offer capacity on the electricity markets because investor-owned utilities, clobbered by high prices, were on the brink of bankruptcy.¹⁰³

Fearing blackouts, the California ISO asked the Department of Energy to order generators to sell electricity.¹⁰⁴ The Department obliged in December 2000 and the Secretary declared a § 202(c) emergency, citing “a shortage of currently operational electric generation facilities, a shortage of water used to generate electricity, unusual volatility of electricity and natural gas markets, and . . . other reasons.”¹⁰⁵ Follow up orders extended the emergency several times—in the end until the third week of January 2001.¹⁰⁶

It is almost as if the California energy market fiasco reminded regulators and stakeholders that § 202(c) existed. Three times between 2002 and 2008, the Department issued interconnection orders to Texas entities during

¹⁰⁰ See FED. ENERGY REGUL. COMM'N, DEP'T OF ENERGY, FINAL REPORT ON PRICE MANIPULATION IN WESTERN MARKETS, at ES-1 (2003) (arguing that natural gas and energy prices are linked and fluctuate together, and that the fluctuations in 2000 were in part due to market manipulation).

¹⁰¹ Order Dismissing Complaints at 9, *Californians for Renewable Energy v. Cal. Pub. Utils. Comm'n*, 119 FERC ¶ 61,058 (2007) (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 93 FERC ¶ 61,121 (2000) and *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 102 FERC ¶ 61,317 (2003)). See also *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 539–40 (2008) (quoting the same language); FED. ENERGY REGUL. COMM'N, *supra* note 100, at I-3, I-10–11 (describing similar reasons for the crisis).

¹⁰² FED. ENERGY REGUL. COMM'N, *supra* note 100, at ES-1–2.

¹⁰³ *Pub. Utils. Comm'n of Cal. v. Fed. Energy Regul. Comm'n*, 462 F.3d 1027, 1064 (9th Cir. 2006).

¹⁰⁴ *Id.*

¹⁰⁵ DEP'T OF ENERGY, ORDER PURSUANT TO SECTION 202(C) OF THE FEDERAL POWER ACT 1 (Dec. 14, 2000), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20December%2014%2C%202000%20-%20California.pdf> [<https://perma.cc/3DYB-AY8N>] [hereinafter DECEMBER 2000 CAISO ORDER].

¹⁰⁶ See Off. of Elec., *Federal Power Act Section 202(c) - California, December 2000*, DEP'T OF ENERGY (May 1, 2012), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-california-december-2000> [<https://perma.cc/5M2X-XRAB>] (listing the orders); DEP'T OF ENERGY, AMENDED ORDER PURSUANT TO SECTION 202(C) OF THE FEDERAL POWER ACT (2001) (extending the orders into January 2001), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20January%2017%2C%202001%20-%20California.pdf> [<https://perma.cc/9NB9-A7US>]; Taylor, *supra* note 13, at 43–44.

hurricanes, allowing them to draw energy from outside of Texas.¹⁰⁷ Two orders, one in 2002 and another in 2003, directed the operation of the Cross-Sound Cable, a controversial undersea cable linking Connecticut with Long Island.¹⁰⁸ Still, the causes of § 202(c)'s long period of quiet are mysterious; electrical disasters were not unknown between 1977 and 2000.

The next § 202(c) episode—a pivotal one—involved a power plant near the national capital. Mirant, a utility company, operated five coal-fired generation units in Alexandria, Virginia.¹⁰⁹ After air quality modeling mandated by the Virginia Department of Environmental Quality (“VDEQ”) showed that the plant would soon exceed several Clean Air Act limits, Mirant announced in August 2005 that it would shutter the facility, at least temporarily.¹¹⁰ But the plant provided much-needed backup generation capacity.¹¹¹ Alarmed, the District of Columbia’s local utility regulator, the D.C. Public Service Commission (“DCPSC”), asked the Department of Energy for emergency orders requiring the Mirant plant to remain available to generate power.¹¹² VDEQ insisted that, if the plant were operated at the levels requested by DCPSC, Mirant would violate VDEQ-administered

¹⁰⁷ DEP’T OF ENERGY, ORDER NO. 202-05-1 (Sept. 28, 2005), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-05-1%20September%2028%2C%202005%20-%20CenterPoint%20Energy.pdf> [https://perma.cc/9RUL-M9TY] (directing interconnection between CenterPoint Energy and Entergy Gulf States after Hurricane Katrina); DEP’T OF ENERGY, ORDER NO. 202-05-2 (Sept. 30, 2005), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-05-2%20September%2030%2C%202005%20-%20TXU%20Electric.pdf> [https://perma.cc/V96Q-GXWT] (directing interconnection between TXU Electric and Entergy Gulf States after Hurricane Katrina); DEP’T OF ENERGY, ORDER NO. 202-08-1 (Sept. 14, 2008), <https://www.energy.gov/sites/prod/files/202%28c%29%20order%20202-08-1%20September%2014%2C%202008%20-%20CenterPoint%20Energy.pdf> [https://perma.cc/86CE-KUS2] [hereinafter ORDER NO. 202-08-1] (directing interconnection between CenterPoint Energy and Entergy Gulf States after Hurricane Ike).

¹⁰⁸ DEP’T OF ENERGY, ORDER NO. 202-02-1 (Aug. 16, 2002), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-02-1%20August%2016%2C%202002%20-%20CSC.pdf> [https://perma.cc/L2YK-QPL7]; DEP’T OF ENERGY, ORDER NO. 202-03-1 (Aug. 14, 2003), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-03-1%20August%2014%2C%202003%20-%20CSC.pdf> [https://perma.cc/GB56-YYWJ].

¹⁰⁹ Taylor, *supra* note 13, at 47–48.

¹¹⁰ See *id.* at 47 (describing Mirant’s temporary closure); Letter from Hula C. Edmonds, Dir. of Operations, Potomac River, Mirant Corp., to Lawrence Mansueti, Dir., State & Reg’l Assistance, Off. of Elec. Delivery & Energy Reliability (Sept. 7, 2005), <https://www.energy.gov/oe/articles/mirant-potomac-river-doe-case-oe-05-01> [https://perma.cc/99WQ-Z82X] (describing Mirant’s five coal plant units).

¹¹¹ See Taylor, *supra* note 13, at 47–48 (detailing Mirant’s role in supplying electricity to Washington, DC); Letter from Craig A. Glazer, Vice President, Gov’t Pol’y, PJM Interconnection, LLC, to Dir., Off. of Air Reg. Dev., Va. Dep’t of Env’t Quality (Apr. 12, 2004) (included as an attachment in Emergency Petition and Complaint, No. EL05-145-000, D.C. Pub. Serv. Comm’n, 114 FERC ¶ 61,017 (2006)) (describing the importance of keeping the Mirant plant running).

¹¹² Emergency Petition and Complaint of the District of Columbia Public Service Commission to Avert the Impending Shutdown of the Potomac River Generating Station Power Plant Under EL05-145, at 1–2, *Pub. Serv. Comm’n*, 114 FERC ¶ 61,017 (Aug. 25, 2005). DCPSC filed a single document with both FERC and the Department of Energy including both a request for a § 202(c) order (directed to the Secretary of Energy) and a request for invocation of various other authorities possessed by FERC (directed to the Commission). *Id.* at 1–2.

Clean Air Act permit limits.¹¹³ The Secretary of Energy granted DCPSC's request and ordered the plant to operate at up to full capacity if needed to meet demand.¹¹⁴ The order punted on the permit violation question, musing that "regulators and Mirant can work together, with the Department, to reduce, and perhaps eliminate, any conflict between environmental goals and electric reliability."¹¹⁵ But the power plant, operating under the § 202(c) order, violated its permit limits.¹¹⁶ VDEQ promptly issued Mirant a \$31,000 fine.¹¹⁷ Although it is unclear whether Mirant was, in fact, obliged by the § 202(c) order to violate pollution limits,¹¹⁸ this between-a-rock-and-a-hard-place¹¹⁹ story about Mirant's experience would stick.

4. *The FAST Act Amendment*

Ten years later Congress responded to the Mirant episode by passing the "Resolving Environmental and Grid Reliability Conflicts Act" as part of the 2015 FAST Act.¹²⁰ Congress designed the amendment to head off future Mirant-like incidents by excusing entities subject to § 202(c) orders from any environmental rules conflicting with those orders. Congress added these two paragraphs to the end of § 202(c):

With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or

¹¹³ See Motion to Intervene and Protest of Robert G. Burnley, Director, Commonwealth of Virginia, Department of Environmental Quality, at 2–4, *Pub. Serv. Comm'n*, 114 FERC ¶ 61,017 (Aug. 29, 2005) (arguing that "the DC PSC is requesting the Commission to order the plant to operate in violation of state and federal laws").

¹¹⁴ DEP'T OF ENERGY, ORDER NO. 202-05-3, at 10–11 (Dec. 20, 2005), <https://www.energy.gov/oe/articles/departement-energy-order-no-202-05-3> [<https://perma.cc/LN3W-RF8Z>] [hereinafter ORDER NO. 202-05-3].

¹¹⁵ *Id.* at 10. The Department's order would be extended three times, ultimately until July 1, 2007. DEP'T OF ENERGY, ORDER NO. 202-06-2 (Sept. 28, 2006), <https://www.energy.gov/sites/default/files/2022-06/2020202-06-2%20September%2028%2C%202006%20-%20Mirant%20Corporation.pdf> [<https://perma.cc/9HVK-P294>] [hereinafter ORDER NO. 202-06-2] (extending to December 1, 2006); DEP'T OF ENERGY, ORDER NO. 202-07-1 (Nov. 22, 2006), <https://www.energy.gov/sites/default/files/2022-07/2020202-07-1%20November%2022%2C%202006%20-%20Mirant%20Corporation.pdf> [<https://perma.cc/D6DL-6L5G>] [hereinafter ORDER NO. 202-07-1] (extending to February 1, 2007); DEP'T OF ENERGY, ORDER NO. 202-07-2 (Jan. 31, 2007), <https://www.energy.gov/sites/default/files/2022-07/2020202-07-2%20January%2031%2C%202007%20-%20Mirant%20Corporation.pdf> [<https://perma.cc/HJL5-HR5R>] [hereinafter ORDER NO. 202-07-2] (extending to July 1, 2007).

¹¹⁶ *Reliability Hearing*, *supra* note 99, at 50 & n.3 (statement of Regina McCarthy, Assistant Adm'r of Air & Radiation, Env't Prot. Agency).

¹¹⁷ *Id.* at 50 n.3.

¹¹⁸ Compare *id.* at 46 ("this fine was not a violation compelled by the order"), with *id.* at 39 (statement of Patricia Hoffman, Assistant Sec'y, Off. of Elec. Delivery and Energy Reliability, Dep't of Energy) (describing Mirant as having faced a "potential conflict" between the § 202(c) order and an environmental statute), and *id.* at 120, 130, 178–79 (statement of Debra L. Raggio, Vice President & Assistant Gen. Couns., GenOn Energy, Inc.) (insisting that "[w]e would not have had the exceedance but for the order").

¹¹⁹ Ferrey, *Broken at Both Ends*, *supra* note 13, at 73 (describing Mirant's fine from VDEQ as "the proverbial trap between an energy rock and an environmental hard place").

¹²⁰ Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, § 61002, 129 Stat. 1312, 1772–73 (2015) (amending 16 U.S.C. § 824a(c)–(d)).

local environmental law or regulation, the Commission shall ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts. . . .

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.¹²¹

Further paragraphs limit § 202(c) orders with environmental conflicts to ninety days but allow the Secretary to extend orders if “necessary to meet the emergency and serve the public interest.”¹²²

In a 2012 House hearing on the amendment, supporters framed the updates as a modest change vindicating Congress’s intent for § 202(c). One claimed that the amendment merely “clarif[ied]” that complying with a § 202(c) order “will not be considered in violation of conflicting environmental laws.”¹²³ Another promised that “this bill . . . is not intended as a way out of compliance with any EPA regulations” while arguing that “it is never acceptable for the Federal Government to require actions from a company that necessitates a choice of which law to violate.”¹²⁴

At the hearing, the Mirant Alexandria incident illustrated the problem solved by the amendment.¹²⁵ Witnesses (and reports on the amendment) also mentioned a 2001 incident in California involving a different Mirant facility.¹²⁶ During the California energy markets crisis, Mirant obtained formal enforcement discretion decisions allowing it to operate a San

¹²¹ 16 U.S.C. § 824a(c)(2)–(3).

¹²² *Id.* § 824a(c)(4)(A).

¹²³ *Reliability Hearing*, *supra* note 99, at 2 (statement of Rep. Ed Whitfield).

¹²⁴ *Id.* at 22 (statement of Rep. Michael F. Doyle). *See also id.* at 25 (statement of Rep. Fred Upton) (“It is like having one police officer telling you to speed up while another sits at the end of the street to give you a ticket.”).

¹²⁵ *See, e.g., id.* at 23, 39, 42–44, 46, 49–50, 81–82, 84, 107–18, 122–31, 178–81, 192–94 (discussing Mirant).

¹²⁶ H.R. REP. NO. 112-586, at 5 (2012); H.R. REP. NO. 113-86, at 4–5 (2013); *Reliability Hearing*, *supra* note 99, at 49 n.2, 127.

Francisco-area power plant in excess of its Clean Air Act limits.¹²⁷ This discretion protected Mirant from government fines, but did not limit liability under the Clean Air Act's citizen suit provision.¹²⁸ The City of San Francisco and a group of NGOs sued Mirant for its permit violations.¹²⁹ Although the San Francisco incident did not involve § 202(c),¹³⁰ it perhaps helps explain the amended subsection's unusual provision absolving liability from "citizen suit[s]."¹³¹

There were hints that the amendment would do more than "clarify" § 202(c). Several committee members referenced the Mercury and Air Toxics Standards for Power Plants, a Clean Air Act rule that was especially costly for large, dirty coal-fired generating units.¹³² One Congressman, Representative Michael Doyle, invoking the "MATS rule," worried that "coal-fired power plant retirements are being announced nearly every month."¹³³ Still, Doyle continued to tie § 202(c) to surprise problems: he argued that "should something go wrong, like an unexpected severe weather event, we have one tool of last resort, emergency orders issued under Section 202(c)."¹³⁴ Representative Bobby Rush insisted that "we are requiring our energy companies to undergo a transformation to cleaner, more efficient operating facilities through the MATS standards," and argued that "in order to ensure that we are able to effectively protect our constituents from potential power shortages we must strengthen the language in Section 202C."¹³⁵

C. *Substance and Procedure of § 202(c)*

Here, the workings of § 202(c) are divided into four parts. First, what can count as an "emergency." Second, the kinds of actions that the

¹²⁷ *Reliability Hearing*, *supra* note 99, at 127–28 (statement of Debra L. Raggio, Vice President & Assistant Gen. Couns., GenOn Energy, Inc.).

¹²⁸ 42 U.S.C. § 7604(a)(1) (allowing "any person" to "commence a civil action on his own behalf . . . against any person . . . who is alleged to have violated . . . an emission standard or limitation").

¹²⁹ *See Reliability Hearing*, *supra* note 99, at 127–28 (statement of Debra L. Raggio, Vice President & Assistant Gen. Couns., GenOn Energy, Inc.) (citing First Amended Complaint for Injunctive and Other Relief and Demand for Jury Trial, City & Cnty. of S.F. v. Mirant Potrero, LLC, No. C-01-2356 (N.D. Cal. Aug. 20, 2001); First Amended Complaint, Bayview Hunters Point Cmty. Advocs. v. Mirant Potrero, LLC, No. C-01-02348 (N.D. Cal. Aug. 20, 2001)).

¹³⁰ *See id.* at 91 (statement of Regina McCarthy, Assistant Adm'r of Air & Radiation, Env't Prot. Agency) ("Congressman, can I make one correction? Just for Mr. Olson, the Potrero Utility incident was not related to § 202(c). It was not a § 202(c) issue . . ."); *id.* at 48 (claiming that EPA knew of no § 202(c) orders requiring violation of environmental laws or regulations).

¹³¹ 16 U.S.C. § 824a(c)(3).

¹³² National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012) (codified at 40 C.F.R. pt. 63, subpart UUUUU).

¹³³ *See Reliability Hearing*, *supra* note 99, at 22 (statement of Rep. Michael F. Doyle).

¹³⁴ *See id.*; *cf. id.* at 37 (statement of Rep. Pete Olson) (arguing that the proposed amendment was "extremely relevant today" because EPA, FERC, and the Department of Energy had "acknowledged that grid reliability could be threatened due to accelerated power plant closures").

¹³⁵ *Id.* at 189–90 (statement of Rep. Bobby L. Rush).

Department of Energy may mandate in a § 202(c) order. Third, the statutory language that requires the Department to minimize adverse effects when orders involve conflicts with environmental law. Finally, the underdeveloped procedure for obtaining and contesting § 202(c) orders.

1. “Emergency”

What counts as an emergency is a central, unsettled question about § 202(c). This subpart introduces a tripartite taxonomy of possible approaches to the meaning of “emergency,” and argues that text and historical context strongly suggest that one of those approaches is the right one: that § 202(c) orders are allowed only during wartime or for *unexpected* crises.

There are two situations when orders are permitted: “[d]uring the continuance of any war in which the United States is engaged” *or* “whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes.”¹³⁶ No order since World War II has invoked “continuance of any war”¹³⁷; instead, the FPC and now the Secretary of Energy have relied on findings of “an emergency.”

The statute seems to list out three different sorts of emergencies. 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.”¹³⁸ The concluding catchall—“other causes”—makes the emergency power exceptionally capacious, if read for all its worth. But, in commentary to one 1974 rulemaking, the FPC endorsed a sensible *ejusdem generis* reading limiting “other causes” to “[o]nly those [causes] which are related to the enumerated statutory causes.”¹³⁹ Still, the section expressly delegates to “the Commission” (now the Secretary of Energy) the power to determine whether any of these three emergencies exist.¹⁴⁰ That express delegation means the Secretary’s emergency declarations are entitled to deference even after *Loper Bright*.¹⁴¹

¹³⁶ 16 U.S.C. § 824a(c)(1); *accord* Niagara Mohawk Power Corp., 56 F.P.C. 666, 667–68 (1976) (“[§ 202(c)] emergencies are of two basic types: 1) emergencies as determined by the Commission by reason of one or more [of the factors listed in § 202(c)] . . . 2) emergencies occasioned during wars in which the United States may be engaged.”).

¹³⁷ 16 U.S.C. § 824a(c)(1). For a World War II-vintage order citing the declarations of war against Germany and Japan, see, for example, Bonneville Power Admin., 3 F.P.C. 920, 920–21 (1943).

¹³⁸ 16 U.S.C. § 824a(c)(1).

¹³⁹ Amendment of Regulations Under the Federal Power Act; Part 32—Interconnection of Facilities; Emergencies; Transmission to Foreign Country, Order No. 520, 52 F.P.C. 1554, 1558 n.8 (1974).

¹⁴⁰ *Id.* at 1557.

¹⁴¹ See *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024).

Across § 202(c)’s history, agency officials have toyed with different meanings of “emergency.” Those competing approaches fall into roughly three camps. First, a broad understanding of the types of events that can be emergencies, cabined by the rule that those events must have been *unexpected* or *unanticipated*. Second, a freewheeling approach that allows for lengthy § 202(c) orders whenever the grid is in trouble, whether the problem was anticipated or not. And third, the most restrictive: creating objective criteria for emergencies (this approach is not necessarily incompatible with the first).

Approach 1: Unexpected emergencies only. — The first approach is the correct and most common one, and the one currently reflected in § 202(c)’s implementing regulations. A rule promulgated by the Department of Energy in 1981¹⁴²—still in effect—defines “emergency” as: “an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power.”¹⁴³ An “emergency” might be “the result of weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected ‘entity’ to prevent.”¹⁴⁴ An “emergency” might also be “a sudden increase in customer demand, an inability to obtain adequate amounts of the necessary fuels to generate electricity, or a regulatory action which prohibits the use of certain electric power supply facilities.”¹⁴⁵

In a case involving an agency, of course, the statute’s meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes . . . empower an agency . . . to regulate subject to the limits imposed by a term or phrase that ‘leaves agencies with flexibility’ . . .

(quoting *Michigan v. EPA*, 576 U.S. 743, 752 (2015)); Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2153 (2016) (book review); E. Garrett West, *A Youngstown for the Administrative State*, 70 ADMIN. L. REV. 629, 666–67 (2018).

¹⁴² Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power, 46 Fed. Reg. 39984 (Aug. 6, 1981) (codified at 10 C.F.R. §§ 205.370–205.379). The 1981 regulations supplemented an older definition of “emergency,” which was shorter and similar, but did not expressly apply to § 202(c) orders. *See* 18 C.F.R. § 32.20 (1980).

‘Emergency’, as used in section 202(d) of the Federal Power Act, is defined to mean the failure of facilities for the generation or transmission of electric energy caused by breakdown, weather conditions, acts of God, or other unforeseen occurrences, not reasonably within the power of the utility affected to prevent, resulting in the cutting off or curtailment of the electric service, or rendering such utility unable to provide adequate service for its customers.

Although this older statutory definition referred to § 202(d), rather than § 202(c), FPC staff seem to have thought it might be relevant to § 202(c) emergencies. *See, e.g.*, Initial Decision of the Presiding Examiner, Pub. Serv. Co. of Ind., Docket No. E-7410 (Feb. 20, 1969), *reprinted in* 50 F.P.C. 1323, 1330–31 [hereinafter Initial Decision, Pub. Serv. Co. of Ind.] (referencing this definition in a discussion about § 202(c)).

¹⁴³ 10 C.F.R. § 205.371 (2024).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

By using words like “unexpected,” “unforeseen,” and “sudden,” the regulations appear to confine emergencies to situations that cannot be predicted in advance.¹⁴⁶ This reflects the text of the statute. The word “emergency” itself indicates suddenness. As one roughly contemporaneous dictionary defined it, an emergency is “a state of things unexpectedly arising, and urgently demanding immediate action.”¹⁴⁷ Hence, § 202(c)’s provision for orders “with *or without* notice, hearing, or report.”¹⁴⁸ The first of the three possible emergencies underlines this unexpectedness requirement by referring to “a *sudden* increase in the demand for electric energy.”¹⁴⁹

This reading is reinforced by the only two court decisions that have ever said anything meaningful about § 202(c). In one, *Otter Tail Power Co. v. Federal Power Commission*,¹⁵⁰ the Eighth Circuit rejected a challenge by Otter Tail Power (a utility company) to an FPC order under § 202(b) of the Federal Power Act requiring an interconnection between Otter Tail and a competitor utility.¹⁵¹ Because the interconnection was to be energized only if some later emergency arose, Otter Tail argued that the FPC should have used § 202(c), not § 202(b).¹⁵² But the court reasoned that “§ 202(b) applies to a crisis which is likely to develop in the foresee[a]ble future but which does not necessitate immediate action”—in contrast with § 202(c), which “enables the Commission to react to a war or national disaster.”¹⁵³ In the other, *Richmond Power & Light v. FERC*,¹⁵⁴ the D.C. Circuit reviewed the FPC’s rejection of a request to declare the 1970s oil embargo a § 202(c) emergency.¹⁵⁵ The court quickly dispatched the argument that “dependence on imported oil leaves this country with a continuing emergency,” observing that § 202(c) “speaks of ‘temporary’ emergencies, epitomized by wartime disturbances.”¹⁵⁶

¹⁴⁶ See JACOBS & PESKOE, *supra* note 13, at 26 (making a similar point); Schneider & Trotta, *supra* note 13, at 389–90 (also making a similar point).

¹⁴⁷ *Emergency*, 3 THE OXFORD ENGLISH DICTIONARY 119 (1st ed. 1913). “Emergency” has retained the same meaning for many years. See *Emergency*, THE CENTURY DICTIONARY 1897 (1889) (“[A] sudden or unexpected happening; an unforeseen occurrence or condition”); *Emergency*, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/emergency_n (last visited July 29, 2024) (“A juncture that arises or ‘turns up’; esp. a state of things unexpectedly arising, and urgently demanding immediate action.”).

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

¹⁴⁹ *Id.* (emphasis added).

¹⁵⁰ 429 F.2d 232 (8th Cir. 1970).

¹⁵¹ *Id.* at 233.

¹⁵² *Id.* at 234.

¹⁵³ *Id.*

¹⁵⁴ 574 F.2d 610 (D.C. Cir. 1978). The caption refers to FERC, but “the events relevant to this case occurred before” FERC’s creation and the transfer of FPC proceedings to FERC. *Id.* at 612 n.1.

¹⁵⁵ *Id.* at 614–15.

¹⁵⁶ *Id.* at 615. For similar reasoning, see also Initial Decision, Pub. Serv. Co. of Ind., *supra* note 142, at 1331.

Search of previous Commission decision under Section 202(c) suggests that the Commission has reserved action under this provision to situations which

Also, the FPC and Department of Energy have almost always issued § 202(c) orders during wartime or because of unexpected events, further bolstering the unexpected-events-only reading.¹⁵⁷ The earliest orders invoked “a sudden increase in the demand for electric energy,”¹⁵⁸ and subsequent orders were during World War II.¹⁵⁹ More recently, the California energy markets crisis was, of course, quite surprising, as were the Texas hurricanes that prompted other orders.¹⁶⁰ Still, agency practice has not always been so restrained.

Approach 2: Emergencies for anything, for any duration. — Another, more aggressive reading of “emergency” has sometimes appeared, although it has almost always been contested. For example, a 1950 order declared a § 202(c) emergency (tersely citing a presidential proclamation related to the Korean War) even though the utilities applying for the order had not claimed “that any emergency exists.”¹⁶¹ One commissioner dissented, pointing out that the utilities had disclaimed any emergency and insisting that the FPC’s “records show ample electrical energy in the area.”¹⁶² Or in a 1972 FPC decision, the “emergency” was the Cleveland municipal utility’s failure to maintain adequate reserve capacity.¹⁶³ This was a predictable dilemma that the FPC conceded was caused by factors “both within and without the control of the City.”¹⁶⁴ Again, a commissioner dissented, arguing that the “‘emergency’ now being acted upon is neither more nor less than the ‘emergency’ which has existed for months or years heretofore.”¹⁶⁵ Perhaps these two orders addressed pressing problems with the electricity supply—but they are in tension with the ordinary of meaning of “emergency,” which, as suggested above, implies some degree of suddenness or surprise.

can fairly be termed emergencies arising from sudden physical breakdowns, shortages, or unanticipated demands. In no case has the Commission taken affirmative action under Section 202(c) in a situation such as the instant one where a supplier having the capacity to provide electric power has notified the purchaser that it will no longer supply him with electric power after a certain date

(footnote omitted).

¹⁵⁷ *Cf.*, e.g., *Cnty. of Maui v. Haw. Wildlife Fund*, 140 S. Ct. 1462, 1472 (2020) (“[L]ongstanding regulatory practice undermines the Ninth Circuit’s broad interpretation of the statute.”).

¹⁵⁸ Recommendation for Curtailment of the Use of Elec. Energy in the Se. States, 2 F.P.C. 990, 990 (1941).

¹⁵⁹ *Infra* Table 2 (listing all FPC-era § 202(c) orders).

¹⁶⁰ See *supra* note 107 and accompanying text (discussing the California energy market fiasco and its effect on Texas).

¹⁶¹ *Texas Elec. Serv. Co.*, 9 F.P.C. 1373, 1373–74 (1950) (citing Proclamation No. 2914, 15 Fed. Reg. 9029 (Dec. 19, 1950)); *id.* at 1374 (Buchanan, Comm’r, dissenting) (“The application neither claims nor shows any emergency. To the contrary, it flatly asserts ‘the companies do not represent that any emergency exists.’”).

¹⁶² *Id.* (Buchanan, Comm’r, dissenting).

¹⁶³ See *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 47 F.P.C. 747, 748 (1972) (“It appears that the City has an emergency by virtue of the shortage of facilities for the generation of electric energy whenever the largest unit is out of service.”).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 751 (Carver, Comm’r, dissenting).

More recently, during the first Trump administration, a leaked Department of Energy memo showed that Department officials had seriously considered announcing that the possible retirement of a few coal-fired power plants (made uneconomical by inexpensive natural gas) was a § 202(c) emergency.¹⁶⁶ The memo came to naught, but it embraced a reading of § 202(c) unbounded by whether the emergency was unanticipated. The memo argued that § 202(c) was designed “not merely to react to actual disasters, but to act in a preventative manner.”¹⁶⁷

Under this broader understanding of “emergency,” emergencies also need not be that temporary. The Mirant Alexandria emergency lasted more than a year and a half.¹⁶⁸ And another series of orders, discussed in more detail below, lasted almost two years.¹⁶⁹ Deeper in § 202(c)’s history are longer emergencies still. For instance, one of the very first § 202(c) orders directed the Florida Power & Light Company to interconnect with the Florida Public Service Company.¹⁷⁰ The order had no expiration date; thirteen years later the FPC finally terminated the order.¹⁷¹

Approach 3: Objective emergencies. — The FPC experimented briefly with a more rigorous approach. In January 1974, amid the OPEC oil embargo and energy crisis, a group of utilities petitioned the FPC for a § 202(c) order to facilitate fuel conservation and energy transfer measures.¹⁷² But the Commission refused to declare a § 202(c) emergency.¹⁷³ Instead, in August 1974 it announced its intent to adopt new implementing regulations for § 202(c), saying that “[r]ecent events, particularly those of the 1973 Arab oil embargo, underscore the need for regulations of this type.”¹⁷⁴ Apparently worried about overuse of § 202(c), the proposal insisted that “electric utility control dispatching centers” were able “to transfer substantial blocks of power and energy among systems under . . . various types of emergency conditions.”¹⁷⁵ The final rule, adopted in November 1974,¹⁷⁶ set more objective criteria for emergency declarations.¹⁷⁷ For example, there may be an “inadequate fuel or energy supply” if “[s]ystem coal stocks are reduced to 30 days (or less) of normal

¹⁶⁶ See JACOBS & PESKOE, *supra* note 13, at 26–28.

¹⁶⁷ Untitled Memorandum 37 (May 29, 2018), <https://www.documentcloud.org/documents/4491203-Grid-Memo.html>.

¹⁶⁸ ORDER NO. 202-05-3, *supra* note 114, at 10, 12; ORDER NO. 202-07-2, *supra* note 115, at 8.

¹⁶⁹ See *infra* notes 217–224 and accompanying text (discussing the Dominion Energy orders).

¹⁷⁰ Fla. Power & Light Co., 2 F.P.C. 991, 991 (1941).

¹⁷¹ Fla. Power & Light Co., 13 F.P.C. 1231, 1231 (1954).

¹⁷² New England Power Pool Participants (*Coal-by-Wire*), 52 F.P.C. 410, 410 (1974). On the history of the embargo, see GIULIANO GARAVINI, *THE RISE AND FALL OF OPEC IN THE TWENTIETH CENTURY* 216–53 (2019) (recounting how “Arab crude oil production had dropped from 20.3 million barrels per day in September, to 15.8 million barrels per day in November 1973”).

¹⁷³ *Coal-by-Wire*, 52 F.P.C. at 410.

¹⁷⁴ Emergency Actions Pursuant to Section 202(c) of the Federal Power Act, 39 Fed. Reg. 31654, 31654 (proposed Aug. 30, 1974) (to be codified at 18 C.F.R. pt. 32).

¹⁷⁵ *Id.*

¹⁷⁶ Order No. 520, 52 F.P.C. 1554 (1974) (codified at 18 C.F.R. §§ 32.60–32.62 (1980)).

¹⁷⁷ 18 C.F.R. § 32.62(a) (1980).

burn days and a continued downward trend in stocks is projected.”¹⁷⁸ But oil embargo anxieties faded, and by 1978, the FPC no longer existed. In 1990, FERC deleted these regulations, explaining only that “the Commission’s jurisdiction over these matters was transferred to the Secretary of Energy.”¹⁷⁹ The Department of Energy never replaced them.

2. *What May Be Ordered*

If an emergency exists, what can a § 202(c) order command? The text itself lists five things: temporary connection of facilities, generation of electricity, delivery of electricity, interchange of electricity, and transmission of electricity.¹⁸⁰ But the five can be reduced to two groups: First, orders requiring the movement of electricity already generated; then, second, orders requiring the generation of electricity. Historically, most orders have fallen into the first category, especially orders requiring new interconnections or transmission across pre-existing infrastructure.¹⁸¹ There have, though, occasionally been generation orders.¹⁸² And since 2015, as is discussed below, § 202(c) orders have shifted almost entirely from interconnection to generation.¹⁸³

In practice, orders can go beyond the five narrow categories. Orders may—and often do—require reports on implementation.¹⁸⁴ Also, the Department of Energy frequently delegates certain order implementation decisions to regional ISOs, RTOs, or balancing authorities.¹⁸⁵ One World War II-vintage order authorized a hydropower license amendment so that the Niagara Falls Power Company could divert additional water through its turbines.¹⁸⁶ And so, as used, orders will often extend beyond the narrow confines of the text of § 202(c) to accomplish the broader goal of mitigating

¹⁷⁸ *Id.* § 32.62(c)(1). The regulations set similar criteria for shortages of other types of fuel, including natural gas, fuel oil, and hydropower. *See id.* § 32.62(c).

¹⁷⁹ Deletion of Procedural Regulations for Transmission Electricity to a Foreign Country and for Emergency Connection of Facilities, 55 Fed. Reg. 3943 (Feb. 6, 1990).

¹⁸⁰ 16 U.S.C. § 824a(c)(1). *See also* Stein, *supra* note 13, at 840 n.213 (listing the five permissible emergency circumstances).

¹⁸¹ *See infra* Table 1.

¹⁸² *See, e.g.,* Duke Power Co., 2 F.P.C. 1055, 1056 (1941) (ordering that “Duke Power Company continue to deliver . . . electric energy in an aggregate amount per week equivalent to that delivered during the week ending October 18, 1941”).

¹⁸³ *See infra* Part II.B; Figure 1 (showing that ten generation orders were issued between 2015 and 2022).

¹⁸⁴ *See, e.g.,* ORDER NO. 202-05-3, *supra* note 114, at 11 (requiring a post-order report). Reports are also required by regulation. 10 C.F.R. § 205.377 (2024).

¹⁸⁵ *See, e.g.,* DECEMBER 2000 CAISO ORDER, *supra* note 105, at 2–3 (delegating authority but requiring pre-approval from the Department); *Waiver of Certain Provisions of Order Pursuant to Section 202(c) of the Federal Power Act*, DEP’T OF ENERGY (Jan. 16, 2001), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20January%2016%2C%202001%20-%20California.pdf> [<https://perma.cc/P3FU-GCRV>] (revising the pre-approval requirement); DEP’T OF ENERGY, ORDER NO. 202-20-2 (Sept. 6, 2020), https://www.energy.gov/sites/default/files/2020/09/f78/CAISO%20202c%20Order_1.pdf [<https://perma.cc/KRD5-VRSG>] [hereinafter ORDER NO. 202-20-2] (delegating to CAISO the authority to dispatch units and to “select the combination of units that meets the reliability emergency and minimizes environmental impact”).

¹⁸⁶ Niagara Falls Power Co., 2 F.P.C. 461, 465 (1941).

the emergency.

3. *Minimizing Adverse Effects*

Along with its nonliability language, the 2015 amendment introduced some safeguards, triggered when an order conflicts with environmental rules.¹⁸⁷ First, such orders must be limited to the “hours necessary to meet the emergency and serve the public interest.”¹⁸⁸ Second, they must be consistent with the environmental rules “to the maximum extent practicable.”¹⁸⁹ Third, they must “minimize[] any adverse environmental impacts.”¹⁹⁰ And, fourth, they can last no longer than ninety days.¹⁹¹ Orders can be renewed, as long as they meet two additional conditions. One is that an extension is permitted only if the Secretary¹⁹² “determines” it is “necessary to meet the emergency and serve the public interest.”¹⁹³ The other is that, when issuing an extension, the Secretary must “consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable.”¹⁹⁴ Any recommended conditions must be made public,¹⁹⁵ but they need not be imposed if the Secretary determines they “would prevent the order from adequately addressing the emergency necessitating such order.”¹⁹⁶

Yet the protections are riddled with outs. Because the propriety of extensions is committed to the “determin[ation]” of the Secretary, who has the power to decide whether extensions “serve the public interest,” the

¹⁸⁷ See 16 U.S.C. § 824a(c)(2)–(4) (limiting certain requirements to when there is a “conflict” or “noncompliance” with “any Federal, State, or local environmental law or regulation”).

¹⁸⁸ *Id.* § 824a(c)(2).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* § 824a(c)(4)(A).

¹⁹² The amended language still refers to the “Commission,” but I refer here to the “Secretary” because of the 1977 transfer of authority.

¹⁹³ 16 U.S.C. § 824a(c)(4)(A).

¹⁹⁴ *Id.* § 824a(c)(4)(B). The statute offers no guidance on how to determine which federal agency is the “primary” agency. So far, (c)(4)(B) consultations have occurred in just three emergencies. See DEP’T OF ENERGY, AMENDMENT NUMBER 1 TO ORDER NO. 202-22-2, at 2 (Sept. 8, 2022), https://www.energy.gov/sites/default/files/2022-09/Amendment%20No.%201%20to%20Order%20202-22-2%20sb%20A_S3%20Hogan.pdf [<https://perma.cc/X7R5-7YUV>] [hereinafter ORDER NO. 202-22-2 AMENDMENT 1] (referring to consultation with EPA); DEP’T OF ENERGY, AMENDMENT NUMBER 2 TO ORDER NO. 202-22-1, at 1–2 (Sept. 8, 2022), https://www.energy.gov/sites/default/files/2022-09/Amendment%202%20to%20Order%20202-22-1_FINAL_9.8.2022%20sb%20A_S3%20Hogan.pdf [<https://perma.cc/6Y9G-439F>] [hereinafter ORDER NO. 202-22-1 AMENDMENT 2] (likewise referring to consultation with EPA); Email from Larry Starfield, Acting Ass’t Admin., Off. Envt & Compliance Assurances, Env’t Prot. Agency, to Pat Hoffman, Acting Under Sec’y for Sci. & Energy, Dep’t of Energy (Sept. 11, 2017), <https://www.energy.gov/sites/default/files/2017/09/f36/2017-9-11%20EPA%20consultation%20renewal.pdf> [<https://perma.cc/95LK-C97N>] [hereinafter *Dominion Consultation Email*] (likewise referring to consultation with EPA). All three were with the EPA regarding waivers of Clean Air Act rules.

¹⁹⁵ 16 U.S.C. § 824a(c)(4)(B).

¹⁹⁶ *Id.*

Secretary has broad discretionary power over whether to grant them.¹⁹⁷ With no overall limit on the number of extensions, orders can in principle be renewed indefinitely. Similarly, whether to accept conditions proposed after consultation depends on (as mentioned above) the Secretary's "determin[ation]" as to whether the conditions prevent "adequately addressing the emergency."¹⁹⁸ The baked-in discretion for the Secretary means it is unclear how much bite the safeguards really have.¹⁹⁹

4. *Ad Hoc and Ex Parte Procedure*

Since the 1977 reorganization, § 202(c) has operated in a procedural gray zone. Before the Federal Power Commission's dissolution, that agency's robust body of procedural rules guided requests for and issuances of orders. But since then, the Energy Department's § 202(c) proceedings have been ad hoc and sometimes ex parte. Now, the Department maintains no formal docket for § 202(c) orders and no formal filing mechanism.²⁰⁰ Even when orders are issued, sometimes all the notice is an after-the-order scan posted to the Department's website—although more recent orders have been followed months later by formal notices in the *Federal Register*.²⁰¹ Proceedings require no public notice or participation. Section 202(c) itself permits orders "either upon [the Secretary's] own motion or upon complaint, with or without notice, hearing, or report."²⁰² In at least one order the Department has interpreted this to mean that "[t]he Administrative Procedure Act's prohibitions on ex parte communications in an adjudicatory proceeding . . . do not apply to DOE's [§] 202(c) proceedings."²⁰³ Recently, this scant procedure has been used for a new kind of § 202(c) order.

II. THE ENVIRONMENTAL TURN: § 202(C)'S PRESENT

During the Trump and Biden administrations, the Department of Energy has taken § 202(c) in a new direction. The earlier crop of § 202(c) orders

¹⁹⁷ *Id.* § 824a(c)(4)(A).

¹⁹⁸ *Id.* § 824a(c)(4)(B).

¹⁹⁹ During the 2012 hearings on the amendment, Gina McCarthy, then Assistant Administrator for Air and Radiation at EPA, soon to be EPA Administrator, warned that the amendments would "significantly decrease[] current incentives for input from EPA and the State and local environmental officials on how best to craft orders that are more, rather than less, environmentally sensitive." *Reliability Hearing*, *supra* note 99, at 47 (statement of Regina A. McCarthy, Assistant Admin. of Air & Radiation, Env't Prot. Agency).

²⁰⁰ Instead, a webpage asks that "comments and requests related to FPA section 202(c) . . . be sent via email to AskCR@hq.doe.gov." *DOE Use of FPA Emergency Authority*, *supra* note 99.

²⁰¹ For example, the only information published online or in print by the Department of Energy about a September 2008 order to CenterPoint Energy is a scan of the order, which covered barely a single sheet of paper. *See* ORDER NO. 202-08-1, *supra* note 107. On the other hand, the Department followed several recent orders with notices in the *Federal Register*. *See, e.g.*, Emergency Order Issued to the Electric Reliability Council of Texas, Inc. (ERCOT), 88 Fed. Reg. 67740 (Oct. 2, 2023); Emergency Order Issued to PJM Interconnection, L.L.C., 88 Fed. Reg. 10103 (Feb. 16, 2023).

²⁰² 16 U.S.C. § 824a(c)(1).

²⁰³ ORDER NO. 202-05-3, *supra* note 114, at 2 n.4 (citation omitted) (citing 5 U.S.C. § 557(d)(l)).

focused on interconnection and were mostly issued during World War II. Since 2015, all § 202(c) orders—save one—have required generation (not interconnection) and have waived compliance with at least some environmental rules. This Part explores the environmental turn.

A. *Different Emergencies*

At first glance, the post-FAST Act § 202(c) orders involve a familiar parade of emergencies. The first of these, from 2017, cited a “lightning-caused fire” and flooding that caused construction delays for a new replacement unit.²⁰⁴ Five cited dramatic increases in demand caused by unusual heat waves.²⁰⁵ Two orders to the Texas grid operator, ERCOT, and a third to PJM Interconnection all cited increases in demand and pressure on supply caused by unusually cold weather.²⁰⁶

But underlying all these orders is a new problem. Not a lack of interconnection, but the constraints of environmental law. In response to the lightning strike, heat waves, and cold waves, the requests have *not* been for orders requiring the movement of electricity around the grid to meet the shortage; instead, grid entities are asking for permission to run generation units in excess of environmental limits.

Take the 2017 lightning strike order. The Grand River Dam Authority (“GRDA”) is a utility in Oklahoma.²⁰⁷ Most of its generation capacity comes from the Grand River Energy Center, a facility with both coal- and natural gas-fired generation units.²⁰⁸ In a § 202(c) request letter to the Department

²⁰⁴ DEP’T OF ENERGY, ORDER NO. 202-17-1 (Apr. 14, 2017), <https://www.energy.gov/sites/default/files/2017/04/f34/Oklahoma.pdf> [<https://perma.cc/2DGH-9YT9>] [hereinafter ORDER NO. 202-17-1].

²⁰⁵ See ORDER NO. 202-20-2, *supra* note 185 (citing “extreme heat”); DEP’T OF ENERGY, ORDER NO. 202-21-2 (Sept. 10, 2021), <https://www.energy.gov/sites/default/files/2021-09/EXEC-2021-005025%20-%20Order%20202-21-2%20-%20signed%209-10-21.pdf> [<https://perma.cc/AR6W-DZTD>] [hereinafter ORDER NO. 202-21-2] (citing “extreme heat, drought conditions, and wildfires”); DEP’T OF ENERGY, ORDER NO. 202-22-1 (Sept. 2, 2022), <https://www.energy.gov/sites/default/files/2022-09/Order%20202-22-1%20final.pdf> [<https://perma.cc/Y6WP-PTHZ>] [hereinafter ORDER NO. 202-22-1] (citing “extreme heat, drought conditions, and threat of wildfires”); DEP’T OF ENERGY, ORDER NO. 202-22-2 (Sept. 4, 2022), <https://www.energy.gov/sites/default/files/2022-09/Order%20202-22-2%20Final%20for%20BANC%20.pdf> [<https://perma.cc/6XRT-WSVX>] [hereinafter ORDER NO. 202-22-2] (citing “extreme heat, drought conditions, and threat of wildfires”); DEP’T OF ENERGY, ORDER NO. 202-23-1 (Sept. 7, 2023), <https://www.energy.gov/sites/default/files/2023-09/ERCOT%20202%28c%29%20Order.pdf> [<https://perma.cc/8BNH-FYQ4>] [hereinafter ORDER NO. 202-23-1] (citing “a sustained heat wave”).

²⁰⁶ See DEP’T OF ENERGY, ORDER NO. 202-21-1 (Feb. 14, 2021), <https://www.energy.gov/sites/default/files/2021/02/f82/DOE%20202%28c%29%20Emergency%20Order%20-%20ERCOT%2002.14.2021.pdf> [<https://perma.cc/NU3X-NMJ8>] [hereinafter ORDER NO. 202-21-1] (citing “an unprecedented cold weather event”; to ERCOT); DEP’T OF ENERGY, ORDER NO. 202-22-3 (Dec. 23, 2022), <https://www.energy.gov/sites/default/files/2022-12/Department%20of%20Energy%20Order%20No.%20202-22-3signed.pdf> [<https://perma.cc/SV83-8AFG>] [hereinafter ORDER NO. 202-22-3] (citing “a severe winter weather system”; to ERCOT); ORDER NO. 202-22-4, *supra* note 8 (citing “a severe winter weather system”; to PJM Interconnection).

²⁰⁷ Letter from Daniel S. Sullivan, Chief Exec. Officer, Grand River Dam Auth., to James Richard Perry, Sec’y, Dep’t of Energy 2 (Apr. 11, 2017), <https://www.energy.gov/sites/default/files/2017/05/f34/GRDA%20public%20202%28c%29%20letter.pdf> [<https://perma.cc/TYW6-X54U>].

²⁰⁸ *Id.*

of Energy, GRDA said that the Mercury and Air Toxics Standards (“MATS”) were the reason for its request. Because MATS “would have required substantial upgrades” to a coal-fired unit, Unit No. 1, GRDA decided to shutter Unit No. 1 and construct a new, natural gas-fired Unit No. 3.²⁰⁹ But the new unit was not scheduled to become available until May 2017, well after the MATS compliance deadline.²¹⁰ So, to protect grid reliability, GRDA requested and received from EPA in April 2016 an Administrative Order deferring MATS compliance until April 2017.²¹¹ Then, a lightning strike in July 2016 damaged Unit No. 2, a second coal-fired generator, and floods caused supply shortages that pushed Unit No. 3’s completion into June 2017.²¹² So, once Unit No. 1 closed in compliance with the EPA order, GRDA would fall out of compliance with a NERC reliability standard.²¹³ GRDA therefore requested a § 202(c) order permitting Unit No. 1 to run—despite its MATS-violating emissions—if needed to prevent blackouts.²¹⁴ Three days later, the Department granted the request,²¹⁵ although in the end GRDA never needed to use the newly obtained flexibility.²¹⁶

A series of orders in 2017 had even less to do with natural disasters. A utility, Dominion Energy, had operated a pair of large coal-fired units at its Yorktown plant near Norfolk, Virginia since the 1950s.²¹⁷ After the MATS rule, rather than upgrade the Yorktown units with costly emissions controls, Dominion planned to create a new transmission line to bring in electricity from elsewhere.²¹⁸ To keep the Yorktown Units open during the planning

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* (citing Administrative Compliance Order, Grand River Dam Auth., No. AED-CAA-113(a)-2016-0002 (EPA Off. Enf’t & Compliance Assurance Apr. 18, 2016)).

²¹² *Id.* at 1, 8.

²¹³ *Id.* at 5 (citing N. Am. Elec. Reliability Corp., *VAR-001-4.1 — Voltage and Reactive Control*, <https://www.nerc.com/pa/Stand/Reliability%20Standards/VAR-001-4.1.pdf> (last updated Nov. 13, 2015)).

²¹⁴ *Id.* at 2.

²¹⁵ ORDER NO. 202-17-1, *supra* note 204.

²¹⁶ Email from Kenneth Buell, Deputy Dir., Off. Cybersecurity, Energy Sec., & Emergency Response, Dep’t of Energy, to author (May 17, 2024, 08:48 AM) (on file with author) (“Order 202-17-1 GRDA – Was Not Used, [email notification July 20, 2017]” (alterations in original)) [hereinafter 202(c) Usage Email].

²¹⁷ Darren Sweeney, *Dominion Shuts Down Nearly 2,000 MW of Coal, Oil Capacity in Virginia*, S&P GLOB.: MKT. INTEL. (May 31, 2023), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/dominion-shuts-down-nearly-2-000-mw-of-coal-oil-capacity-in-virginia-75993976> (showing that two smaller coal-burning plants at Yorktown that had operated since the mid-1950s were retired in 2019).

²¹⁸ See Letter from Steven R. Pincus, Assoc. Gen. Counsel, PJM Interconnection, LLC., to James Richard Perry, Sec’y, Dep’t of Energy 16–17 (June 13, 2017), <https://www.energy.gov/sites/prod/files/2017/07/f35/PUBLIC-DOE%20FPA%20202%28c%29%20Emergency%20Application%20Dominion%20Yorktown%201%20%202%20-6-13...0.pdf> [<https://perma.cc/42EV-WJXV>] [hereinafter *Dominion Request*] (arguing that compliance with MATS “would be prohibitively expensive[]” and that it would “take too long to permit and construct” pollution-control facilities). First, Dominion decided to shutter the Yorktown units because of MATS. *Id.* at 5 (“The deactivation of Yorktown Units is prompted

and construction phase of the transmission line, Dominion, like GRDA, obtained time-limited enforcement deferrals from EPA.²¹⁹ But the permits were delayed²²⁰ and EPA's deferrals were running out. So, Dominion and the regional grid operator, PJM Interconnection, requested a § 202(c) order requiring the Yorktown units to continue operating beyond the end of EPA's enforcement discretion.²²¹ Four days later, the Department granted the request.²²² The Secretary agreed that there was an emergency and wrote that "[e]lectric . . . reliability is at risk" because without the availability of the Yorktown units, Dominion and PJM could violate a NERC reliability standard.²²³ The orders would be extended six times for a total of twenty-one months before Dominion completed the transmission line.²²⁴

The heat and cold wave orders also faulted environmental limits. For example, one order to the California ISO ("CAISO") issued during a heat wave noted that the "impetus for the Application, however, arose . . . when the operator of [certain] natural gas-fired [generation facilities] informed the CAISO that it could not produce to its maximum generation capability without exceeding its federal air quality or other permit limitations."²²⁵ Or, during a 2022 cold snap in Texas, ERCOT requested (and was granted) a § 202(c) order because the electricity supply was tight and ERCOT had been "notified by one generation owner that some of its generating units are currently limited in their power output due to emissions, effluent, and other limits established by federal environmental permits."²²⁶

by the . . . Mercury and Air Toxics Standards . . ."). Next, PJM Interconnection, the regional grid operator, notified Dominion "that the deactivation of Yorktown Units 1 & 2 respectively would adversely affect the PJM transmission system absent the installation of certain transmission upgrades." *Id.* at 16.

²¹⁹ See *id.* at 5–6 (arguing that it was necessary to leave the Yorktown Units open to "maintain transmission system reliability" and to "keep the power grid stable in the North Hampton Roads").

²²⁰ See *id.* at 3 (referring to "significant delays associated with Dominion obtaining permitting approval for the PJM-ordered transmission upgrades"); *Nat'l Parks Conservation Ass'n v. Semonite*, 282 F. Supp. 3d 284 (D.D.C. 2017).

²²¹ *Dominion Request*, *supra* note 218, at 12–13.

²²² DEP'T OF ENERGY, ORDER NO. 202-17-2 (June 16, 2017), https://www.energy.gov/sites/prod/files/2017/08/f35/Order%20Number%20202-17-2_0_0.pdf [<https://perma.cc/YK99-RSDW>] [hereinafter ORDER NO. 202-17-2].

²²³ *Id.* at 2 (citing N. AM. ELEC. RELIABILITY CORP., *TPL-001-4 — Transmission System Planning Performance Requirements*, <https://www.nerc.com/pa/Stand/Reliability%20Standards/TPL-001-4.pdf> (last updated Nov. 26, 2014)).

²²⁴ JACOBS & PESKOE, *supra* note 13, at 32. See also *Skiffes Creek Timeline*, DOMINION ENERGY, <https://www.dominionenergy.com/projects-and-facilities/electric-projects/power-line-projects/skiffes-creek/timeline> (last visited Jan. 10, 2024) (reporting that Dominion energized the transmission line in February 2018).

²²⁵ ORDER NO. 202-20-2, *supra* note 185, at 2.

²²⁶ Letter from Pablo Vegas, President & Chief Exec. Officer, ERCOT, to Jennifer Granholm, Sec'y, Dep't of Energy, at 2 (Dec. 23, 2022), https://www.energy.gov/sites/default/files/2022-12/ERCOT%20DOE_202c%2012.23.22.pdf [<https://perma.cc/TTG3-XKJC>] [hereinafter ERCOT 2022 Request]; ORDER NO. 202-22-3, *supra* note 206.

B. *Different Orders*

What is ordered has adjusted with the changing emergencies. Now, “order” is a misnomer; the Department of Energy is not directing reluctant utilities to interconnect, but bestowing exemptions (in the form of orders to generate electricity), usually from the Clean Air Act. Since 2015, of twelve § 202(c) emergencies, eleven ordered generation of electricity that would cause violations of environmental rules.²²⁷ Two of those—the GRDA and Dominion orders—allowed for continued operation in violation of mercury and air toxics standards.²²⁸ The Dominion order also allowed the Yorktown units to operate without fully complying with Clean Water Act standards for cooling water intake structures, as well as an unspecified municipal permit requirement.²²⁹ At least eight orders—those issued during heat or cold waves—required generators to operate in excess of Clean Air Act permit requirements imposed as part of controls on criteria pollutants under the National Ambient Air Quality Standards.²³⁰ Those eight orders allowed for otherwise-illegal emissions of nitrogen oxides, a class of ozone precursors.²³¹ Others variously provided for carbon monoxide and ammonia emissions, as well as air opacity violations.²³² One order also referenced unspecified Clean Water Act pollution discharge limitations.²³³

²²⁷ See *infra* Table 1.

²²⁸ See *id.*

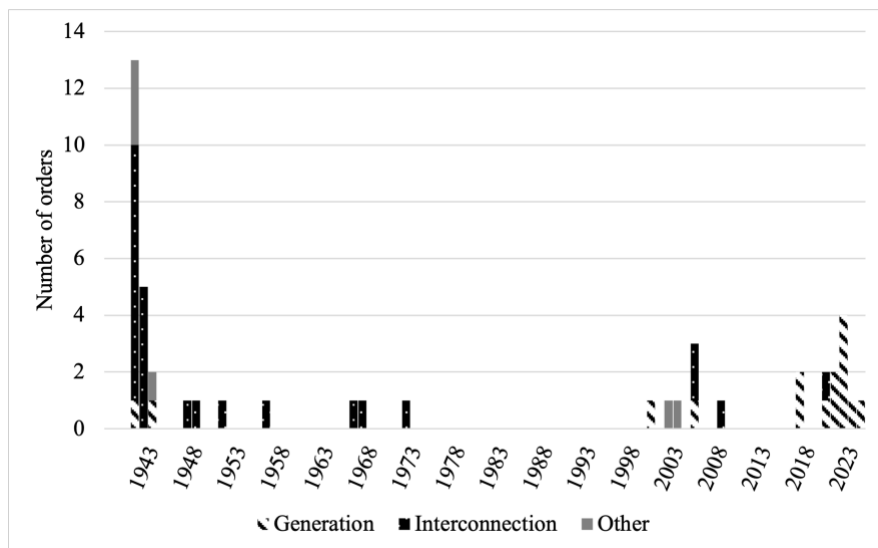
²²⁹ See *id.*; see also Clean Water Act § 316(b), 33 U.S.C. § 1326 (requiring the “best technology available for minimizing adverse environmental impact” for cooling water intake structures).

²³⁰ See *infra* Table 1.

²³¹ See *id.*

²³² See *id.*

²³³ See *id.* (ERCOT, February 2021).

Figure 1: § 202(c) emergencies by order type per year²³⁴

Contrast this with pre-2015 orders. Between 2000 and 2014, there were seven § 202(c) emergencies.²³⁵ Just two ordered generation—and one of those was for Mirant Alexandria, the episode that prompted the 2015 amendments. The rest either allowed electricity to flow into Texas or required use of the Connecticut-to-Long Island Cross Sound Cable.²³⁶ Looking back to the days of the Federal Power Commission, as Figure 1, above, shows,²³⁷ the shift in the type of § 202(c) orders is even more dramatic. There is a spike of orders immediately before and during World War II. Almost all those decisions ordered interconnections.²³⁸ Then, in the

²³⁴ Each separate docket or order series in which the FPC or the Department of Energy issued a § 202(c) order is counted as a separate emergency. So, each emergency on this graph corresponds with a single row in *infra* Table 1 or Table 2. However, note that this methodology produces a perhaps misleading spike in 1941. In a never repeated practice, the FPC issued ten distinct orders on June 27, 1941, pursuant to a single emergency declaration but on separate dockets. The single emergency declaration was contained in the recommendation-only decision, *Recommendation for the Curtailment of the Use of Electric Energy in the Southeastern States*, 2 F.P.C. 990 (1941). The nine other June 27, 1941, § 202(c) decisions *did* order actions, but referred back to *Recommendation for Curtailment* as describing the emergency that justified the orders. See sources cited in *infra* Table 2.

Orders directing an entity to both generate electricity and provide transmission or distribution are classified as “generation.” Orders directing an entity to both interconnect and provide transmission or distribution are classified as “interconnection.” Orders requiring neither generation nor interconnection (for example, an order requiring only delivery to a specific customer, *see, e.g.*, *Duke Power Co.*, 2 F.P.C. 1055 (1941); *Niagara Falls Power Co.*, 2 F.P.C. 461 (1941)) are classified as “other.” The two recommendation “orders,” *Recommendation for the Curtailment of the Use of Electric Energy in the Southeastern States*, 2 F.P.C. 990 (1941) and *Tenn. Valley Auth.*, 2 F.P.C. 997 (1941), are omitted from the chart.

²³⁵ *Infra* Table 1.

²³⁶ *Id.*

²³⁷ See also *infra* Table 2 (listing the details of FPC-era § 202(c) orders).

²³⁸ *Supra* Figure 1.

period after the war and before the dissolution of the FPC, the Commission used § 202(c) just seven times—in every case to order interconnection.²³⁹ Against this historical backdrop, the relative burst of *generation* orders after 2015 is even more striking.

C. *Evolving Safeguards*

The Department of Energy has enforced some informal procedural safeguards for this new sort of § 202(c) orders. Orders have consistently required reporting on any pollution exceedances. For example, the 2017 GRDA order required GRDA to “report to the Department all dates on which Unit No. 1 is run during the effectiveness of this Order and the [associated] emissions.”²⁴⁰ More typical of recent orders is one to ERCOT from 2023, which requires a preliminary report and final report on emissions.²⁴¹ But these reports themselves are of limited utility because the Department of Energy has refused to make most of them public, citing “the presence of business sensitive material in the reports.”²⁴² Still, separate from these requestor-submitted reports, during the entirety of the Biden administration the Department published brief summaries of § 202(c) orders and their aftermath in the *Federal Register*. These summaries describe the emergency, the order, and often, whether the pollution limit waivers were actually used.²⁴³

²³⁹ *Id.*; *infra* Table 2.

²⁴⁰ ORDER NO. 202-17-1, *supra* note 204, at 2.

²⁴¹ ORDER NO. 202-23-1, *supra* note 205, at 6 (requiring ERCOT to “submit a final report by November 6, 2023, with any revisions to the information reported on October 6, 2023”). For other similar requirements, see ORDER NO. 202-22-4, *supra* note 8, at 6; ORDER NO. 202-22-3, *supra* note 206, at 5; ORDER NO. 202-22-2, *supra* note 205, at 5.

²⁴² Email from Kenneth Buell, Deputy Dir., Off. Cybersecurity, Energy Sec., & Emergency Response, Dep’t of Energy, to author (Feb. 26, 2024, 9:12 AM) (on file with author) [hereinafter *Report Email*]. For example, Order No. 202-22-1 required a final report by November 14, 2022. ORDER NO. 202-22-1, *supra* note 205, at 5. Until February 2024, a Department of Energy webpage about the order promised that “[t]his page will be updated when CAISO[] files reports in accordance with this order.” *Federal Power Act Section 202(c): CAISO September 2022*, DEP’T OF ENERGY (Feb. 26, 2024, 10:33 AM), <https://www.energy.gov/ceser/federal-power-act-section-202c-caiso-september-2022> [https://perma.cc/JG2F-58TR] (on file with author). But after I inquired about the promised reports, this notice was removed. *Compare id.* (describing the notice), with *Federal Power Act Section 202(c): CAISO September 2022*, DEP’T OF ENERGY, <https://www.energy.gov/ceser/federal-power-act-section-202c-caiso-september-2022> [https://perma.cc/J7WC-R2C2] (last visited July 29, 2024) [hereinafter *CAISO Sept. 2022*] (omitting the notice). A Department official wrote that the Department “is unable to make the reports available on [its] website due to the presence of business sensitive material in the reports.” *Report Email, supra*. In a subsequent email, he added that, “[a]t this juncture, we do not anticipate requiring or doing a redacted version of the reports, and we will be removing the statement that the reports will be posted from the website.” Email from Kenneth Buell, Deputy Dir., Off. Cybersecurity, Energy Sec., & Emergency Response, Dep’t of Energy, to author (Feb. 26, 2024, 9:44 AM) (on file with author).

²⁴³ See, e.g., Emergency Order Issued to the Electric Reliability Council of Texas, Inc. (ERCOT), to Operate Power Generating Facilities Under Limited Circumstances in Texas as a Result of Extreme Weather, 88 Fed. Reg. 67740 (Oct. 2, 2023) (illustrating the information included in summaries); Emergency Order Issued to PJM Interconnection, LLC. to Operate Power Generating Facilities Under Limited Circumstances in the PJM Region as a Result of Extreme Weather, 88 Fed. Reg. 10103 (Feb.

Orders have also adopted sophisticated rules about when, exactly, pollution exceedances are allowed. The GRDA and Dominion orders incorporated by reference intricate unit dispatch conditions already included in earlier EPA enforcement deferral orders.²⁴⁴ More recent cold and heat wave orders have generally allowed for pollution exceedances only after grid operators exhaust all other resources and only if the operator has declared an energy emergency of a certain level of severity.²⁴⁵

Under the Biden administration, the Department also introduced a grab bag of additional tools. With that, some requests proactively provided information about whether vulnerable populations would be at risk because of pollution exceedances.²⁴⁶ Orders also required environmental justice assessments after the emergency resolves²⁴⁷ and required utilities to provide public notice to residents around affected units.²⁴⁸ At least some of these practices—and certainly environmental justice assessments—are unlikely to continue in the second Trump administration.²⁴⁹

The Department also adopted a more rigorous National Environmental Policy Act (“NEPA”)²⁵⁰ process for § 202(c) orders. NEPA requires that federal agencies develop an environmental impact assessment for “major Federal actions significantly affecting the quality of the human

16, 2023) (same). No *Federal Register* notice has (yet) been published for one Biden-era order—an October 2024 order to Duke Energy. DEP’T OF ENERGY, ORDER NO. 202-24-1 (Oct. 9, 2024), https://www.energy.gov/sites/default/files/2024-10/Duke%20202%28c%29%20Order_100924%20FINAL_JMG%20signed.pdf [<https://perma.cc/RCD7-Z8D4>]. But a Department of Energy webpage refers to a *Federal Register* notice, suggesting that one may still be forthcoming. See *Federal Power Act Section 202(c): Duke Energy Florida October 2024*, DEP’T OF ENERGY, <https://www.energy.gov/ceser/federal-power-act-section-202c-duke-energy-florida-october-2024> [<https://perma.cc/KCN9-AHKY>] (last visited Mar. 19, 2025) [hereinafter *Federal Power Act Section 202(c): Duke Energy Florida October 2024*] (“Though it is not intended or expected, should any discrepancy occur between the document posted here and the document published in the Federal Register, the Federal Register publication controls.”).

²⁴⁴ See ORDER NO. 202-17-1, *supra* note 204, at 2 (“This Order will continue the operational limitations described in [the] EPA Administrative Compliance Order . . .”); ORDER NO. 202-17-2, *supra* note 222, at 2 (similar).

²⁴⁵ For example, Order No. 202-23-1 and Order No. 202-22-4 allowed dispatch of exempted units only after the grid operator declared an Energy Emergency Alert Level 2 or 3. ORDER NO. 202-23-1, *supra* note 205, at 4; ORDER NO. 202-22-4, *supra* note 8, at 4. See also *supra* note 4 (describing EEA levels).

²⁴⁶ See, e.g., Letter from Mark Rothleder, Senior Vice President & Chief Operating Officer, Cal. Indep. Sys. Operator Corp., to Jennifer Granholm, Sec’y, Dep’t of Energy 6–7 (Sept. 7, 2021), https://www.energy.gov/sites/default/files/2021-09/CAISO%20202%20Request_09062021.pdf [<https://perma.cc/MDK9-TF6C>] [hereinafter CAISO 2021 Request] (“The relief requested is necessary to access additional generating capacity but should not create a disproportionate impact on any individual community[.]”).

²⁴⁷ See, e.g., ORDER NO. 202-23-1, *supra* note 205, at 7 (describing environmental justice impact requirements); ORDER NO. 202-22-4, *supra* note 8, at 7 (same).

²⁴⁸ See, e.g., ORDER NO. 202-22-1, *supra* note 242, at 6 (describing public notice requirement); ORDER NO. 202-22-2, *supra* note 205, at 6 (same).

²⁴⁹ Cf., e.g., Exec. Order No. 14151, 90 Fed. Reg. 8339, 8339 (Jan. 20, 2025) (directing agencies to “terminate, to the maximum extent allowed by law, all . . . ‘environmental justice’ offices and positions”).

²⁵⁰ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended in scattered sections of 42 U.S.C.).

environment.”²⁵¹ However, assessments are not required for actions that fall under a “categorical exclusion”—a group of actions that do not generally significantly affect the environment.²⁵² During the Dominion § 202(c) orders, the Department of Energy declined to perform an environmental impact assessment on the grounds that the orders fell under a categorical exclusion for “power management activities” of “generating projects” that “remain within normal operating limits.”²⁵³ The Department invoked the same categorical exclusion for a 2020 order.²⁵⁴

In contrast, during the Biden administration, whenever the environmental waivers under § 202(c) orders were actually used, the Department ordered the completion of a Special Environmental Analysis (“SEA”), a document prepared when an action *does* have “significant environmental impact,” but an emergency situation prevents completion of an environmental impact assessment before the action is taken.²⁵⁵ So far, the Department has completed and publicly released two § 202(c) SEAs and has released one draft SEA.²⁵⁶ These documents include much of the important information contained in the confidential final reports, such as which generating units were operated and the exact amount of pollutants released.

* * *

Section 202(c) emergencies have changed. Since the 2015 amendments, emergency orders have nearly always involved conflict with environmental rules—not problems transferring power around the grid. In keeping with that shift, orders now usually direct generation of electricity, rather than interconnection. The Department of Energy has implemented some new

²⁵¹ 42 U.S.C. § 4331(C). For more on the structure and function of NEPA, see generally ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION 813–93 (9th ed. 2021); KRISTEN HITE, CONG. RSCH. SERV., R47205, JUDICIAL REVIEW AND THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (2022).

²⁵² See PERCIVAL, SCHROEDER, MILLER & LEAPE, *supra* note 251, at 851 (describing categorical exclusions).

²⁵³ Dep’t of Energy, *Records of Categorical Exclusion Determination, Order No. 202-18-3*, at 3 (Feb. 27, 2018), https://www.energy.gov/sites/prod/files/2018/03/f49/02_27_2018_CX_PJM%20202-18-3.pdf [<https://perma.cc/Y6DB-C24Z>] (quoting 10 C.F.R. pt. 1021, subpart D, app. B4.4).

²⁵⁴ Dep’t of Energy, *Records of Categorical Exclusion Determination: Order No. 202-20-2* (Sept. 6, 2020), <https://www.energy.gov/sites/default/files/2020/09/f78/CX-270545.pdf> [<https://perma.cc/2SYG-L8BW>].

²⁵⁵ 40 C.F.R. § 1506.12; see *infra* Table 1 (noting that SEAs were prepared for the February 2021 ERCOT, September 2022 BANC, and December 2022 PJM orders, which all involved permit breaches).

²⁵⁶ DEP’T OF ENERGY, AIR QUALITY AND ENVIRONMENTAL JUSTICE ANALYSIS MEMORANDUM (2021), <https://www.energy.gov/sites/default/files/2022-01/sea-05-ercot-air-quality-and-ej-analysis-2021-07-21.pdf> [<https://perma.cc/J58Y-XLG8>]. The Department also prepared an SEA for the Mirant Alexandria orders. See DEP’T OF ENERGY, SPECIAL ENVIRONMENTAL ANALYSIS FOR ACTIONS TAKEN UNDER U.S. DEPARTMENT OF ENERGY EMERGENCY ORDERS REGARDING OPERATION OF THE POTOMAC RIVER GENERATING STATION IN ALEXANDRIA, VIRGINIA (2006), https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/SEA-04-2006.pdf [<https://perma.cc/RJ4G-JEVT>] (detailing the special environmental analysis); Memorandum from ICF, to Tertia Speiser, NEPA Compliance Officer, Off. Cybersecurity, Energy Sec., & Emergency Response, Dep’t of Energy (Apr. 19, 2024), <https://www.energy.gov/sites/default/files/2024-08/sea-07-banc-special-environmental-analysis-2024-04-19.pdf> [<https://perma.cc/R7H8-GKJK>]; Draft Memorandum, *supra* note 9.

procedural safeguards, but these protections are fragile and contingent. Expect more changes ahead.

III. EMERGENCIES DURING CLIMATE CHANGE: § 202(c)'S FUTURE

Regulations, economic shifts, and extreme weather driven by the changing climate will all put pressure on the reliability of the national electrical grid. And recently finalized Clean Air Act rules have expressly relied on § 202(c) as a reliability safety valve. This Part details these developments and then suggests ways to supervise § 202(c)'s use.

A. *New Challenges: Greenhouse Gas Regulation and Beyond*

The grid is under pressure from all sides. Some of that is regulatory, including EPA's new rule limiting greenhouse gas emissions from electric generating units. After the Supreme Court struck down a previous effort to reduce greenhouse gas emissions from the electricity sector in *West Virginia v. EPA*,²⁵⁷ in the summer of 2024 EPA finalized new rules under section 111 of the Clean Air Act that require greenhouse gas emissions controls for new, modified, and existing fossil fuel-fired electric plants.²⁵⁸ Under the rule, many power facilities will need to use sometimes costly technology, like carbon capture and storage or hydrogen co-firing.²⁵⁹ When EPA proposed the rule, the agency acknowledged that it could have reliability effects: old and dirty (but high capacity) plants might not make economic sense to outfit with new emissions controls.²⁶⁰

Although EPA struck an optimistic note on reliability in the section 111 proposal,²⁶¹ grid operators were not so sure. The CEO of PJM

²⁵⁷ 597 U.S. 697, 734–35 (2022) (rejecting the Clean Power Plan).

²⁵⁸ See NSPS Rule, *supra* note 23 (describing the details of the new rule).

²⁵⁹ See Carrie Jenks & Sara Dewey, *EPA's Final CO₂ Standards for the Power Sector: Robust Regulatory Record Sets the Stage for Legal Challenges*, HARV. L. SCH. ENV'T & ENERGY L. PROGRAM 1 (2024), <https://eelp.law.harvard.edu/wp-content/uploads/2024/08/Power-Sector-GHG-Rule-Summary-EPA-final-May10-update-.pdf> (describing the new technologies power facilities will need to use). Although the initial proposed rule includes standards for existing natural gas-fired units, the EPA subsequently announced that existing natural gas power plants would be excluded. See Jean Chemnick, *Biden's EPA Postponing Major Piece of Power Plant Climate Rule*, POLITICO PRO (Feb. 29, 2024, 6:56 PM), <https://subscriber.politicopro.com/article/2024/02/29/epa-weakens-gas-power-plant-climate-rule-00144309> (describing the support and criticism of the exclusion).

²⁶⁰ See New Source Performance Standards for Greenhouse Gas Emissions, 88 Fed. Reg. 33240, 33415–16 (May 23, 2023) [hereinafter NSPS Proposed Rule] (discussing grid reliability considerations).

²⁶¹ See *id.* at 33415.

As explained in this preamble, these proposed actions take account of the rapidly evolving power sector and extensive input received from power companies and other stakeholders on the future of these regulated sources, while ensuring that new natural gas-fired combustion turbines and existing steam EGUs achieve significant and cost-effective reductions in GHG emissions through the application of adequately demonstrated control technologies. Preserving the ability of power companies and grid operators to maintain system reliability has been a paramount consideration in the development of these proposed actions.

Interconnection, the grid operator for much of the mid-Atlantic and Midwest, told a Senate committee hearing that generation unit retirements driven “in large part by state laws and federal environmental initiatives that create a clear near-term, date-certain requirement for generation to comply or retire” are outpacing the addition of clean energy sources.²⁶² A comment on the proposed rule from four ISOs/RTOs²⁶³ likewise argued that relatively high costs of compliance would drive retirements that would not be matched by new generation capacity.²⁶⁴ So, the final rule includes several compliance flexibility mechanisms designed to preserve reliability.²⁶⁵ Those flexibilities include formal enforcement discretion, and a “short-term reliability emergency mechanism” that loosens emission standards during grid emergencies.²⁶⁶ There is also a “reliability assurance mechanism” that can allow existing facilities to secure extended compliance deadlines.²⁶⁷ The second Trump administration has promised to rethink the rule about greenhouse gas emissions from generating units.²⁶⁸ But there’s a good chance that even the revised rule will still have enough teeth to drive some unit retirements.²⁶⁹

Other changes, including some regulatory, are also causing capacity constraints and unit retirements. For example, NERC’s 2023 Summer Reliability Assessment reported that power units in Texas could hit generation limits because of pollution controls on nitrogen oxides imposed by the EPA’s rule on cross-boundary air pollution, the Good Neighbor Plan.²⁷⁰ Tightened regulations on coal ash under the Clean Water Act and

²⁶² *PJM Interconnection, Testimony of Manu Asthana President and CEO, PJM Interconnection Before the Senate Comm. on Energy & Nat. Res.*, 6 (2023), <https://www.energy.senate.gov/services/files/2098C524-7B71-4D39-BFF1-295E6E75BDB7> [<https://perma.cc/A2WA-PVP8>]; see also *id.* at 9–10 (describing the use of markets and competition to reinforce grid reliability).

²⁶³ PJM Interconnection, ERCOT, Midcontinent Independent System Operator, and Southwest Power Pool.

²⁶⁴ See Joint ISOs/RTOs, Joint Comments on New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units 1–3 (Aug. 8, 2023), <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20230808-comment-s-of-joint-isos-rtos-docket-epa-hq-oar-2023-0072.ashx>.

²⁶⁵ See NSPS Rule, *supra* note 23, at 39803, 40011–20 (describing grid reliability considerations).

²⁶⁶ *Id.* at 40014–17.

²⁶⁷ *Id.* at 40017–20.

²⁶⁸ *Trump EPA Announces Reconsideration of Biden-Harris Rule, “Clean Power Plan 2.0”, that Prioritized Shutting Down Power Plants While Raising Costs on American Families*, ENV’T PROT. AGENCY (Mar. 12, 2025), <https://www.epa.gov/newsreleases/trump-epa-announces-reconsideration-biden-harris-rule-clean-power-plan-20-prioritized> [<https://perma.cc/8K8K-DEAT>].

²⁶⁹ See Dan Farber, LEGALPLANET, *The Legal Complexities of Deregulating Power Plant Carbon Emissions* (Mar. 10, 2025), <https://legal-planet.org/2025/03/10/the-legal-complexities-of-deregulating-power-plant-carbon-emissions/> (explaining that “[w]e are likely to end up with a Trump rule that is much weaker than the Biden rule, but not as weak as EPA’s effort in the first Trump Administration,” and that “[t]his matters because even a very weak rule may require significant investments in improving powerplant efficiency, which could result in some plant closures”).

²⁷⁰ N. AM. ELEC. RELIABILITY CORP., 2023 SUMMER RELIABILITY ASSESSMENT 28 (2023), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2023.pdf. Those concerns were temporarily alleviated when the Fifth Circuit stayed part of the Plan. *Id.*; *Texas v. EPA*,

the Resource Conservation and Recovery Act are also raising costs and encouraging utilities to shutter coal plants.²⁷¹ And new, tighter rules for mercury emissions from lignite-fired facilities could also drive plant closures and have reliability effects.²⁷² A FERC staff reliability report points to these regulatory pressures, and frets that “changes to resource availability are a potential reliability challenge.”²⁷³ Still, perhaps the most influential driver of large unit retirements is competition from low-cost natural gas, which handily outcompetes coal.²⁷⁴

In response to all these pressures, utilities are turning to solar and wind. But costs and permitting delays have made it remarkably difficult to bring new clean energy online. A January 2024 survey of utility-scale wind and

No. 23-60069, 2023 WL 7204840, at *11 (5th Cir. May 1, 2023). Another portion of the Plan was also stayed by the Supreme Court in *Ohio v. EPA*, 144 S. Ct. 2040, 2058 (2024), and the second Trump administration has promised to rethink the cross-boundary pollution rule, see *Trump EPA Announces Plan to Work with States on SIPs to Improve Air Quality and Reconsider “Good Neighbor Plan”*, ENV’T PROT. AGENCY (Mar. 12, 2025), <https://www.epa.gov/newsreleases/trump-epa-announces-plan-work-states-sips-improve-air-quality-and-reconsider-good> [<https://perma.cc/D3VW-4S4V>] (announcing that EPA “is tackling the troubled ‘Good Neighbor Plan’”).

²⁷¹ See Ethan Howland, *EPA Proposes Stricter Wastewater Discharge Limits for Coal-Fired Power Plants*, UTIL. DIVE (Mar. 8, 2023), <https://www.utilitydive.com/news/epa-wastewater-discharge-coal-power-plants/644422/> (“The U.S. coal-fired power plant fleet is in decline, partly because of the cost of complying with environmental regulations.”); see also *PJM Outlines for EPA the Need to Coordinate Outages Resulting from Coal Combustion Rule*, PJM INSIDE LINES (Mar. 30, 2022), <https://insidelines.pjm.com/pjm-outlines-for-epa-the-need-to-coordinate-outages-resulting-from-coal-combustion-rule/> (reporting that the Coal Combustion Residual Rule, intended to prevent coal ash pollution, has spurred a reduction of coal facilities). The second Trump administration is likewise adjusting or reconsidering these rules. See *EPA Launches Biggest Deregulatory Action in U.S. History*, ENV’T PROT. AGENCY (Mar. 12, 2025), <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history> [<https://perma.cc/WR28-FU4Y>] (announcing plans to reconsider “limitations, guidelines and standards (ELG) for the Steam Electric Power Generating Industry to ensure low-cost electricity while protecting water resources” and to “[p]rioritiz[e] coal ash program to expedite state permit reviews and update coal ash regulations”).

²⁷² See MATS Revision, *supra* note 24, at 38526 (noting that although “EPA disagrees that this rule would threaten resource adequacy,” “it is possible that some EGU owners may conclude that retiring a particular EGU and replacing it with new capacity is a more economic option”). “EGU” means “electric generating unit.” *Id.* at 38508. These rules too will be rethought. See *Trump EPA to Reconsider Biden-Harris MATS Regulation that Targeted Coal-Fired Power Plants to Be Shut Down*, ENV’T PROT. AGENCY (Mar. 12, 2025), <https://www.epa.gov/newsreleases/trump-epa-reconsider-biden-harris-mats-regulation-targeted-coal-fired-power-plants-be> [<https://perma.cc/73BQ-MEX5>] [hereinafter *Trump EPA to Reconsider Biden-Harris MATS Regulation*] (announcing that EPA “will reconsider the Mercury and Air Toxics Standards (MATS) from the Biden-Harris Administration”).

²⁷³ FED. ENERGY REGUL. COMM’N STAFF, 2023 SUMMER ENERGY MARKET AND ELECTRIC RELIABILITY ASSESSMENT 50 (2023), https://www.ferc.gov/sites/default/files/2023-05/23_Summer-Assessment_0517_1745.pdf [<https://perma.cc/LE6Z-N2T9>].

²⁷⁴ *Id.* (noting that “some thermal resources face increasingly challenging economic conditions, including competition from new resources and storage”); see also DEP’T OF ENERGY, STAFF REPORT TO THE SECRETARY ON ELECTRICITY MARKETS AND RELIABILITY 21 (2017), https://www.energy.gov/sites/default/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf [<https://perma.cc/PWM5-APMA>] (“No new coal plants have been built for domestic utility electricity production since 2014 because new coal plants are more expensive to build and operate than natural gas-fired plants.” (footnotes omitted)); *id.* at 24 (“The primary recent drivers of coal plant retirement announcements include low natural gas prices and new environmental regulations—especially the Mercury and Air Toxics Standards (MATS), Clean Water Act Section 316(b), and the Coal Combustion Residuals rule.” (quoting Ed Malley, *Coal Power Plant Post-Retirement Options*, POWER (Sept. 1, 2016), <https://www.powermag.com/coal-power-plant-post-retirement-options/>)).

solar developers found that about half of solar and wind siting applications faced delays of at least six months; about a third were cancelled altogether.²⁷⁵ On average, new generation projects sit for five years in the “interconnection queue,”²⁷⁶ waiting for approval to connect to the grid.²⁷⁷ At every turn, projects face opposition, litigation, and increased costs.²⁷⁸ So, the current pace of generation facility construction is just not fast enough to keep up.²⁷⁹ And even when utility-scale wind and solar facilities *are* constructed, their intermittent power generation can have reliability impacts without the right transmission line and infrastructure upgrades.²⁸⁰

There are also demand-side challenges. The severe weather that figured in most of the post-2015 § 202(c) orders is becoming more frequent, driving extreme spikes in demand. For example, during the February 2021 cold snap in Texas, demand in ERCOT reached its highest wintertime peak ever.²⁸¹ Although it is difficult to link specific weather events (like the February 2021 winter storm) to climate change, higher global temperatures increase the likelihood of catastrophic weather.²⁸² That means colder cold snaps and

²⁷⁵ ROBI NILSON, BEN HOEN & JOE RAND, LAWRENCE BERKELEY NAT’L LAB’Y, SURVEY OF UTILITY-SCALE WIND AND SOLAR DEVELOPERS 1 (2024).

²⁷⁶ “The interconnection queue is the process by which prospective generation projects are grouped and ordered by transmission planners to evaluate the potential impacts of new generation projects on the existing power grid. The list of prospective generation projects is often referred to as the interconnection queue.” Stephen M. Fisher, Note, *Reforming Interconnection Queue Management Under FERC Order No. 2003*, 26 YALE J. ON REGUL. 117, 118 n.2 (2009).

²⁷⁷ Emma Penrod, *US Grid Interconnection Backlog Jumps 40%, with Wait Times Expected to Grow as IRA Spurs More Renewables*, UTIL. DIVE (Apr. 11, 2023), <https://www.utilitydive.com/news/grid-interconnection-queue-berkeley-lab-lbnl-watt-coalition-wind-solar-renewables/647287/>.

²⁷⁸ See J.B. Ruhl & James Salzman, *The Greens’ Dilemma: Building Tomorrow’s Climate Infrastructure Today*, 73 EMORY L.J. 1, 35–45 (2023) (describing the many challenges to generation facility construction, including litigation, local opposition, and insufficient transmission infrastructure).

²⁷⁹ See *id.* at 82 n.480 (explaining that, even if all the infrastructure funded by the Inflation Reduction Act and Infrastructure Investment and Jobs Act were built, the resulting emissions reduction would still be below the fifty percent goal).

²⁸⁰ See, e.g., Peter Behr, *Low-Carbon Shift Raises Risk of Blackouts, Grid Execs Warn*, E&E NEWS (Apr. 3, 2024, 6:38 AM), <https://subscriber.politicopro.com/article/eenews/2024/04/03/grid-leaders-warn-that-low-carbon-shift-raises-blackout-risks-00150203> (“Executives of U.S. regional power grids are warning they face new and unprecedented challenges as energy demand grows and the industry takes on the enormous shift to carbon-free electricity.”); Debra Warady, Tyler Hodge & Lindsay Aramayo, *As Texas Wind and Solar Capacity Increase, Energy Curtailments Are Also Likely to Rise*, U.S. ENERGY INFO. ADMIN. (July 13, 2023), <https://www.eia.gov/todayinenergy/detail.php?id=57100> (projecting an increase in wind and solar curtailments due to limited transmission line capacity). But see Alexandra Klass, Joshua Macey, Shelley Welton & Hannah Wiseman, *Grid Reliability Through Clean Energy*, 74 STAN. L. REV. 969, 980 (2022) (arguing that “[t]he project of creating a clean, reliable grid is often treated as a technical challenge,” but that “it is equally—or largely—a challenge of law and governance”).

²⁸¹ Keith Everhart & Gergely Molnar, *Severe Power Cuts in Texas Highlight Energy Security Risks Related to Extreme Weather Events*, INT’L ENERGY AGENCY (Feb. 18, 2021), <https://www.iea.org/commentaries/severe-power-cuts-in-texas-highlight-energy-security-risks-related-to-extreme-weather-events> [https://perma.cc/684F-VQDX] (“The day-ahead forecast peak for 15 February stood at 74.5 GW, which is almost 10 GW above the previous all-time winter peak of 65.9 GW on 17 January 2018 . . .”).

²⁸² See, e.g., Eric Wolff, Debra Kahn & Zack Colman, *Texas and California Built Different Power Grids, but Neither Stood Up to Climate Change*, POLITICO PRO (Feb. 19, 2021, 12:55 PM), <https://subscriber.politicopro.com/article/2021/02/19/texas-and-california-built-different-power-grids-but-neither-stood-up-to-climate-change-1364579> (explaining the scientific research linking climate change, and rising global temperatures, to an elevated risk of extreme weather events).

hotter summers—both of which send electricity demand sky high. Grid operators, obliged to keep supply and demand in line and operations within NERC guidelines, will therefore increasingly turn to § 202(c) to make the numbers add up.

B. *Planning on Emergencies?*

EPA agrees that § 202(c) is part of maintaining grid reliability during the energy transition. The section 111 rule for greenhouse gas emissions from electric generating units includes, as described above, extra flexibility and enforcement discretion to help keep the lights on. However, the reliability assurance mechanism and the short-term reliability mechanism for existing sources will be available only if states choose to include it in their state implementation plans.²⁸³ EPA seems to anticipate that not every state will adopt these mechanisms, or at least that they will not cover all possible reliability issues. The rule's preamble notes that states adopting the short-term reliability mechanism "*could* make it available for sources to use without needing action by DOE under section 202(c)."²⁸⁴ It adds, "section 202(c) would continue to be available for sources subject to this rule for emergency situations where EPA's short-term reliability mechanism would not apply."²⁸⁵ Another rule, this one a revision to MATS that puts further restrictions on emissions from lignite coal plants, also briefly invokes § 202(c) to assuage reliability concerns. Although EPA found no reason to think the MATS revision would degrade reliability, the rule's preamble says that if reliability problems *do* arise, extended deadlines are possible, and then, facilities may "obtain, if warranted, an emergency order from the Department of Energy pursuant to section 202(c)."²⁸⁶ The advent of the second Trump administration makes it even more likely that § 202(c) will be used to ease regulatory compliance: EPA has already signaled that it will use at least one emergency Clean Air Act authority to pull back regulations before it can complete the full rulemaking process.²⁸⁷

In the section 111 rule, EPA appears to sign-on to a broad definition of § 202(c) emergencies. The rule's preamble asserts that "Congress provided section 202(c) as the *primary* mechanism to ensure that when generation is needed to meet an emergency, environmental protections will not prevent a

²⁸³ NSPS Rule, *supra* note 23, at 40015, 40017.

²⁸⁴ *Id.* at 40013 (emphasis added).

²⁸⁵ *Id.* The short-term reliability mechanism is available only during EEA Level 2 or 3 emergencies, but "certain emergency conditions . . . may occur outside any EEA-2 or EEA-3 event." *Id.* at 40016.

²⁸⁶ MATS Revision, *supra* note 24, at 38526.

²⁸⁷ See *Trump EPA to Reconsider Biden-Harris MATS Regulation*, *supra* note 272 (saying that, with respect to the MATS rule, "[t]he Trump Administration is considering a 2-year compliance exemption via Section 112(i)(4) of the Clean Air Act for affected power plants while EPA goes through the rulemaking process"); 42 U.S.C. § 7412(i)(4) (authorizing "[t]he President" to "exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years," provided that "the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so").

source from meeting that need.”²⁸⁸ EPA applauds the provision’s recent uses, saying that it is an “effective mechanism” and citing orders in 2022 to PJM and the California Independent System Operator as evidence that § 202(c) “work[s] well.”²⁸⁹ Those brief orders were ordinary enough, but EPA also approvingly references the lengthy MATS-era Dominion Energy and GRDA orders, noting that “202(c) has also been used to allow generators to remain online pending completion of infrastructure needed to facilitate reliable replacement of those generators.”²⁹⁰

NERC has also emphasized the importance of § 202(c). Its 2022 Long-Term Reliability Assessment highlighted the reliability risks of decreased generation capacity, as well as “the need to consider extreme [weather] scenarios in resource planning.”²⁹¹ The report urged “[r]egulatory and policy-setting organizations” to “use their full suite of tools to manage the pace of retirements and ensure replacement infrastructure can be timely developed and placed in service”; it added that, “[i]f needed, the Department of Energy should use its 202(c) authority as called upon by electric system operators.”²⁹²

Some of the reliability events that EPA and NERC seem to be worried about are extreme weather and other unanticipated emergencies, and therefore consistent with the best reading of § 202(c). These are just the dilemmas the 1935 and 2015 Congresses designed § 202(c) to meet. The World War I coal shortages, the 1920s California droughts, the 2000 California energy market crisis, and unseasonable 2021 and 2022 Texas cold snaps are all acute, temporary, and unexpected events. Even the 2005 Mirant orders, which lasted more than a year, involved a surprise: that the Mirant power plant would close entirely.²⁹³ Suspending environmental rules is a new twist, but adding this flexibility was exactly the point of the 2015 amendment, and most environmental rule waivers have been brief, and resulted in no excess emissions.²⁹⁴

The role for § 202(c) previewed during the MATS rule and embraced in the section 111 rule is potentially different. Using § 202(c) to resolve *anticipated* reliability challenges caused by environmental rules distorts the meaning of “emergency.” Rather than unexpected shortages, these are long expected difficulties. Worse, lengthy “emergencies” undermine the rules to which § 202(c) orders provide an exception. An expansive understanding of what can be an emergency also legitimizes other aggressive emergency orders that are much more counterproductive—like the order to keep coal-

²⁸⁸ NSPS Rule, *supra* note 23, at 40012 (emphasis added).

²⁸⁹ *Id.* at 40012–13.

²⁹⁰ *Id.* at 40013.

²⁹¹ N. AM. ELEC. RELIABILITY CORP., 2022 LONG-TERM RELIABILITY ASSESSMENT 13 (2022), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2022.pdf.

²⁹² *Id.*

²⁹³ See *supra* notes 109–119 and accompanying text (describing the 2005 Mirant Orders).

²⁹⁴ See *infra* Table 1 (showing that most waivers are relatively short).

fired facilities in business that was floated during the first Trump administration.²⁹⁵ Some § 202(c) orders could be prompted by regulatory challenges, while remaining licit. The GRDA order, for example, was only necessary because of a surprise, inopportune lightning strike. But the months-long, slow-moving Dominion Energy “emergency” stretches the boundaries of § 202(c).

Depending on compliance flexibilities (including § 202(c)) to assuage reliability concerns underlines the need for broader reforms. The lengthy Dominion Energy emergency is illustrative. There, Dominion Energy decided to wind down dirty coal-fired power plants rather than install pollution control equipment required by MATS.²⁹⁶ PJM, the regional grid operator, insisted that Dominion Energy first construct a new switching station and transmission lines—upgrades that were necessary to keep the local grid within reliability standards.²⁹⁷ But the upgrades were stalled by permit delays and opposition from conservation groups.²⁹⁸ Something had to give, and what gave was the MATS standards. These kinds of dilemmas have and will occur countless times as the grid shifts to clean energy sources. Sometimes, as with Dominion Energy, something will have to give—and that’s when utilities may turn to § 202(c).

C. *Supervising § 202(c)*

New pressures make adequate supervision of § 202(c) orders all the more important, to ensure that orders stay within the boundaries of *unexpected* emergencies. This Section describes two possible sources of supervision: changes in Department of Energy procedure and regulations, and external routes for challenging § 202(c) orders through litigation.

1. *Internal Supervision*

The Department of Energy can build on and reinforce its existing § 202(c) processes. Although the Department adopted some implementing regulations in 1981, these have not been updated since the 2015 amendments, and are often ignored. There is a list of mandatory information to be provided by applicants,²⁹⁹ but applicants have simply not supplied all the required information in recent § 202(c) requests.³⁰⁰ Meanwhile, the Department of Energy has had to request additional information relevant to

²⁹⁵ See *supra* notes 166–167 and accompanying text.

²⁹⁶ See *supra* notes 217–226 and accompanying text.

²⁹⁷ See *supra* notes 217–226 and accompanying text (describing PJM’s role).

²⁹⁸ See *supra* notes 217–226 and accompanying text (listing obstacles that stalled transmission-upgrade approval).

²⁹⁹ 10 C.F.R. § 205.373 (2024).

³⁰⁰ See, e.g., ERCOT 2022 Request, *supra* note 226; CAISO 2021 Request, *supra* note 246. The fact that these requests were missing ostensibly required information, like “[t]he status of all interruptible customers for each of the past 30 days and the anticipated status of these customers for each day of the expected duration of the emergency,” 10 C.F.R. § 205.373(d)(3), appeared to occasion no comment from the Department of Energy.

environmental exemptions—information that the regulations do not require (and could not have anticipated in 1981). For example, in September 2022, the Balancing Authority of Northern California (“BANC”) requested a § 202(c) order permitting it to dispatch certain generation units in violation of Clean Air Act permits.³⁰¹ A day later, apparently in response to requests from the Department, BANC submitted a supplemental letter providing more specific details about the exact permit requirements it sought an exemption from, describing how BANC would dispatch the units, clarifying when dispatch could occur, and explaining that the units were not in “a disadvantaged community.”³⁰² The regulations do require post-order reports on, for example, associated costs and the amount of electricity delivered.³⁰³ Yet information like whether pollution limits were actually exceeded, and if they were by how much is not explicitly required.³⁰⁴

Section 202(c)’s corner of the Code of Federal Regulations should be amended to reflect the environmental turn and to preserve transparency and accountability. While the Department *now* inquires about dispatch triggers, other emergency measures available, the environmental laws implicated, and environmental justice implications, it need not always do so, and it is not required to by the statutory text. The Department, would-be requestors, and the public would all be served by codifying and clarifying the information to be provided when an applicant seeks a § 202(c) order.

The Department should also codify its NEPA philosophy for § 202(c) orders. During the Biden administration, its approach was simple enough: when there were actual permit exceedances, the Department prepared, after the fact, an SEA analyzing the environmental consequences of the order.³⁰⁵ When no exceedances occurred, no NEPA analysis happened.³⁰⁶ This is the right balance to strike. For fast-moving situations, to require any kind of NEPA process pre-order would defeat the utility of having an emergency power at all. At the same time, some assessment is necessary both to inform future agency decision-making, and to alert the public about what happened. Yet this practice, too, is nowhere memorialized and is not mandatory. It remains to be seen whether the second Trump administration will keep up this approach.

These new *de facto* safeguards and transparency are a recent development. During the first Trump administration, the Department

³⁰¹ Letter from James R. Shetler, Gen. Manager, Balancing Auth. of N. Cal., to Jennifer Granholm, Sec’y of Energy, Dep’t of Energy 1–3 (Sept. 2, 2022), https://www.energy.gov/sites/default/files/2022-09/DOE%20Waiver_BANC_FINAL.pdf [<https://perma.cc/V3ZE-DNWF>].

³⁰² Letter from James R. Shetler, Gen. Manager, Balancing Auth. of N. Cal., to Jennifer Granholm, Sec’y of Energy, Dep’t of Energy 3–4 (Sept. 3, 2022), <https://www.energy.gov/sites/default/files/2022-09/BANCAmendmentCombinedFinal.pdf> [<https://perma.cc/EY3P-35Q6>].

³⁰³ 10 C.F.R. § 205.377 (2024).

³⁰⁴ See, e.g., ORDER NO. 202-23-1, *supra* note 205, at 6–7 (requesting reports on exceedances).

³⁰⁵ See *infra* Table 1 (identifying whether a NEPA SEA was prepared for each breached permit).

³⁰⁶ See *infra* Table 1 (showing that, generally, no NEPA SEA is prepared where there were no exceedances during a § 202(c) emergency).

invoked a NEPA categorical exclusion and declined to prepare a post-order environmental assessment for the many-month Dominion Energy emergency.³⁰⁷ Still, the Department publicly posted reports from Dominion about how often the plant was used and what its emissions levels were.³⁰⁸ After a 2020 order to the California ISO, the Department also invoked a categorical exclusion³⁰⁹—even though at least one unit operated in violation of Clean Air Act permit limits.³¹⁰ Unlike with Dominion, the Department has refused to release even a redacted version of the final report for that order, meaning that no public information is available about which units exceeded permit limits or by how much.³⁰⁷ Without regulatory changes, the Department could quickly return to this older, opaque approach.

2. External Supervision

Actors outside the Department of Energy can also police § 202(c) through an (almost) never tested route: litigation. The Federal Power Act, in § 313, sets up a two-step route for judicial review of the merits of § 202(c) orders.³¹¹ First, a party “aggrieved by an order issued by the Commission” may apply to the agency for a rehearing; the agency can respond to the rehearing petition, granting or denying it and (perhaps) abrogating or modifying the order.³¹² After thirty days, or after a decision on the rehearing petition, whichever is earlier, a party who is “aggrieved by an order issued by the Commission . . . may obtain review of such order” either in the court of appeals where the party is located or in the U.S. Court of Appeals for the District of Columbia.³¹³ The court taking jurisdiction of the review may

³⁰⁷ See *supra* note 253 and accompanying text (showing that the Department of Energy may circumvent the often-lengthy NEPA process if a categorical exclusion applies, as in the Dominion § 202(c) orders); *supra* notes 251–252 and accompanying text (describing NEPA and categorical exclusions).

³⁰⁸ See Off. of Elec., *Federal Power Act Section 202(c) – PJM Interconnection & Dominion Energy Virginia, 2017*, DEP’T OF ENERGY (June 19, 2017), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017> [<https://perma.cc/W6W5-QSTX>] [hereinafter *PJM & Dominion 2017*] (listing reports on the operations of Dominion Energy’s Yorktown units).

³⁰⁹ ORDER NO. 202-20-2, *supra* note 185.

³¹⁰ 202(c) Usage Email, *supra* note 216 (“CAISO, September 2020. . . . This Order was used; NEPA CX; [Final report filed 9/21/20, business confidential]” (second alteration in original)).

³⁰⁷ Email from Tertia Speiser, Off. Cybersecurity, Energy Sec., & Emergency Response, Dep’t of Energy, to author (May 17, 2024, 9:48 AM) (on file with author) (“[Q:] Is there any plan to release a redacted version of the final report for the September 2020 CAISO order or some other public-facing documentation of how it was used? [A:] No.”).

³¹¹ See 16 U.S.C. § 825l(a)–(b) (providing for judicial review). This is also the *only* route for obtaining judicial review on the merits. See 5 U.S.C. § 703.

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction.

³¹² 16 U.S.C. § 825l(a).

³¹³ *Id.* § 825l(b).

“affirm, modify, or set aside such order in whole or in part”—but the court may only consider objections that the party “urged before the Commission” in an application for rehearing.³¹⁴ Although § 313 still refers to the “Commission,” the Department of Energy has understood § 313 to apply to Department orders issued pursuant to the Federal Power Act.³¹⁵ So far, no § 202(c) order has been subject to judicial review under this scheme.³¹⁶

On four occasions since 1977, outside parties have petitioned for rehearing. All four were stymied—and judicial review blocked—by procedural shenanigans. In both 2002 and 2003, after the Department issued orders requiring the use of the Cross-Sound Cable (a politically contentious undersea transmission link between Connecticut and Long Island), the Connecticut Attorney General filed petitions for rehearing with the Department.³¹⁷ On both occasions the Secretary of Energy granted the petition for rehearing for the “limited purpose” of “afford[ing] additional time for consideration,”³¹⁸ waited until the challenged § 202(c) order expired, and then denied the petition for rehearing as moot.³¹⁹ Later, during the Mirant Alexandria § 202(c) emergency, the City of Alexandria and the Virginia Department of Environmental Quality submitted petitions for rehearing.³²⁰ The Department granted the petition “for the limited purpose of further consideration,”³²¹ three times extended the emergency while refusing to take action either way on the petition for rehearing,³²² and then denied the petition as moot once the final extension expired.³²³ During the

³¹⁴ *Id.*

³¹⁵ See, e.g., DEP’T OF ENERGY, ORDER NO. 202-06-1 (Feb. 17, 2006), <https://www.energy.gov/oe/articles/departments-energy-emergency-order-no-202-06-01> [<https://perma.cc/C92D-LSSQ>] [hereinafter ORDER NO. 202-06-1] (granting a petition for rehearing pursuant to § 313 “for the limited purpose of further consideration”); DEP’T OF ENERGY, ORDER NO. 202-02-1B (Nov. 13, 2002), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-02-1B%20November%2013%2C%20202%20-%20CSC.pdf> [<https://perma.cc/J6SQ-MYC3>] [hereinafter ORDER NO. 202-02-1B] (similar).

³¹⁶ *Richmond Power & Light v. FERC*, 574 F.2d 610 (D.C. Cir. 1978), discussed earlier, involved review pursuant to § 313 of a decision *not* to issue a § 202(c) order. See *supra* notes 154–156 and accompanying text; *Richmond Power*, 574 F.2d at 614–15 (discussing § 202(c)); *id.* at 614 n.14 (citing 16 U.S.C. § 825(b)).

³¹⁷ ORDER NO. 202-02-1B, *supra* note 315; DEP’T OF ENERGY, ORDER NO. 202-03-4 (May 7, 2004), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-03-4%20May%207%2C%202004%20-%20CSC.pdf> [<https://perma.cc/EZ9V-BJUA>] [hereinafter ORDER NO. 202-03-4].

³¹⁸ DEP’T OF ENERGY, ORDER NO. 202-02-1A (Sept. 17, 2002), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-02-1A%20September%2017%2C%202002%20-%20CSC.pdf> [<https://perma.cc/VUC6-DPRA>]; DEP’T OF ENERGY, ORDER NO. 202-03-3 (Sept. 26, 2003), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-03-3%20September%2026%2C%202003%20-%20CSC.pdf> [<https://perma.cc/2J74-LLR3>].

³¹⁹ ORDER NO. 202-02-1B, *supra* note 315; ORDER NO. 202-03-4, *supra* note 317.

³²⁰ See ORDER NO. 202-06-1, *supra* note 315 (regarding “the Mirant Potomac River Generating Station”).

³²¹ *Id.*

³²² See ORDER NO. 202-06-2, *supra* note 115 (“The rehearing requests continue under consideration and no action is being taken on those requests by the issuance of this order.”); ORDER NO. 202-07-1, *supra* note 115 (same); ORDER NO. 202-07-2, *supra* note 115 (same).

³²³ DEP’T OF ENERGY, ORDER NO. 202-07-3 (July 2, 2007), <https://www.energy.gov/oe/articles/departments-energy-order-no-202-07-3> [<https://perma.cc/K8NP-2KPS>].

Dominion Energy emergency, the Sierra Club petitioned for rehearing and the Department again delayed, then denied, the petition as moot.³²⁴ The Sierra Club submitted a renewed petition for rehearing which the Department ultimately denied on the merits a few months before the emergency expired.³²⁵ The Sierra Club did not seek judicial review.

The Department's delay tactic follows FERC's practice of pushing off judicial review using so-called "tolling orders." Until recently, FERC, facing petitions for rehearing under § 313 of the Federal Power Act or an identical provision of the Natural Gas Act, would regularly issue orders "grant[ing] [rehearing] for the limited purpose of further consideration" on the theory that this failure to issue a decision on the merits of the rehearing petition would prevent judicial review.³²⁶ But in 2020 the D.C. Circuit held that judicial review *was* available after the issuance of tolling orders.³²⁷ So, any future would-be § 202(c) challengers will likely avoid the Department's favored procedural obstacle.

Outside review on the merits, two kinds of collateral attacks are available. First, § 202(c) orders may implicate FERC's authority over energy rate setting. Section 206 of the Federal Power Act confers on FERC the power to set "just and reasonable" rates.³²⁸ And if there are *unjust* and *unreasonable* wholesale rates, "any person" who is "adversely affected" may file a complaint with FERC.³²⁹ Should there be § 202(c) orders requiring the purchase or sale of expensive wholesale energy from, for example, high-cost generators that run only because of the order, that might be unjust and unreasonable, teeing up a corrective order from FERC (and, possibly, an

³²⁴ See DEP'T OF ENERGY, ORDER NO. 202-17-3 (Aug. 11, 2017), <https://www.energy.gov/sites/prod/files/2017/08/f35/Order%20202-17-3%20signed.pdf> [<https://perma.cc/HY9J-LSHT>] (granting for further consideration); DEP'T OF ENERGY, ORDER NO. 202-17-5 (Sept. 15, 2017), <https://www.energy.gov/sites/prod/files/2017/09/f36/EXEC-2017-007186%20Order%20No%20202-17-5.pdf> [<https://perma.cc/H5M3-SLTV>] (denying as moot).

³²⁵ See DEP'T OF ENERGY, SUMMARY OF FINDINGS: DEPARTMENT OF ENERGY ORDER NO. 202-18-1, at 2, 15 (2017), <https://www.energy.gov/sites/prod/files/2017/11/f46/Summary%20of%20Findings%20Order%20No.%20202-18-1.pdf> [<https://perma.cc/A6SH-3CGK>] ("The September Order is tailored to accomplish those goals. Accordingly, Sierra Club's petition for rehearing is denied.").

³²⁶ *Allegheny Def. Project v. Fed. Energy Regul. Comm'n*, 964 F.3d 1, 6 (D.C. Cir. 2020) (second alteration in original); see *id.* at 9 (describing FERC's frequent use of tolling orders).

³²⁷ *Id.* at 3–4 ("We hold that, under the plain statutory language and context, such tolling orders are not the kind of action on a rehearing application that can fend off a deemed denial and the opportunity for judicial review."). *Allegheny Defense* was about § 19 of the Natural Gas Act, not the Federal Power Act. See *id.* at 9; 15 U.S.C. § 717r. However, § 19 and § 313 are materially identical. Compare 16 U.S.C. § 825l, with 15 U.S.C. § 717r(a)–(c). FERC has treated *Allegheny Defense* as applying with equal force to petitions for rehearing under the Federal Power Act. See, e.g., *ISO New England Inc.*, 179 FERC ¶ 62,035 (2022) (applying *Allegheny* to 16 U.S.C. § 825l(a)); *NYC Energy LLC*, 173 FERC ¶ 61,193 (2020) (same). In general, courts treat decisions about the Natural Gas Act and the Federal Power Act as relevant for both laws. See *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 n.10 (2016) ("This Court has routinely relied on NGA cases in determining the scope of the FPA, and vice versa.").

³²⁸ 16 U.S.C. § 824e(a).

³²⁹ See *Spire STL Pipeline LLC*, 174 FERC ¶ 61,058, P 9 (2021); 16 U.S.C. § 824e(a) (outlining FERC's rate-setting power); 18 C.F.R. § 385.102(d) (2024) (defining "person" broadly).

appeal from FERC to the courts).³³⁰

Second, despite § 202(c)'s curious language barring "citizen suit[s],"³³¹ § 202(c) orders may be vulnerable to outside NEPA litigation. So far, as discussed above, the Department of Energy has attempted to satisfy its NEPA obligations by either completing Special Environmental Analyses (environmental analyses prepared *after* an action is taken, rather than before, as is the usual course) or determining that a categorical exclusion applies (which allows the Department to avoid a NEPA analysis altogether).³³² Yet these conclusions are far from obvious. Although NEPA must operate differently during time-crunched emergencies, that justification fades when (as with Dominion) an "emergency" drags on for months. The Department's NEPA decision-making—as long as it has reached the stage of final agency action—can be challenged in court, and if the NEPA analysis is flawed, then the Department's decision could be vacated or enjoined.³³³ Because the suit would be against the Department of Energy, rather than the utility or grid operator that is the subject of the § 202(c) order, and because NEPA suits are not "citizen suits,"³³⁴ § 202(c)'s limit on environmental law liability should not apply.

The § 202(c)(4)(B) consultation provision could prove important. NEPA itself requires that the agency leading an environmental review "consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved."³³⁵ Internal disagreements, revealed in consultation documents, have been fruitful material for litigation. When consulting agencies express skepticism of a proposed decision, courts are more likely to find NEPA violations.³³⁶ So too, disagreements revealed in § 202(c)

³³⁰ See JACOBS & PESKOE, *supra* note 13, at 25 ("Should DOE ultimately issue an order using its emergency authorities that compels purchases of wholesale energy, the resulting contracts would likely be challenged at FERC as unjust and unreasonable . . .").

³³¹ 16 U.S.C. § 824a(c)(3).

³³² See *supra* notes 253–256 and accompanying text (detailing DOE's efforts).

³³³ See HITE, *supra* note 251, at 6, 9–10 (explaining the remedies a plaintiff may seek).

³³⁴ NEPA has no citizen suit provision, and suits from private parties are instead brought under the Administrative Procedure Act. See *id.* at 6 (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882 (1990)).

³³⁵ 42 U.S.C. § 4332(C); see also 16 U.S.C. § 824a(c)(4)(B).

In renewing or reissuing [a § 202(c) order], the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public.

³³⁶ See, e.g., *Sierra Club v. U.S. Army Corps of Eng'rs*, 701 F.2d 1011, 1021–22, 1049 (2d Cir. 1983) (finding NEPA violations in part because, after the mandatory consultation, an agency had opposed the Army Corps' decision to issue the permit). On the role of consulting agency comments in NEPA litigation, see Michael C. Blumm & Stephen R. Brown, *Pluralism and the Environment: The Role of*

consultations could be used as powerful evidence that the Department of Energy acted arbitrarily and capriciously. But the political context of extension requests makes agency disagreement unlikely. The NEPA process is common and routine. But § 202(c) extension requests (as with the Dominion emergency) often occur in the context of possible widespread blackouts—and so it is more likely that there will be pressure from non-career agency officials to push through emergency extensions. Only a future with more frequent § 202(c) extensions will show whether the interagency consultation requirement has teeth.

These routes for external supervision through litigation not only should be, but as a practical matter *must* be reserved for truly unusual § 202(c) emergencies. Of the nineteen § 202(c) emergencies since 2000, just ten were ten days or shorter.³³⁷ Just three exceeded two months.³³⁸ The tight timelines are themselves evidence that the orders were addressing unexpected, short-term emergencies. However, long-term problems akin to the Dominion emergency could crop up in the future. Then, external supervision would be more plausible on the merits, more practically achievable—and perhaps necessary.

CONCLUSION

Section 202(c) has come a long way. The New Deal Congress that added it into the Federal Power Act was worried about a fragmented electric grid buckling under wartime demand. For most of its life, the Federal Power Commission, and then the Department of Energy, invoked § 202(c) for those sorts of problems: commanding interconnection and transmission to avert unexpected catastrophe. But after Congress amended § 202(c) in 2015, the Secretary of Energy's odd, ill-defined emergency power transformed into a kind of super-waiver for environmental laws. Since 2015, that is just how the Department has used § 202(c), allowing grid operators in a (weather) pinch to squeeze a bit more electricity out of power plants, the Clean Air Act notwithstanding.

These recent uses of § 202(c) are telling. They clarify what we and regulators value most. When confronted with stark, inescapable choices between pollution control and electricity, we choose electricity, every time. And no wonder, given the lives and livelihoods at stake.³³⁹ As the grid

Comment Agencies in NEPA Litigation, 14 HARV. ENV'T L. REV. 277, 282, 287–96 (1990) (reviewing cases), and Michael C. Blumm & Marla Nelson, *Pluralism and the Environment Revisited: The Role of Comment Agencies in NEPA Litigation*, 37 VT. L. REV. 5, 7–8, 11–32 (2012) (same).

³³⁷ See *infra* Table 1 (tabulating the length of § 202(c) emergencies since 2000).

³³⁸ See *id.* (same).

³³⁹ See N. AM. ENERGY STANDARDS BD., THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES 9 (2021), https://www.naesb.org/pdf4/ferc_nerc_regional_entity_staff_report_feb2021_cold_weather_outages_111621.pdf [<https://perma.cc/MA8N-L7MW>] (reporting that 210 people died during the February 2021 cold weather electric outages in Texas that prompted Order No. 202-21-1).

evolves to both keep up with demand and cut down on carbon emissions, those moments of crisis will—hopefully—remain rare.

But the new challenges to the grid are shaping up to put the power system’s operators in a bind more often. And regulators are also pressuring § 202(c) to transform yet again, this time into a tool that will provide just a bit more compliance flexibility for tough new climate rules—even if the strain on reliability is long expected. Policymakers and courts should heed § 202(c)’s limited scope. It is a flexible emergency power, but Congress did not design it as a catch-all for *all* reliability problems. Yet, inevitably, as large fossil fuel-fired generating units are slated for retirement,³⁴⁰ reliability-conscious regulators and operators will look to § 202(c), in the process, perhaps, stretching the meaning of “emergency.” That means that supervision, both through internal processes, and (if necessary) from outside the Department of Energy, is all the more important.

APPENDIX

*Table 1: All § 202(c) emergencies after dissolution of the Federal Power Commission*³⁴¹

Ordered entity	Start month	Emergency	Pollution limits waived	Length	Extensions?	Action ordered	NEPA SEA prepared?	Permit limits breached?
Duke Energy Florida, LLC ³⁴²	Oct. 2024	Hurricane Milton	CAA: Formaldehyde permit limits Possibly other CAA and CWA limits	4 days	No	Generation	Not yet	Unknown
ERCOT ³⁴³	Sept. 2023	Heat wave	CAA: NOx, CO, NH ₃ , and opacity NAAQS permit limits	2 days	No	Generation	No	No

³⁴⁰ Cf. Jack Quinn, *EPA, Utility Strike Deal to Shut Down Last Northeast Coal Plants*, ENERGYWIRE (Mar. 28, 2024), <https://subscriber.politicopro.com/article/eenews/2024/03/28/epa-utility-strike-deal-to-shut-down-last-northeast-coal-plants-00149345> (reporting on a recently announced coal-fired power plant closure, which “stirr[ed] a debate about whether fossil fuels are needed to stabilize the region’s grid”).

³⁴¹ I assembled this table based on a list of § 202(c) orders provided on two Department of Energy webpages. See *DOE Use of FPA Emergency Authority*, *supra* note 99 (listing orders since 2020); *DOE Use of FPA Emergency Authority Archive*, *supra* note 99 (listing orders prior to 2020). The Department issued no § 202(c) orders between the agency’s creation and the December 2000 order to California ISO. See *supra* note 99.

³⁴² See *Federal Power Act Section 202(c): Duke Energy Florida October 2024*, *supra* note 243 (listing documents relevant to Duke Energy’s § 202(c) order). I was unable to learn, before this Article went to print, whether this order was actually used and whether any permit limits were actually breached. Also, as of March 17, 2025, the Department of Energy had not publicly posted any Special Environmental Analysis documents for this order. See Off. of NEPA Pol’y & Compliance, *Special Environmental Analyses*, DEP’T OF ENERGY, <https://www.energy.gov/nepa/listings/special-environmental-analyses> [https://perma.cc/75R6-ZQE5] (last visited Mar. 17, 2025).

³⁴³ See Off. of Cybersecurity, Energy Sec., & Emergency Response, *Federal Power Act Section 202(c): ERCOT September 2023*, DEP’T OF ENERGY, <https://www.energy.gov/ceser/federal-power-act-section-202c-ercot-september-2023> [https://perma.cc/Y53P-7J3D] (last visited Feb. 21, 2025) (listing documents relevant to ERCOT’s § 202(c) order).

Ordered entity	Start month	Emergency	Pollution limits waived	Length	Extensions?	Action ordered	NEPA SEA prepared?	Permit limits breached?
PJM Interconnect-ion ³⁴⁴	Dec. 2022	Cold wave	CAA: NOx and CO NAAQS permit limits	3 days	No	Generation	Yes ³⁴⁵	Yes
ERCOT ³⁴⁶	Dec. 2022	Cold wave	CAA: NOx, CO, NH ₃ , and opacity NAAQS permit limits	3 days	No	Generation	No	No
Balancing Authority of Northern California ³⁴⁷	Sept. 2022	Heat wave	CAA: VOC, NOx, SO ₂ , PM10, and CONAAQS permit limits	1 week	Yes	Generation	Yes ³⁴⁸	Yes
California ISO ³⁴⁹	Sept. 2022	Heat wave	CAA: NOx and CO NAAQS permit limits	10 days	Yes	Generation	No	No
California ISO ³⁵⁰	Sept. 2021	Heat wave	CAA: NOx NAAQS permit limits; lack of required BACT	2 months	No	Generation	No	No
ERCOT ³⁵¹	Feb. 2021	Cold wave	CAA: NOx, CO, and NO ₂ NAAQS permit; Hazardous air pollutant permit limits CWA: Unspecified discharge limitations	5 days	No	Generation	Yes	Yes

³⁴⁴ See Off. of Cybersecurity, Energy Sec., & Emergency Response, *Federal Power Act Section 202(c): PJM December 2022*, DEP'T OF ENERGY, <https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-december-2022> [https://perma.cc/4VUM-RU9W] (last visited Feb. 21, 2025) (listing documents relevant to PJM's § 202(c) order).

³⁴⁵ See Draft Memorandum, *supra* note 9, at 2 (presenting conclusions "intended to satisfy the DOE's NEPA requirements").

³⁴⁶ See Off. of Cybersecurity, Energy Sec., & Emergency Response, *Federal Power Act Section 202(c): ERCOT December 2022*, DEP'T OF ENERGY, <https://www.energy.gov/ceser/federal-power-act-section-202c-ercot-december-2022> [https://perma.cc/8SCR-WRQH] (last visited Feb. 21, 2025) (listing documents relevant to ERCOT's § 202(c) order).

³⁴⁷ See Off. of Cybersecurity, Energy Sec., & Emergency Response, *Federal Power Act Section 202(c): BANC September 2022*, DEP'T OF ENERGY, <https://www.energy.gov/ceser/federal-power-act-section-202c-banc-september-2022> [https://perma.cc/SCQ8-BR4X] (last visited Feb. 21, 2025) (listing documents relevant to BANC's § 202(c) order).

³⁴⁸ See Memorandum from ICF to Tertia Speiser, *supra* note 256.

³⁴⁹ See *CAISO Sept. 2022*, *supra* note 242 (listing documents relevant to CAISO's § 202(c) order).

³⁵⁰ See Off. of Elec., *Federal Power Act Section 202(c): CAISO, September 2021*, DEP'T OF ENERGY, <https://www.energy.gov/oe/federal-power-act-section-202c-caiso-september-2021> [https://perma.cc/8GES-QT7N] (last visited Feb. 21, 2025) (listing documents relevant to CAISO's § 202(c) order).

³⁵¹ See Off. of Elec., *Federal Power Act Section 202(c) – ERCOT, February 2021*, DEP'T OF ENERGY (Feb. 15, 2021), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-ercot-february-2021> [https://perma.cc/W9DL-BMBT] (listing documents relevant to ERCOT's § 202(c) order).

Ordered entity	Start month	Emergency	Pollution limits waived	Length	Extensions?	Action ordered	NEPA SEA prepared?	Permit limits breached?
California ISO ³⁵²	Sept. 2020	Heat wave	CAA: NOx NAAQS permit limits	1 week	No	Generation	No; formal categorical exclusion determination prepared ³⁵³	Yes ³⁵⁴
CenterPoint Energy Houston Electric ³⁵⁵	Aug. 2020	Hurricane	None	1.5 months	No	Non-jurisdictional interconnection	No	N/a
Dominion Energy and PJM Interconnect-ion ³⁵⁶	June 2017	Transmission line delay; MATS	CAA: Mercury Air Toxics Standards CWA: Cooling water intake structure standards Other: municipal permit	21 months	Yes	Generation	No; formal categorical exclusion determination prepared	Yes
Grand River Dam Authority ³⁵⁷	Apr. 2017	Lightning strike; construction delay; MATS	CAA: Mercury Air Toxics Standards	3 months	No	Generation	No	No ³⁵⁸
CenterPoint Energy Houston Electric ³⁵⁹	Sept. 2008	Hurricane Ike	None	2 weeks	No	Non-jurisdictional interconnection	No	N/a
CenterPoint Energy Houston Electric ³⁶⁰	Sept. 2005	Hurricanes Katrina and Rita	None	4 days	No	Non-jurisdictional interconnection	No	N/a

³⁵² See Off. of Elec., *Federal Power Act Section 202(c) – CAISO, September 2020*, DEP’T OF ENERGY (Sept. 6, 2020), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-caiso-september-2020> [https://perma.cc/9G7H-GKQY] (listing documents relevant to CAISO’s § 202(c) order).

³⁵³ See Off. of NEPA Pol’y & Compliance, *CX-270545: Emergency Order Pursuant to Section 202(c) of the FPA for California Independent System Operator (CAISO)*, DEP’T OF ENERGY (Sept. 6, 2020), <https://www.energy.gov/nepa/articles/cx-270545-emergency-order-pursuant-section-202c-fpa-california-independent-system> [https://perma.cc/L7HK-XHRL] (applying categorical exclusion).

³⁵⁴ 202(c) Usage Email, *supra* note 216 (“CAISO, September 2020 . . . This Order was used; NEPA CX; [Final report filed 9/21/20, business confidential]” (second alteration in original)).

³⁵⁵ See Off. of Elec., *Federal Power Act Section 202(c) – CenterPoint Energy Houston Electric, August 2020*, DEP’T OF ENERGY (Aug. 28, 2020), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-centerpoint-energy-houston-electric-august-2020> [https://perma.cc/QP6F-X5EK] (listing documents relevant to CenterPoint Energy Houston Electric’s § 202(c) order).

³⁵⁶ See *PJM & Dominion 2017*, *supra* note 308 (listing documents relevant to Dominion Energy and PJM’s § 202(c) order, including a series of requests from Dominion Energy Virginia and PJM).

³⁵⁷ See Off. of Elec., *Federal Power Act Section 202(c) – Grand River Dam Authority, April 2017*, DEP’T OF ENERGY (Apr. 14, 2017), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-grand-river-dam-authority-april-2017> [https://perma.cc/BJ4B-JZG3] (listing documents relevant to Grand River Dam Authority’s § 202(c) order).

³⁵⁸ 202(c) Usage Email, *supra* note 216 (“Order 202-17-1 GRDA – Was Not Used, [email notification July 20, 2017]” (alteration in original)).

³⁵⁹ See *DOE Use of FPA Emergency Authority Archive*, *supra* note 99 (listing the Department of Energy’s use of § 202(c) from 2000 to 2020, including the September 2008 order issued for CenterPoint Energy Houston Electric).

³⁶⁰ See Off. of Elec., *Federal Power Act Section 202(c) - Hurricane Rita, September 2005*, DEP’T OF ENERGY (May 1, 2012), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-hurricane-rita-september-2005> [https://perma.cc/V7AM-Y89U] (listing documents relevant to CenterPoint Energy Houston Electric’s § 202(c) orders).

Ordered entity	Start month	Emergency	Pollution limits waived	Length	Extensions?	Action ordered	NEPA SEA prepared?	Permit limits breached?
TXU Electric ³⁶¹	Sept. 2005	Hurricanes Katrina and Rita	None	2 days	No	Non-jurisdictional interconnection	No	N/a
Mirant Corp. ³⁶²	Dec. 2005	Generation unit closure	None	18 months	Yes	Generation	Yes	Yes
Cross Sound Cable Co. ³⁶³	Aug. 2003	Widespread blackouts in New England	None	9 months	Yes	Transmission	No	N/a
Cross Sound Cable Co. ³⁶⁴	Aug. 2002	Energy shortage on Long Island	None	1.5 months	No	Transmission	No	N/a
California ISO ³⁶⁵	Dec. 2000	Electricity and natural gas market crisis	None	1.5 months	Yes	Generation	No	N/a

³⁶¹ See *id.* (listing documents relevant to TXU Electric's § 202(c) order).

³⁶² See Off. of Elec., *Federal Power Act Section 202(c) - Mirant Corporation, August 2005*, DEP'T OF ENERGY (May 1, 2012), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-mirant-corporation-august-2005> [<https://perma.cc/MX6Z-Q9VQ>] (listing documents relevant to Mirant Corp.'s § 202(c) orders).

³⁶³ See Off. of Elec., *Federal Power Act Section 202(c) - Cross-Sound Cable Company, August 2003*, DEP'T OF ENERGY (May 1, 2012), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-cross-sound-cable-company-august-2003> [<https://perma.cc/C4F3-Q4V5>] (listing documents relevant to Cross Sound Cable Co.'s § 202(c) orders).

³⁶⁴ See Off. of Elec., *Federal Power Act Section 202(c) - Cross-Sound Cable Company, August 2002*, DEP'T OF ENERGY (May 1, 2012), <https://www.energy.gov/oe/articles/federal-power-act-section-202c-cross-sound-cable-company-august-2002> [<https://perma.cc/V7EG-67KD>] (listing documents relevant to Cross Sound Cable Co.'s § 202(c) orders).

³⁶⁵ See Off. of Elec., *supra* note 106 (listing documents relevant to CAISO's § 202(c) orders); Notice of Issuance of Emergency Orders Under Section 202(c) of the Federal Power Act, 65 Fed. Reg. 82989 (Dec. 29, 2000) (reprinting CAISO emergency orders).

*Table 2: All § 202(c) emergencies before dissolution of the Federal Power Commission*³⁶⁶

Ordered entity	Date	Emergency	Length	Extension?	Action ordered
Cleveland Electric Illuminating Co. ³⁶⁷	March 1972	Possibility of shortages in an isolated electrical system without external interconnection.	Indefinite	No	Interconnection
Kentucky Utilities Co. ³⁶⁸	August 1967	Possibility of shortages in an isolated electrical system without external interconnection.	Indefinite	No	Interconnection
Georgia Power Co. ³⁶⁹	April 1966	Inadequate generating facilities under isolated operation.	Five years and nine months	No	Interconnection
Commonwealth Edison Co. and Wisconsin Electric Power Co. ³⁷⁰	August 1956	Shortage of reserve generating capacity.	Four months	Yes	Interconnection

³⁶⁶ This table includes all § 202(c) orders issued by the Federal Power Commission and published in the *Federal Power Commission Reports* (initially titled *Opinions and Decisions of the Federal Power Commission*). According to an archivist from the National Archives and Records Administration, all Federal Power Commission orders in the National Archives appear to have been published in the *Reporter*. See E-mail from Gene Morris, Archives II Textual Reference Branch, Nat'l Archives & Recs. Admin., to author (Mar. 13, 2024, 3:30 PM) (on file with author).

This is in response to your request for information about Record Group (RG) 138, Records of the Federal Energy Regulatory Commission (FERC)[.] Specifically, you are interested in the records of the Federal Power Commission (FPC) relating to orders issued by the FPC between 1935 and 1977. We identified four series in RG 138 that have orders within them. . . . Everything in them appears to be published sources. The first two entries consist entirely of bound volumes of FPC reports. Based on our review of the last two entries, any orders that appear here are from published sources.

So, all § 202(c) orders issued by the FPC should appear in the *Reports*.

I identified § 202(c) orders by reviewing the indexes in the *Reports*. Volumes 1 through 41 of the *Reports* include both a “Table of Statutes Cited,” which lists all statutory citations in the volume, and an “Index-Digest,” which includes brief summaries of orders organized by topic. For volumes 1 through 41, I reviewed all orders that the statutory citation index identified as having cited § 202 or § 202(c). I also reviewed the Index-Digest for entries that mentioned § 202(c) or that included the word “emergency.” The remaining volumes, volumes 42 through 59, did not include a statutory citations index. For those volumes, I reviewed the Index-Digest for entries that mentioned § 202(c) or that included the word “emergency.” To ensure that no citations in volumes 42 through 59 slipped through the cracks, I also reviewed the results for the search term “(“202 (c)” OR “202(c)” OR “824a (c)” OR “824a(c)”) AND (volshortname:fpowco)” in the U.S. Federal Agency Documents, Decisions, and Appeals database in HeinOnline.

³⁶⁷ See *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 47 F.P.C. 747, 749–50 (1972); *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 49 F.P.C. 118, 124–25, 136 (1973) (modifying order); *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 49 F.P.C. 631, 633 (1973) (denying rehearing and stay).

³⁶⁸ See *City of Paris v. Ky. Utils. Co.*, 38 F.P.C. 269, 290–92 (1967).

³⁶⁹ See *Crisp Cnty. Power Comm’n v. Ga. Power Co.*, 35 F.P.C. 629, 630–31 (1966); *Ga. Power Co.*, 36 F.P.C. 949, 950 (1966) (supplemental order); *Crisp Cnty. Power Comm’n v. Ga. Power Co.*, 47 F.P.C. 137, 138 (1972) (terminating proceeding based on a settlement).

³⁷⁰ See *Commonwealth Edison Co.*, 16 F.P.C. 823, 824 (1956); *Commonwealth Edison Co.*, 16 F.P.C. 999, 999–1000 (1956) (extending order); *Commonwealth Edison Co.*, 16 F.P.C. 1145, 1150 (1956) (dismissing joint application to establish permanent connection for emergency use only).

Ordered entity	Date	Emergency	Length	Extension?	Action ordered
Commonwealth Edison Co.; Wisconsin Electric Power Co.; and Public Service Co. of Northern Illinois ³⁷¹	November 1951	Increased demand from heavy concentration of defense industries; limits on construction of new transmission and generation facilities.	Four years and nine months	No	Interconnection
Texas Electric Service Co.; Texas Power & Light Co.; Dallas Power & Light Co.; Community Public Service Co.; and Southwestern Electric Service Co. ³⁷²	April 1948	Increase in demand; shortage of electric facilities; decreased rainfall; in one extension order, the Korean War Presidential emergency declaration.	Four years and eight months	Yes	Interconnection
Puget Sound Power & Light Co. ³⁷³	January 1947	Sudden increase in demand since the return to peacetime activity.	Eight years	No	Interconnection
Dairyland Power Cooperative and Northern States Power Co. ³⁷⁴	February 1943	Existence of a state of war.	Indefinite	No	Generation and transmission
Bonneville Power Administration and Washington Water Power Co. ³⁷⁵	February 1943	Existence of a state of war.	Duration of emergency plus 90 days after cessation of hostilities	No	Transmission and delivery
Connecticut Light & Power Co. ³⁷⁶	November 1942	Existence of a state of war; increase in demand for and shortage of electricity.	Duration of emergency plus 90 days after cessation of hostilities	No	Interconnection
Idaho Power Co. and Malheur Cooperative Electric Ass'n ³⁷⁷	July 1942	Existence of a state of war; increase in demand for and shortage of electricity.	Indefinite	No	Interconnection and delivery
Florida Power & Light Co. and Clay Electric Cooperative Ass'n, Inc. ³⁷⁸	May 1942; order expanded December 1942	Existence of a state of war; increase in demand for and shortage of electricity.	Duration of emergency; terminated after twelve years	No	Interconnection
Florida Power Corp. and City of Gainesville, Fla. ³⁷⁹	May 1942	Existence of a state of war; increase in demand for and shortage of electricity.	Duration of emergency; terminated after twelve years	No	Interconnection
Florida Power & Light Co. and City of Jacksonville, Fla. ³⁸⁰	May 1942	Existence of a state of war; increase in demand for and shortage of electricity.	Duration of emergency; terminated after twelve years	No	Interconnection

³⁷¹ See *Commonwealth Edison Co.*, 10 F.P.C. 1506 (1951); *Commonwealth Edison Co.*, 16 F.P.C. 823, 824 (1956) (modifying order based on a different emergency from original order).

³⁷² See *Tex. Elec. Serv. Co.*, 7 F.P.C. 574, 575 (1948); *Tex. Elec. Serv. Co.*, 8 F.P.C. 679, 680 (1949) (extending order); *Tex. Elec. Serv. Co.*, 9 F.P.C. 1373, 1374 (1950) (extending order based on Korean War Presidential emergency declaration).

³⁷³ See *Puget Sound Power & Light Co.*, 6 F.P.C. 320, 320 (1947); *Puget Sound Power & Light Co.*, 14 F.P.C. 621, 622 (1955) (terminating emergency authorization).

³⁷⁴ See *Dairyland Power Coop.*, 3 F.P.C. 934, 934–35 (1943).

³⁷⁵ See *Bonneville Power Admin.*, 3 F.P.C. 920, 921–22 (1943); *Bonneville Power Admin.*, 3 F.P.C. 954, 954 (1943) (ordering hearing); *Bonneville Power Admin.*, 4 F.P.C. 410, 410 (1943) (rescinding original order).

³⁷⁶ See *Conn. Light & Power Co.*, 3 F.P.C. 869, 870–71 (1942).

³⁷⁷ See *Idaho Power Co.*, 3 F.P.C. 750, 750 (1942).

³⁷⁸ See *Fla. Power & Light Co.*, 3 F.P.C. 715, 715–16 (1942); *Fla. Power & Light Co.*, 3 F.P.C. 872, 873 (1942) (amending order); *Fla. Power & Light Co.*, 13 F.P.C. 1231, 1231 (1954) (terminating several prior orders).

³⁷⁹ See *Fla. Power Corp.*, 3 F.P.C. 714, 714–15 (1942); *Fla. Power & Light Co.*, 13 F.P.C. at 1231 (terminating several prior orders)..

³⁸⁰ See *Fla. Power & Light Co.*, 3 F.P.C. 712, 712–13 (1942); *Fla. Power & Light Co.*, 13 F.P.C. at 1231 (terminating several prior orders)..

Ordered entity	Date	Emergency	Length	Extension?	Action ordered
Virginia Public Service Co.; Potomac Electric Power Co.; and Braddock Light & Power Co., Inc. ³⁸¹	December 1941	Sudden and constantly increasing demand for electricity.	Indefinite	No	Interconnection and delivery
South Carolina Power Co.; Georgia Power Co.; Alabama Power Co.; Mississippi Power Co.; Gulf Power Co.; and South Carolina Electric & Gas Co. ³⁸²	November 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Transmission and delivery
Duke Power Co. ³⁸³	October 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Delivery
Niagara Falls Power Co. ³⁸⁴	September 1941	Urgent need for 25-cycle electric energy to supply essential defense industries.	Indefinite	Yes	License amendment to authorize additional water diversion
Gulf Power Co.; Florida Power Corporation; and Alabama Power Co. ³⁸⁵	August 1941	Increase in demand for electricity caused by need for national defense production.	One month	No	Interconnection
Carolina Aluminum Co. ³⁸⁶	June 1941 ³⁸⁷	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Generation and delivery
Tennessee Valley Authority and Cincinnati Gas & Electric Co. ³⁸⁸	June 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Recommendation only
Alabama Electric Cooperative; Florida Power Corporation; and Alabama Power Co. ³⁸⁹	June 1941	Increase in demand for electricity caused by need for national defense production.	Three months	No	Interconnection
Georgia Power & Light Company; Florida Power Corporation; and Georgia Power Co. ³⁹⁰	June 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Interconnection
Florida Power Corporation and Florida Power & Light Co. ³⁹¹	June 1941	Increase in demand for electricity caused by need for national defense production.	Thirteen years and one month	No	Interconnection
Georgia Power & Light Co. and Georgia Power Co. ³⁹²	June 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Interconnection
New Orleans Public Service, Inc.; Mississippi Power Co.; and Louisiana Power &	June 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Interconnection

³⁸¹ See Va. Pub. Serv. Co., 2 F.P.C. 1095, 1095–96 (1941).

³⁸² See S.C. Power Co., 2 F.P.C. 1060, 1060–61 (1941).

³⁸³ See Duke Power Co., 2 F.P.C. 1055, 1055–56 (1941).

³⁸⁴ See Niagara Falls Power Co., 2 F.P.C. 461, 462–64 (1941); Niagara Falls Power Co., 3 F.P.C. 659, 660 (1942) (amending order); Niagara Falls Power Co., 3 F.P.C. 820, 820 (1942) (extending order).

³⁸⁵ See Gulf Power Co., 2 F.P.C. 1021, 1021–22 (1941); Ala. Elec. Coop., 2 F.P.C. 1026, 1026 (1941) (rescinding order).

³⁸⁶ See Carolina Aluminum Co., 2 F.P.C. 998, 998–99 (1941).

³⁸⁷ The Federal Power Commission issued ten separate § 202(c) orders on June 27, 1941. However, all ten orders were pursuant to a single emergency, declared in a separate order that did not itself order any entities. See Recommendation for the Curtailment of the Use of Elec. Energy in the Se. States, 2 F.P.C. 990, 990–91 (1941).

³⁸⁸ See Tenn. Valley Auth., 2 F.P.C. 997, 997–98 (1941).

³⁸⁹ See Ala. Elec. Coop., 2 F.P.C. 996, 996–97 (1941); Ala. Elec. Coop., 2 F.P.C. at 1026 (rescinding order).

³⁹⁰ See Ga. Power & Light Co., 2 F.P.C. 995, 995–96 (1941); Ga. Power & Light Co., 2 F.P.C. 1059, 1059–60 (1941) (amending order).

³⁹¹ See Fla. Power Corp., 2 F.P.C. 994, 994–95 (1941); Fla. Power Corp., 13 F.P.C. 1231, 1231 (1954) (terminating several prior orders).

³⁹² See Ga. Power & Light Co., 2 F.P.C. 993, 993–94 (1941); Ga. Power & Light Co., 2 F.P.C. at 1059–60 (amending order).

Ordered entity	Date	Emergency	Length	Extension?	Action ordered
Light Co. ³⁹³					
Duke Power Co. and Carolina Aluminum Co. ³⁹⁴	June 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Interconnection
Florida Power & Light Co. and Florida Public Service Co. ³⁹⁵	June 1941	Increase in demand for electricity caused by need for national defense production.	Thirteen years and one month	No	Interconnection
None—emergency declaration only ³⁹⁶	June 1941	Increase in demand for electricity caused by need for national defense production.	Indefinite	No	Recommendation only

³⁹³ See New Orleans Pub. Serv., Inc., 2 F.P.C. 992, 992–93 (1941).

³⁹⁴ See Duke Power Co., 2 F.P.C. 992, 992 (1941).

³⁹⁵ See Fla. Power & Light Co., 2 F.P.C. 991, 991 (1941); *Fla. Power & Light Co.*, 13 F.P.C. at 1231 (terminating several prior orders).

³⁹⁶ See Recommendation for the Curtailment of the Use of Elec. Energy in the Se. States, 2 F.P.C. 990, 990–91 (1941).

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 34

DOE ORDER NO. 202-05-03

United States of America
Department of Energy

District of Columbia Public Service Commission)

Docket No. EO-05-01

Order No. 202-05-3

I. Summary

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes, and that issuance of this order will meet the emergency and serve the public interest. Therefore, Mirant Corporation and its wholly owned subsidiary, Mirant Potomac River, LLC (collectively referred to herein as Mirant), are hereby ordered to generate electricity at their Potomac River Generating Station (the "Plant") pursuant to the terms of this order.

II. Procedural History

On August 19, 2005, Mirant submitted to the Virginia Department of Environmental Quality (DEQ) a computerized emissions modeling study Mirant had conducted of its Plant that indicated that emissions from the Plant caused or contributed to significant localized exceedances of the National Ambient Air Quality Standards (NAAQS).¹ Also on August 19, 2005, DEQ issued a letter to Mirant which requested "that Mirant *immediately* undertake such action as is necessary to ensure protection of human health and the environment, in the area surrounding the Potomac River Generating Station, including the potential reduction of levels of operation, or potential shut down of the facility." (emphasis in original). The letter asked Mirant to provide DEQ with a summary of the actions taken and the progress toward eliminating NAAQS exceedances by August 24, 2005. At midnight on August 21, 2005, Mirant reduced production of all units at the Plant to their minimum load, and at midnight on August 24, 2005, Mirant shut down all five of the generating units at the Plant.

On August 24, 2005, the District of Columbia Public Service Commission (DCPSC) filed an *Emergency Petition and Complaint* with both the United States Department of Energy (DOE or Department) and the Federal Energy Regulatory Commission (FERC or Commission) pursuant to the FPA. The DCPSC requested the Secretary of Energy to find that an emergency exists under section 202(c) of the FPA and to issue an order directing Mirant to continue

¹ The Clean Air Act, 42 U.S.C. § 7401 *et seq.*, authorizes the United States Environmental Protection Agency (EPA) to establish NAAQS, 42 U.S.C. §§ 7408-7409, and states that it is the responsibility of the states and local governments for assuring that they are attained, 42 U.S.C. §§ 7401(a)(3) and 7416.

operation of the Plant. The basis for the petition was that the shutdown of the Plant "...will have a drastic and potentially immediate effect on the electric reliability in the greater Washington, D.C., area and could expose hundreds of thousands of consumers, agencies of the Federal Government and critical federal infrastructure to curtailments of electric service, load shedding and, potentially, blackouts." The DCPSC requested that the Commission issue a similar order under sections 207 and 309 of the FPA. Numerous parties filed interventions and comments in response to DCPSC's emergency petition, as well as subsequent comments and responses.² Further, both FERC and DOE issued information requests to Mirant, the Potomac Electric Power Company (PEPCO), the company responsible for supplying electricity to retail customers in the District of Columbia, and PJM Interconnection, LLC (PJM), the grid operator responsible for the administration of the bulk power grid and electricity market in the region.³ In addition to the DCPSC petition proceedings, DOE has hosted and participated in numerous conference calls and meetings to gather information on the shutdown of the Plant and its effect on the reliability of D.C.'s electricity system.⁴

III. Background

The coal-fired Mirant Plant, which began operation in 1949, is located in Alexandria, Virginia, and is capable of producing 482 megawatts of electricity primarily for delivery to Washington, D.C. The Plant consists of five generating units, two of which are cycling units that range in output from 35 MW to 88 MW, and three of which are baseload units that range in output from 35 MW to 102 MW. It is one of only three sources of electricity that serve the central business district of the District of Columbia, many federal institutions, the Georgetown area in D.C., as well as other portions of Northwest, D.C., and the District of Columbia Water and Sewer Authority's Blue Plains Advanced Water Treatment Plant, the largest wastewater

² Several of these filings were only made in the FERC docket and not in DOE's docket. Even though a number of filers did not submit their comments in the DOE docket, the Department has, in the interest of rendering an appropriate and fully informed determination, reviewed all the filings in the FERC docket for any pertinent facts that will assist the Department in making its decision. Also, to the extent the filings contained analysis or legal arguments pertaining to the Department's 202(c) authority, they have been considered in the Department's decision making process.

³ The data submitted contained Critical Energy Infrastructure Information and was submitted in both confidential and redacted versions, as defined in FERC's rules at 18 C.F.R. § 388.13. All information contained in this order is from public filings in the DOE and FERC dockets.

⁴ The Administrative Procedure Act's prohibitions on ex parte communications in an adjudicatory proceeding, 5 U.S.C. § 557(d)(1), do not apply to DOE's 202(c) proceedings, because section 202(c) explicitly authorizes the Department to issue a 202(c) order "either upon its own motion or upon complaint, with or without notice, hearing, or report. . ." 16 U.S.C. § 824a(c).

treatment plant in the world.⁵ The other two sources are two 230 kV lines that deliver electricity from other generating sources in the regional electric grid operated by PJM. Although there are other generating units in close physical proximity to the Central D.C. area, (e.g., the Benning Road and Buzzard Point generating facilities, which are dual-fueled oil and natural gas generating power plants, owned by PEPCO) there are no transmission lines that would allow delivery of power from these other units to reach the Central D.C. area. With regard to the sources of power that serve the Central D.C. area, PEPCO owns and operates the transmission lines, and PJM determines electricity demand.

Although Mirant shut down all of the Plant's generating units on August 24, 2005, it has since restarted unit number one which, the Department understands, is currently operating. Mirant is operating the unit on an 8/8/8 basis --- that is, in any given twenty-four hour period, the unit runs for eight hours at its maximum level of 88 MW, eight hours at its minimum level of 35 MW, and has eight hours when it does not run. DOE has been informed that both EPA and DEQ acknowledge that the operation of this unit in this manner does not result in any NAAQS exceedances. In addition, DOE understands that Mirant is taking other steps to increase production at the Plant in a manner which will be acceptable to DEQ and EPA.

PEPCO has applied to the DCPSC to construct two new 230 kV lines that would supply electricity to the Central D.C. area. In the same application, PEPCO has proposed building two new 69kV lines to supply the Blue Plains wastewater treatment plant. PEPCO proposes having the two 69 kV lines installed by the summer 2006 peak season, and the two 230 kV lines installed in 18 to 24 months. The two existing 230 kV lines that supply the Central D.C. area would need to be temporarily taken out of service sequentially in order to connect the new lines to the Central D.C. area. Once completed, these lines apparently would provide a high level of electric reliability in the Central D.C. area, even in the absence of production from the Plant.

IV. Discussion

A. Reliability Issues

The Department has conducted an independent analysis of the electricity reliability situation in the Central D.C. area and has analyzed the Plant's role in ensuring a sufficiently reliable supply of electricity to that area. DOE's analysis was conducted by the Department's Oak Ridge National Laboratory. Under North American Electric Reliability Council standards, at a minimum, the power system must carry at least enough contingency reserves of electricity to cover the most severe single contingency. The standards require that an area's system always be operated with sufficient reserves to compensate for the sudden failure of the area's most important single generator or transmission line.

⁵ For purposes of this order, the area supplied with electricity by these three sources will be referred to as the "Central D.C. area," and the retail customers in this area will be referred to as the "Central D.C. area customers."

Based on the fact that the Central D.C. area has only three sources of supply, the Plant and the two 230 kV transmission lines, the Department's analysis concludes that in order to maintain a minimally reliable electric power system, the Plant must be available to run when one of the 230 kV lines is out of service, because if the remaining line failed there would be no other source of electricity to serve the Central D.C. area load. In addition, the analysis concludes that if one of the 230 kV lines failed unexpectedly, enough generation must be started as rapidly as possible so as to be able to serve all of the Central D.C. area load as a contingency reserve in the event the other line were to fail. The analysis also indicates that the Plant should be operated in such a way as to minimize the amount of time needed to bring it into production.

PEPCO has asserted that:

Absent the generating capacity of the Plant, if the two 230 kV transmission circuits into the [Central D.C. area] fail, there will be a blackout in much of the District of Columbia until the circuits are repaired or the Plant's generators are restarted and can operate at a level that matches load. All electric customers in Georgetown, Foggy Bottom and major portions of downtown Washington will be affected. The affected customers will also include Blue Plains wastewater treatment plant. It is PEPCO's understanding that within 24 hours of the loss of electric supply, Blue Plains will have no option but to release untreated sewage directly into the Potomac River, which would result in a significant adverse impact to human health, aquatic wildlife and other environmental resources. Affected customers will also include numerous hospitals, schools, universities, commercial buildings, and residential customers. Importantly, numerous federal facilities will lose power, including those critical to the security, safety, and welfare of the whole country, such as the FBI, the Justice Department, the State Department, the Federal Emergency Management Agency, the Department of the Interior, and the Department of Energy to name but a few.⁶

No commenter has disputed these statements by PEPCO, and they have been generally corroborated by DOE's own independent analysis; therefore, DOE will accept them as correct statements of fact. Further, the 230 kV lines do go out of service on occasion; since 2000, there have been 34 one-line outages for maintenance, and seven occasions where one of the lines has tripped unexpectedly. DOE has been informed that, prior to 2000, there were two occasions when both of the lines failed simultaneously.

B. Environmental Issues

Some commenters have asserted that the renewed operation of the Plant would result in NAAQS exceedances and a violation of the Clean Air Act, and that DOE could not issue a 202(c) order which would contravene the Clean Air Act (42 U.S.C. §§ 7401-7626). In response to this assertion, DCPSC, PEPCO and PJM contend that there were no actual monitored

⁶ See Potomac Electric Power Company's Leave to Answer and Answer to Comments, FERC Docket No. EL05-145-000 at pages 2 & 3 (September 9, 2005).

exceedances of the NAAQS at the Plant during operation, and that operation of the plant at full power does not exceed the emissions limits contained in the Plant's operating permit and therefore the operation of the Plant pursuant to a DOE order would not violate the Clean Air Act. EPA has shared information with DOE regarding NAAQS modeled results and other environmental issues at the Plant. In response to the environmental concerns raised, this order seeks to minimize, to the extent reasonable, any adverse environmental impacts. Should EPA issue a compliance order directed to operation of the Plant, DOE will consider whether and how this order should conformed to such order.

Another assertion raised is that DOE cannot issue an order without complying with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* Responders to that assertion stated that NEPA review requirements do not apply because any order would merely require the Plant to operate in the manner and at the level it has historically operated, and thus is not a "major federal action" triggering NEPA. In addition, responders assert that "...the emergency nature of the relief sought in this case permits the [the Secretary] to act without conducting a NEPA analysis, even if it were required."⁷ DOE has determined that the emergency circumstances here make it necessary to take action without performing a NEPA analysis. Indeed, in order for an order under FPA section 202(c) to be issued at all, the Secretary of Energy must determine that an emergency exists, and I have made that determination here. DOE has consulted with CEQ about alternative arrangements pursuant to 40 C.F.R. § 1506.11.

C. Other Issues

Commenters opposed to the issuance of a FPA section 202(c) order cited *Richmond Power & Light v. FERC*, 574 F. 2d 610 (D.C. Cir. 1978) as imposing a limit on the Secretary's authority to make an emergency finding under section 202(c). In *Richmond*, the New England Power Pool (NEPOOL) petitioned the Federal Power Commission (the Secretary's predecessor in exercising section 202(c) authority) for an order pursuant to FPA section 202(c) to have utilities east of the Mississippi River with excess electric generating capacity supply NEPOOL with that excess capacity. The request was based on fears of an oil shortage due to the 1973 Arab oil embargo. The Commission responded by holding a conference and a series of meetings which resulted in an agreement among the purchasing, transmitting and supplying utilities and participating state regulatory commissions. As a result of the agreement, NEPOOL moved to withdraw its petition, which the Commission allowed. Richmond Power & Light Company challenged the decision to allow the withdrawal and the court found that the Commission did not abuse its discretion in declining to issue an order under section 202(c), but rather settling on the temporary-voluntary agreement program reached by the interested parties. Instead of limiting its

⁷ District of Columbia Public Service Commission Answer to Motion of the Virginia Department of Environmental Quality at page 24 (October 26, 2005), FERC Docket No. EL05-145-000. See also Answer of Potomac Electric Power Company and PJM Interconnection, LLC at page 18, (October 13, 2005), FERC Docket No. EL01-145-000.

reach, *Richmond* underscores the discretionary nature of the Secretary's authority under section 202(c).⁸

Another case asserted to limit the Secretary's authority to issue an order under section 202(c) was *National Fuel Gas Supply v. FERC*, 909 F2d 1519 (D.C. Cir. 1990). In that case, National Fuel applied under section 7 of the Natural Gas Act (NGA), 15 U.S.C. § 717 *et seq.*, for a certificate of public convenience and necessity to allow it to make interruptible sales of natural gas. The Commission imposed a condition that National Fuel accept a blanket transportation certificate to provide open access transportation. The court ruled that the Commission was improperly using a NGA section 7 certificate condition in place of an individual or generic proceeding under section 5 of the NGA. The Department does not see the relevance of *National Fuel* here. I am using section 202(c) of the FPA for precisely the type of situation contemplated by section 202(c) of the FPA.

V. Decision

Section 202(c) of the FPA vests in the Secretary of Energy the authority to issue an order when "an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of the fuel or water for generating facilities, or other causes...." 16 U.S.C. § 824a(c). DOE's regulations acknowledge 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 by these regulations." 10 C.F.R. § 205.371.

I find that in the circumstances presented here, an emergency exists that justifies the issuance of a section 202(c) order. My determination is not based on any single factor, but on the combination of all relevant facts and circumstances. In particular, I find that an emergency exists because of the reasonable possibility an outage will occur that would cause a blackout, the number and importance of facilities and operations in our Nation's Capital that would be potentially affected by such a blackout, the extended number of hours of any blackout that might in fact occur, and the fact that the current situation violates applicable reliability standards.

⁸ The facts in *Richmond* and in the current situation are very different. *Richmond* dealt with a wide regional or even national energy shortage situation, while we are considering electricity reliability in a discrete geographic area. The facts here more closely resemble those considered by the Federal Power Commission in *City of Cleveland, Ohio v. Cleveland Electric Illuminating Company*, 47 FPC 747 (1972). In that case, the City of Cleveland petitioned the Commission pursuant to section 202(c) to order an interconnection with Cleveland Electric Illuminating Company to provide services during shortages caused by outages of the City of Cleveland's generating facilities, or delays getting generation on line. The Commission found that the City of Cleveland had an emergency due to periodic shortages of generating facilities caused by outages and ordered the establishment of a 69kV temporary emergency interconnection between the electric systems of the City and Cleveland Electric Illuminating. Similarly, here DOE is ordering the Plant to provide electricity in certain limited situations.

More specifically, if the Mirant plant is not available to generate electricity and one of the two transmission lines serving the Central D.C. area goes out of service, the Central D.C. area would be served by only one transmission line. Should that remaining line fail for any reason, a blackout would occur in the Central D.C. area, potentially for an extended period of time. In fact, if one or both of the transmission lines could not be brought back into service immediately and the only source of energy for the Central D.C. area was the Mirant Plant, in the absence of today's order it would take several hours at a minimum to bring the Plant into full operation.

The outage of one of these two lines is not merely a theoretical possibility. On Friday, December 16, 2005, PJM informed DOE that on the previous night, "one of the two circuits critical to providing service to the District tripped. Continued [electric] service to certain load within the District was at that time entirely dependent on the remaining circuit." As a result, PJM requested dispatch of a second generating unit at the Plant, but Mirant refused to do so. PJM informed DOE that "service was not interrupted because load was low and the remaining circuit performed without incident." Fortunately, full service to the line that had tripped was restored by the morning of December 16. Nonetheless, there can be no assurance that the Central D.C. area will be so lucky next time, either with respect to the timing of the event, the operation of the second transmission line, or the ability to bring the first transmission line back into service.

Furthermore, it is periodically necessary for an outage to occur on one of the transmission lines because of the need to perform maintenance. In fact, maintenance is scheduled on one of the lines in the next few weeks. Thus, as occurred on the night of December 15, 2005 and as will certainly occur again in the future, if the Mirant Plant is not made operational Central D.C. will find itself relying solely on one transmission line. The duration of an outage can range from up to several days (for maintenance) or even longer (up to weeks) if the outage of a line is due to a major equipment failure. Throughout such a period, if the Plant is not fully operational a blackout in Central D.C. is only one step away, i.e., if an event should occur that causes the second line to fail. Such a blackout could last for hours or days.

I recognize that, if past experience is any guide, the simultaneous failure or outage of both transmission lines serving the Central D.C. area is not a high probability. While this event has occurred in the past, it has not happened often. Moreover, the recent tripping of one circuit does not in itself dictate the existence of an emergency justifying issuance of a 202(c) order.

The facilities and functions that would be adversely affected by an extended blackout in this instance, however, is an important consideration. The Central D.C. area includes offices, facilities and operations involved in all three branches of government, and that are critically important to the Nation's national security, law enforcement and regulatory functions. The Central D.C. area also includes hundreds of thousands of residents and workers, and all manner of public safety and protection facilities, including hospitals, police, and fire facilities. Moreover, DOE has been informed that within 24 hours of a blackout in the Central D.C. area, untreated sewage from the Blue Plains Wastewater Treatment plant would be discharged into the Potomac River.

Finally, it is noteworthy that a blackout in the Central D.C. area not only would affect critically important facilities and operations, it could last for an extended period. Depending on the reason for the outage of the transmission lines, the lack of service on those lines accompanied by the lack of generation by the Plant could result in a large portion of the District of Columbia being without electricity for a period that could last hours or days. At the very least, if the two transmission lines were made unavailable with no advance notice and the only source of electricity for the Central D.C. area was the Mirant plant, in the absence of today's order DOE understands it would take at least 28 hours, and likely longer, to bring the Plant into full operation, during which time all or a substantial part of the Central D.C. area would be without electric power. The results would be hardship and physical risk to hundreds of thousands of persons from loss of heat, elevator outages, medical equipment failure and numerous other causes. In addition, critical portions of the nation's government would also be severely impacted, with resulting adverse effects on a national scale.

Of course, the fact that the Department did not act immediately on the DCPCS petition does not argue against my finding that an emergency currently exists. After the petition was filed, DOE took several weeks to gather the relevant information, consider the facts, talk with environmental regulatory authorities, and develop an order that balanced the appropriate considerations. As explained in the text of this order, the current facts fully justify my finding that an emergency exists and that this order will meet that emergency. There certainly is nothing in the Federal Power Act that requires me to wait until a blackout actually has occurred, lives are put in jeopardy, and a significant disruption of National government functions already has happened before exercising my section 202(c) authority.

Accordingly, and based on all of the facts and circumstances, I find that an emergency exists justifying the issuance of this order under Federal Power Act section 202(c).

After finding the existence of an emergency, DOE has the authority, "either upon its own motion or upon complaint, with or without notice, hearing, or report, to order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest." 16 U.S.C. § 824a(c). The statute gives the Secretary of Energy broad discretion to fashion the terms of an order that will, in the Secretary's judgment, "best meet the emergency and serve the public interest." Based on the circumstances described above in this order, I hereby direct Mirant to generate electricity at the Plant pursuant to the terms of this order.

While I am issuing this order to help ensure a reliable supply of electric energy to the Central D.C. area, I am cognizant of the concerns that have been expressed concerning the potential adverse environmental consequences of operating the Plant, and of the national interest in attainment of the NAAQS that have been established under the Clean Air Act. Ordering action that may result in even local exceedances of the NAAQS is not a step to be taken lightly. However, it would not be reasonable for the Department of Energy to stand by and take no positive action on the DCPSC petition, even though the Central D.C. area is in danger of an extended blackout and the Department and private parties have available to them the legal and operational tools to prevent such a blackout from occurring. In this order, I have sought to harmonize those interests to the extent reasonable and feasible by ordering Mirant to operate in a

manner that provides reasonable electric reliability, but that also minimizes any adverse environmental consequences from operation of the Plant.

DOE expects that the DCPSC, having sought an emergency order, will take such actions as are within its authority to provide adequate and reliable electric service for the Central D.C. area including, for example, expediting approval of PEPCO transmission system upgrades and instituting demand response programs.⁹ Indeed, DOE views this order not as a permanent solution to the Central D.C. area's reliability issues, but rather as a bridge between the current untenable situation and a more permanent solution that must be crafted by appropriate parties, including the DCPSC, FERC, environmental regulatory authorities, and relevant private sector parties. This permanent solution may include the installation of the new transmission lines discussed above, the installation of new pollution control equipment at the Mirant Plant, or other means.

As explained above, in the event that one of the two transmission lines that serve the Central D.C. area is out of service (due either to a necessary planned outage or to unforeseen events) and sufficient electricity from the Mirant power plant were not available, then the Central D.C. area would experience an immediate blackout should the one remaining source of electricity fail. This situation must be avoided, and ordering paragraph A of this order ensures that this situation will be avoided. When an outage is planned, Mirant is to be given advance notice and is required to supply necessary generation throughout the period of the outage.¹⁰ In the event of an unexpected outage, Mirant must provide such generation as soon as possible. In the very unlikely eventuality of both transmission lines failing at the same time, Mirant is required to provide sufficient generation to supply the electrical demands of the affected area as soon as possible.

It is essential to determine the level of operation and other steps that will enable Mirant to rapidly respond to an unplanned transmission line outage. Some commenters have urged the Department to order the Plant to run continuously, even if doing so causes ongoing exceedances of the NAAQS. This would assure a high level of reliability of the electricity supply, but of course would not be tailored to particular circumstances in which operation of the Plant would be most necessary to provide needed reliability for the Central D.C. area and might also cause local air quality concerns. Other commenters have urged the Department to do nothing.

⁹ Demand response programs prompt electricity customers to reduce demand, especially during periods of short supply.

¹⁰ In making certain portions of this order effective only upon notice to Mirant by PEPCO of a planned or unplanned outage of one or both of the 230 kV lines, it is similar to the FPA section 202(c) orders issued during the 2000/2001 California energy crisis. In those, DOE ordered certain entities to generate, deliver, interchange and transmit electricity to the California Independent System Operator (California ISO), but the entities were not required to deliver energy or services unless the California ISO had filed with DOE a certificate that it had been unable to acquire adequate supplies of electricity in the market. See Order pursuant to Section 202(c) of the Federal Power Act (December 14, 2000); Order Pursuant to Section 202(c) of the Federal Power Act (January 11, 2001).

The Department is not prepared to order actions that could cause more localized NAAQS exceedances than are necessary in order to assure adequate electric reliability for the Central D.C. area. At the same time, the Department should address the risks that delays in responding to an unplanned transmission line outage would present if measures are available to mitigate that risk. In my judgment, the appropriate balance is struck by (1) requiring Mirant to keep as many units in operation, and take all other measures to reduce the start-up time of units not in operation, for the purpose of providing electrical reliability, as feasible (as further defined in the ordering paragraphs below). Thus, Mirant must take actions to reduce the time it takes to respond to an unplanned outage. This will serve to reduce the risk of a blackout but not at the price of unnecessary exceedances of health-based NAAQS. As Mirant improves its environmental performance, in cooperation with environmental regulators, its ability to react to an unforeseen outage also will improve. Environmental regulators and Mirant can work together, with the Department, to reduce, and perhaps eliminate, any conflict between environmental goals and electric reliability.

This order is effective immediately and will terminate at 12:01 a.m. October 1, 2006. This order may be modified or extended at any time upon order of the Secretary of Energy.

VI. Ordering Paragraphs

For the reasons set forth above, pursuant to section 202(c) of the Federal Power Act, it is hereby ordered that:

A. During any period in which one or both of the 230kV lines serving the Central D.C. area is out of service, whether planned or unplanned, Mirant will operate the Potomac River Generating Plant to produce the amount of power (up to its full capacity) needed to meet demand in the Central D.C. area as specified by PJM for the duration of the outage.

In the event of a planned outage, Potomac River units will generate that amount of electricity specified by PJM to meet demand.

In the event of an unplanned 230 kV line outage, Potomac River units will generate that amount of electricity specified by PJM to meet demand as soon as possible.

When producing electricity pursuant to this paragraph, Mirant shall utilize pollution control equipment and measures to the maximum extent possible to minimize the magnitude and duration of any exceedance of the NAAQS.

B. Mirant shall keep as many units in operation, and shall take all other measures to reduce the start-up time of units not in operation, for the purpose of providing electricity reliability, as "feasible." For purposes of this paragraph, "feasible" means as determined by the Department of Energy, after consideration of the plan submitted by Mirant pursuant to paragraph D of this order and after consultation with the Environmental Protection Agency, without regard to cost and without causing or significantly contributing to any exceedance of the NAAQS.

C. Notice

In instances of scheduled outages of one of the 230kV lines, PEPCO will give advance notice of the planned outage and the estimated duration of such outage to Mirant, PJM, DOE, FERC, EPA, and DEQ. The notice must be sufficiently in advance of the outage to allow Mirant to bring the required amount of generation needed for reliability purposes on line by the time the outage is scheduled. PEPCO will ensure that only those planned outages needed to maintain or enhance the reliability of the 230 kV lines (or to install new lines) are scheduled and that such outages are scheduled to minimize the environmental effects of the operation of the Plant.

PEPCO will notify DOE, PJM, FERC, EPA, and DEQ of any unplanned outage of one or both of the 230 kV lines as soon as possible, but in no event later than two hours after informing Mirant.

In the event of either a planned or unplanned outage, PJM will specify the amount of electricity that Mirant must provide in order to meet demand.

D. Mirant shall submit a plan to DOE, within 10 days of the date of this order, detailing the steps it will take to ensure compliance with this order. This compliance plan shall include, at minimum, information regarding adequate staffing, materials, and supplies; emissions controls; and length of time necessary to start-up the Plant's generating units in the event of an unplanned or planned outage. DOE will review the compliance plan and order additional requirements if necessary.

E. Pursuant to the terms of FPA section 202(e) and DOE regulations at 10 C.F.R. § 205.376, Mirant and its customers should agree to mutually satisfactory terms for any costs incurred by Mirant under this order. If no agreement can be reached, just and reasonable terms shall be established by a supplemental order.

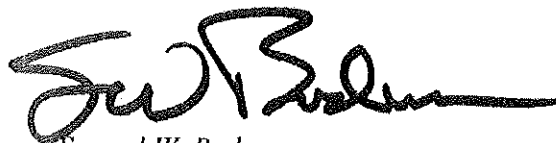
F. DOE expects that the DCPSC will take all reasonable actions to augment electrical reliability and to reduce electricity demand in the Central D.C. area.

G. DOE will periodically reexamine the need for this order with particular emphasis on: (1) Mirant's progress, working with environmental regulators, in reducing emissions and/or the impact of emissions; and (2) whether the DCPSC is taking all reasonable actions available to it to support electricity reliability in the Central D.C. area.

H. Pursuant to section 313 of the Federal Power Act (16 U.S.C. § 8251), any person, State, municipality, or State commission that is a party to this proceeding and is aggrieved by this order may apply for a rehearing within thirty days. Requests for rehearing may be submitted by mail, facsimile, or electronic mail to the following: (1) mail should be directed to Lawrence Mansueti of the Permitting, Siting, and Analysis Division of the Office of Electricity Delivery and Energy Reliability at the United States Department of Energy, Routing Symbol OE-20, 1000

Independence Avenue, S.W., Washington, D.C. 20585; (2) facsimiles may be submitted to 202-586-5860; (3) e-mail may be submitted to Lawrence.Mansueti@hq.doe.gov.

Issued in Washington, D.C. at 1⁴⁵ PM this 20th day of December, 2005.

A handwritten signature in black ink, appearing to read 'Sam Bodman', with a stylized, flowing script.

Samuel W. Bodman
Secretary of Energy

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 35

LETTER REQUEST OF GRAND RIVER DAM AUTHORITY

PUBLIC VERSION



April 11, 2017

The Honorable James Richard Perry
Secretary of Energy
United States Department of Energy
U.S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

Re: Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act

Dear Secretary Perry:

The Grand River Dam Authority (“GRDA”), an agency of the State of Oklahoma, hereby notifies the Department of Energy (“DOE” or “Department”) of an imminent shortage of generation resources in its service area that constitutes an emergency within the meaning of Section 202(c) of the Federal Power Act (“FPA”)¹ and requests that the Department invoke its emergency authority pursuant to Section 202(c) to alleviate such emergency.

This spring, because of a confluence of events that will result in the unavailability of all generation at GRDA’s principal generating facility, the Grand River Energy Center (“GREC”), GRDA will face an unexpected shortage of electric generation resources to address the reactive power needs of its service area. Specifically, from April 16, 2017 to July 15, 2017 (referred to herein as the “Emergency Period”), none of the GREC’s three generating units will be online due to: (i) the required closure of Unit No. 1 on April 15, 2017, pursuant to an Administrative Order issued by the Environmental Protection Agency (“EPA”); (ii) a lightning strike that seriously damaged Unit No. 2 on July 1, 2016, rendering it inoperable until August 2017; and (iii) unforeseen delays in the construction of a new generating unit (Unit No. 3) because of key supplier delays in the fabrication of essential project materials due to the August 2016 floods in Louisiana.

Without at least one of these three generating units available to generate electricity to provide reactive power needed for grid reliability during the Emergency Period, GRDA will be unable to meet the reactive power needs of its service area during any low-load, high voltage conditions that occur (hereinafter, GRDA refers to this shortage of available reactive power resources during the Emergency Period as the “Emergency”). This Emergency will require Southwest Power Pool, Inc. (“SPP”), the Reliability Coordinator for GRDA’s service area, to reconfigure the transmission system to mitigate the high voltage conditions by opening high voltage transmission lines. This method to address high voltage conditions on the transmission system is not as robust an engineering solution as the ability to operate a generator to provide

¹ 16 U.S.C. § 824a(c).



☐ **ADMINISTRATION**
PO Box 409, Vinita OK 74301-0409
918-256-5545, 918-256-5289 Fax

☐ **COAL-FIRED COMPLEX**
PO Box 609, Chouteau OK 74337
918-824-1074, 918-825-7791 Fax

☐ **ECOSYSTEMS & EDUCATION CENTER**
PO Box 70, Langley OK 74350-0070
918-782-4726, 918-782-4723 Fax

☐ **ENGINEERING & TECHNOLOGY CENTER**
9933 E 16th Street, Tulsa OK 74128
918-622-2228

☐ **ENERGY CONTROL CENTER**
ROBERT S. KERR DAM
PO Box 772, Locust Grove OK 74352
918-479-5249, 918-825-1935 Fax

☐ **GRDA POLICE**, PO Box 70, Langley OK
74350, 918-782-4726, 918-782-4723 Fax

☐ **OKLAHOMA CITY**
201 NW 63rd St. Suite 305
Oklahoma City OK 73116
405-297-9963, 405-290-7631 Fax

☐ **PENSACOLA DAM**, PO Box 70, Langley
OK 74350, 918-782-3382 Also Fax

☐ **SALINA PUMPED STORAGE PROJECT**
PO Box 609, Salina OK 74365
918-434-5920 Also Fax

☐ **TRANSMISSION HEADQUARTERS**
PO Box 1128, Pryor OK 74362
918-825-0280, 918-825-9416 Fax

PUBLIC VERSION

dynamic reactive power control; opening a transmission line offers only a static solution that poses more reliability risk to the system and does not follow good utility practice to keep the system intact.

Accordingly, GRDA hereby submits this application pursuant to FPA § 202(c) and Subpart W of Part 205 of the Department's regulations² for an emergency order to provide reactive power from Unit No. 1 of the GREC from April 16, 2017 to July 15, 2017 consistent with the conditions herein, in the event that Southwest Power Pool, Inc. ("SPP") determines that such generation is needed to maintain grid reliability. As explained below, GRDA is requesting that SPP have the ability to call on Unit No. 1, which would otherwise be offline but available (using natural gas igniters if necessary), only if SPP sees a need for Unit No. 1 to run to address reliability concerns relating to overvoltage conditions.

I. BACKGROUND

GRDA is an agency of the State of Oklahoma, primarily serving public power communities in Oklahoma. Approximately 70 percent of GRDA's total electric energy is generated by the Grand River Energy Center, which is located near Chouteau, Oklahoma. GREC Units No. 1 and 2 are coal-fired generating units (with natural gas-fired igniters), with generating capacities of 490 and 520 megawatts (MW), respectively.

Due in part to EPA's Mercury and Air Toxics Standards (MATS) requirements, which would have required substantial upgrades for Unit No. 1, GRDA determined to retire Unit No. 1 and to construct a new, lower-emitting, natural gas-fired generation unit (Unit No. 3). GRDA is currently in the process of constructing Unit No. 3, which is a highly efficient 495 MW natural gas combined cycle unit. When GRDA commenced construction of Unit No. 3, it was projected to come online in May 2017. To maintain grid reliability during Unit No. 3's construction, EPA issued an Administrative Order ("AO") granting GRDA a one-year extension of the compliance deadline for Unit No. 1 to comply with EPA's MATS requirements. The AO, attached hereto as Attachment A, requires Unit No. 1 to cease operation as a coal-fired unit on April 15, 2017.³ The AO, issued under Section 113(a)(4) of the Clean Air Act, is nonrenewable.

As GRDA's principal electric generating station, the GREC plays a critical role in meeting all aspects of GRDA's electric load and in providing ancillary services, including reactive power. In particular, Unit No. 1 has traditionally played a key role in generating reactive power to provide local voltage support in GRDA's service area, particularly when Unit No. 2 has been out of service.

In 2014, SPP on six occasions requested either additional capacitive or reactive voltage support from Unit No. 1 to address voltage problems on the transmission system. During a planned maintenance outage of GREC Unit No. 2 for the period October 15, 2014 through November 4, 2014, SPP created a Temporary Operating Guide for Unit No. 1 requiring it to be

² 10 C.F.R. Part 205, Subpart W (2016).

³ Attachment A also includes an Amendment to the AO to account for increased reliance on Unit No. 1 after the lightning strike at Unit No. 2.

PUBLIC VERSION

available for dispatch during instances of low load and high voltage. The Operating Guide, attached as Attachment B, stated that “[d]ue to the low load and high voltage in the GRDA area, GRDA Unit #1 generation will be needed. Generation needs to be online in order to ensure voltage stability until GRDA Unit #2 returns from outage.”⁴ Unit No. 1 was in fact called upon by SPP to provide reactive support during a substantial portion of the period Unit No. 2 was on outage. GRDA’s transmission system, along with the conditions that give rise to the need to maintain the availability of Unit No. 1 to address low load, high voltage conditions, have not changed materially since SPP issued the Temporary Operating Guide.

II. APPLICATION FOR EMERGENCY ORDER

As explained below, GRDA requests that DOE determine that an emergency exists within the meaning of FPA § 202(c) with respect to the unavailability of Unit No. 1 during the Emergency Period, and order GRDA to run Unit No. 1 for the purpose of providing reactive power during the Emergency Period in the event that neither Unit No. 2 nor Unit No. 3 is online, and SPP determines that reactive power from Unit No. 1 is needed for purposes of grid reliability.

A. An Emergency Exists Because a Lightning Strike at Unit No. 2, and Unforeseeable Construction Delays at Unit No. 3, Will Leave GRDA Without the Ability to Generate Electricity for Reactive Power During the Emergency Period.

FPA § 202(c) provides that if “an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes” DOE may issue an order requiring the temporary connections of facilities, and such generation, delivery, interchange, or transmission of electric energy as it deems appropriate to best meet the emergency and serve the public interest. DOE’s regulations provide additional detail about what constitutes an “emergency” for purposes of Section 202(c) at 10 C.F.R. § 205.371:

“Emergency” . . . is defined as an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power. Such events may be the result of weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected “entity” to prevent. An emergency also can result from . . . a regulatory action which prohibits the use of certain electric power supply facilities. Actions under this authority are envisioned as meeting a specific inadequate power supply situation. Extended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities can result in an emergency as contemplated in these regulations. . . .

⁴ See SPP Temporary Operating Guide, “GRDA Unit #1 Manual Commitment,” Attachment B.

PUBLIC VERSION

The unavailability of Units No. 1, 2, and 3 at the GREC during the Emergency Period constitutes an emergency within the meaning of Section 202(c) and DOE's regulations. First, without the availability of at least one of these three generating units at the GREC, GRDA will be unable to provide reactive power for local voltage support to maintain grid stability in GRDA's service area in low load, high voltage conditions. In the past, Unit Nos. 1 and 2 have traditionally met GRDA's needs for reactive power. However, these generating units will be offline during the Emergency Period, and Unit No. 3 will still be under construction and therefore not yet online. GRDA has no other means to procure or provide adequate reactive power for local voltage support in its service area during the Emergency Period. GRDA does not own, or have control over, other resources that can provide sufficient reactive power in GRDA's service area to provide adequate voltage support under low load, high voltage conditions. GRDA cannot rely on temporary generation to produce the needed reactive power because of the quantity of potential reactive power that might be needed under low load, high voltage conditions. (For instance, SPP called upon Unit No. 1 to provide more than 100 MVars of reactive power in 2016 under low load, high voltage conditions.)

Further, SPP's ability to address the reactive power needs of GRDA's service area without Unit No. 1 is limited and inadequate. SPP has the ability to reduce reactive power needs during the Emergency Period through reconfiguring its transmission system by opening transmission lines. However, this is not an optimal solution, because it would not allow SPP to maintain its system in an intact state consistent with good utility practice. Opening transmission lines is a less reliable means of addressing reactive power needs than through dynamic reactive power generation resources because of the relative reliability risk it poses; reactive power cannot be controlled as easily through system configuration as it can through dynamic resources to respond to unexpected events, and the system is more vulnerable to outages because the system is not intact. Thus, SPP's ability to address reactive power needs in GRDA's service area without Unit No. 1 is a limited and less robust method to ensure reliability.

Second, this shortage of resources to generate reactive power during the Emergency Period was unexpected and unforeseeable by GRDA, which originally expected to have Unit No. 2 available, and Unit No. 3 coming online, during the Emergency Period. However, Unit No. 2 sustained extensive damage on July 1, 2016 from a fire caused by a lightning strike, which took Unit No. 2 offline. Repairs to Unit No. 2 are ongoing and will not be completed until August 2017. This lightning strike causing the fire at Unit No. 2 was an unforeseeable act of God, the effects of which were not within the power of GRDA to prevent.⁵ Likewise, Unit No. 3's commercial operation date has been delayed because of another unforeseeable act of God – the Louisiana floods of August 2016 – which delayed the ability of a key supplier to meet contractual commitments for critical materials for Unit No. 3's construction. Although GRDA planned for the shutdown of Unit No. 1 due to EPA's AO, DOE's regulations note that an emergency can result from "a regulatory action which prohibits the use of certain electric power supply facilities."⁶ Collectively, the unavailability of the GREC's three generating units, each for different reasons, over the Emergency Period gives rise to a "shortage of facilities for

⁵ 10 C.F.R. § 205.371.

⁶ 10 C.F.R. § 205.371.

generating electric energy” within the meaning of Section 202(c) of the FPA for GRDA’s service area.

B. GRDA’s Shortage of Reactive Power Resources During the Emergency Period Will Imperil Grid Reliability

During low load, high voltage conditions, an inability to provide sufficient reactive power for voltage support can imperil grid reliability by allowing the grid to exceed the range of acceptable system voltage.⁷ The inability to schedule sufficient reactive power can constitute a reliability standards violation, because under NERC Reliability Standard VAR-001-4.1 (Voltage and Reactive Control), transmission operators “shall schedule sufficient reactive resources to regulate voltage levels under normal and Contingency conditions.”⁸ A deficiency of reactive power can lead to disruption of service, because transmission facilities operating at voltages in excess of system voltage limits must be disconnected from other elements of the grid.⁹ If transmission facilities operating at excessive voltages are not disconnected, the overvoltages can cause electric arcing due to insulation “flash overs,” which can in turn result in physical damage to transmission facilities.¹⁰

GRDA’s impending shortage of reactive power resources increases the risk of service disruption to GRDA’s customers due to overvoltage, because the only means SPP will have to address reactive power needs is through reconfiguring the transmission system by opening a transmission line – a step that will mean the system is no longer intact. Good utility practice calls for the system to be maintained intact if possible. Without an intact system, GRDA’s system will be more vulnerable to disruption of service or outages as a result of unexpected events. SPP recognized the risks presented by a lack of reactive power resources at the GREC in 2014 when Unit No. 2 was on outage by issuing its Temporary Operating Guide for Unit No. 1. SPP has reaffirmed the importance of maintaining Unit No. 1 beyond April 15, 2017 for mitigation of system voltage issues and local grid reliability in a letter of support for this request, attached hereto as Attachment C.

C. GRDA Provides Power to Significant Regions in Oklahoma, Including Customers of National Significance

⁷ At low levels of electric system load, energized transmission lines may act as a capacitive load that increases system voltage.

⁸ NERC Reliability Standard VAR-001-4.1 (Voltage and Reactive Control), R1 (“Each Transmission Operator shall schedule sufficient reactive resources to regulate voltage levels under normal and Contingency conditions. Transmission Operators can provide sufficient reactive resources through various means including, but not limited to, reactive generation scheduling, transmission line and reactive resource switching, and using controllable load.”).

⁹ See Reliability Standard TOP-008-1 (Response to Transmission Limit Violations), R3 (“The Transmission Operator shall disconnect [an] affected facility if the overload on a transmission facility or abnormal voltage or reactive condition persists and equipment is endangered.”).

¹⁰ FERC Reliability Primer at 25 (“[H]igh voltages can exceed the insulation capabilities of equipment and cause dangerous electric arcs known as “flashovers.” These conditions can occur when there is light loading on the system (e.g., less customer demand), causing an excess of reactive power that elevates the voltage beyond safe operating limits.”).

PUBLIC VERSION

GRDA provides electric power on its transmission system to both retail and wholesale customers. GRDA provides retail electric service to 80 industrial and commercial customers, most of which are located in the MidAmerica Industrial Park (MAIP) near Pryor. [REDACTED]

[REDACTED] The 9,000 acre MAIP is home to over 80 companies employing over 4,500 people. There are also urgent care, emergency and life flight services within the MAIP boundaries. On the wholesale side, GRDA's largest customer is Western Farmers Electric Cooperative (WFEC) which is responsible for supplying power to [REDACTED] 18 member Oklahoma distribution cooperatives. GRDA provides power directly to over 16 municipalities, including [REDACTED] Coffeyville, Kansas, which has a strong industrial base, and the City of Stillwater, which is primarily residential and commercial service. There are 15 hospitals with a combined 1000+ bed-capacity in these cities. GRDA also provides electricity to the Oklahoma Municipal Power Authority (OMPA). Through support of OMPA, GRDA's generation provides a portion of the electric power to an additional 35 participating cities in Oklahoma. Directly and indirectly, GRDA provides electric power support to some portion of 75 of the Oklahoma's 77 counties.

D. Information Required By Section 205.373

Herein, GRDA sets forth the information required under Section 205.373 of DOE's regulations.¹¹ To ensure that DOE has the information it needs to evaluate GRDA's application, GRDA is providing certain additional information that GRDA deems salient to its application.

- (a) Legal Name of Applicant. The applicant is Grand River Dam Authority.
- (b) Person to Whom Correspondence Should Be Addressed. Correspondence with respect to this application should be directed to:

Daniel S. Sullivan
Chief Executive Officer
Grand River Dam Authority
P.O. Box 409
Vinita OK 74301-0409
(918)256-5545
dsullivan@grda.com

¹¹ Certain elements of Section 205.373 address the circumstances of an applicant facing a shortage of real power and the prospect of firm customer curtailment, but do not address GRDA's emergency circumstances, which involve a shortage of reactive power generation during light load conditions. GRDA has indicated where these requirements are Section 205.373 are not applicable to GRDA's circumstances.

PUBLIC VERSION

(c) Political Subdivision in Which GRDA Operates and Business Conducted. GRDA operates in 24 counties in Northeast Oklahoma. GRDA sells electricity to three customer classes in its service area: municipals, electric cooperatives and industries.

(d) Baseline Data.

(1) Daily peak load and energy requirements for each of the past 30 days, and projections for each day of the Emergency Period: These requirements are not applicable to GRDA's request, which contemplates relief in light load conditions. GRDA is providing information about the reactive power provided by Unit No. 1 in February 2017, the most recent month for which data is available, in Attachment D. GRDA provided reactive power pursuant to an SPP Temporary Operating Guide in the fall of 2014 period to maintain grid reliability. GRDA is providing data on the reactive power provided by Unit No. 1 during this time frame in Attachment E.

(2) All capacity and energy receipts or deliveries to other electric utilities for each of the past 30 days: Not applicable.

(3) The status of all interruptible customers for each of the past 30 days, and anticipated status during the Emergency Period: GRDA does not expect to interrupt any customers during the Emergency Period due to a lack of available energy. Interrupting load during the Emergency Period would exacerbate, rather than remedy, the low load, high voltage conditions that present an emergency for GRDA.

(4) All scheduled capacity and energy receipts or deliveries to other electric utilities during the Emergency Period. Not applicable.

(e) **A description of the emergency situation, any contingency plan of GRDA, and the current level of implementation.** The emergency situation GRDA faces is described above in Section II.A of this Application. Until GRDA can bring GREC Unit No. 2 or No. 3 online, GRDA does not have any contingency plan to provide reactive power for voltage support without Unit No. 1. As explained above in Section II.B, SPP's ability to address GRDA reactive power needs in low-load, high voltage conditions without Unit No. 1 is limited and poses increased reliability risks for GRDA's service area compared to operating Unit No. 1 for voltage support.

(f) **A showing that adequate electric service to firm customers cannot be maintained without additional power transfers.** Not applicable.

(g) **A description of any conservation or load reduction actions that have been implemented.** Not applicable. Reducing load via conservation or other load reduction actions under low load, high voltage circumstances would exacerbate, rather than mitigate, emergency overvoltage conditions.

(h) **A description of efforts made to obtain additional power through voluntary means and the results of such efforts.** GRDA does not have the ability to provide additional

reactive power resources to alleviate the Emergency. GRDA is required to cease operation of Unit No. 1 as a coal-fired unit after April 15, 2017 pursuant to an Administrative Order under Section 113(a)(4) of the Clean Air Act. An order issued under Section 113(a)(4) is nonrenewable, and therefore, EPA does not have authority to extend the compliance deadline in the AO and further delay compliance with MATS for Unit No. 1. Unit No. 2 is undergoing repairs as quickly as possible, but the unit will not be available during the Emergency Period. Construction on Unit No. 3 is not expected to be completed until sometime in June 2017, at the earliest, and may not be available at all during the Emergency Period.

- (i) **A listing of proposed sources and amounts of power necessary from each source to alleviate the emergency and a listing of any other “entities” that may be directly affected by the requested order.** The only generation source that GRDA proposes to alleviate the Emergency is Unit No. 1 of the GREC. Based on historical data, GRDA expects that it could be called upon to absorb up to 120 MVar or more from the grid if called on by SPP for local voltage support in low load, high voltage conditions.

Two entities would be directly affected by GRDA’s requested order. First, SPP manages grid operations for GRDA’s transmission assets, and thus would be directly responsible for addressing any grid instability resulting from the Emergency. If DOE grants GRDA’s request for relief herein, SPP would be able to dispatch Unit No. 1 to absorb reactive power if it determines that such generation is necessary to maintain grid reliability. Second, EPA would be directly affected, because running Unit No. 1 after April 15, 2017, would contravene the terms of EPA’s AO and the Clean Air Act, which require GRDA to cease coal-fired operations at Unit No. 1 after April 15, 2017.

- (j) **Specific proposals to compensate the supplying “entities” for the emergency services requested and to compensate any transmitting “entities” for services necessary to deliver such power.** GRDA proposes that, during the Emergency Period, it be compensated for any generation from Unit No. 1 directed by SPP pursuant to a DOE Section 202(c) Order consistent with the terms of the SPP Tariff.
- (k) **A showing that, to the best of the applicant's knowledge, the requested relief will not unreasonably impair the reliability of any “entity” directly affected by the requested order to render adequate service to its customers.** To GRDA’s knowledge, ordering reactive power generation from Unit No. 1, which is currently an SPP generating resource, will not impair the reliability of any entity.
- (l) **Description of the facilities to be used to transfer the requested emergency service to the applicant's system.** Not applicable.
- (m) **A general or key map on a scale not greater than 100 kilometers to the centimeter showing, in separate colors, the territory serviced by each “entity” named in the application; the location of the facilities to be used for the generation and transmission of the requested emergency service; and all connection points between systems.** This information is attached as Attachment F.

(n) An estimate of the construction costs of any proposed temporary facilities and a statement estimating the expected operation and maintenance costs on an annualized basis. Not applicable

(o) Supplemental Information. A letter from SPP in support of GRDA's request for action under FPA Section 202(c) is attached as Attachment C.

E. Compliance with Applicable Environmental Laws Under Section 202(c)(2).

Section 202(c)(2) of the FPA provides that when DOE issues an order under Section 202(c) that results in a conflict with Federal, State, or local environmental law, DOE is required to ensure that the order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with applicable Federal, State, or local environmental law and minimizes any adverse environmental impacts.¹² Herein, GRDA is requesting authorization to generate electricity to provide reactive power support from Unit No. 1 of the GREC after April 15, 2017, which would contravene EPA's Administrative Order on MATS Compliance for Unit No. 1.¹³

To ensure compliance with the AO to the maximum extent possible and minimize environmental impacts pursuant to Section 202(c)(2), GRDA commits that, in the event DOE issues a Section 202(c) order directing the generation of reactive power from Unit No. 1 of the GREC, GRDA will generate from Unit No. 1 only when called upon by SPP pursuant to DOE's order, and will otherwise keep Unit No. 1 offline. Although Unit No. 1 must burn coal to generate reactive power, GRDA Unit No. 1 has natural gas igniters available to keep Unit No. 1 in a ready state, if necessary. This will ensure compliance with EPA's AO to the maximum extent possible given that the AO does not prohibit the use of natural gas at Unit No. 1. Because GRDA can keep Unit No. 1 ready, Unit No. 1 does not need to maintain a minimum generation level or be synchronized to the grid to be ready to respond if called upon by SPP to provide reactive power. Unit No. 1 can be brought online to generate reactive power from an offline state within 24 hours, which is within the window of notice that SPP would give GRDA to generate reactive power.

Additionally, GRDA commits to cease all generation from Unit No. 1 as soon as GREC Unit No. 3 or Unit No. 2 is brought online, in which case either unit would be able to act as a reactive power resource for GRDA.

F. Request for Designation of Critical Electrical Infrastructure Information

Pursuant to Section 215A of the FPA, GRDA requests that the Department designate the bracketed information in Section II.C as critical electrical infrastructure information protected

¹² 16 U.S.C. § 824a(c)(2).

¹³ See Attachment A at P 31.

PUBLIC VERSION

from disclosure under the Freedom of Information Act and other public disclosure laws.¹⁴ The bracketed information includes information relating to the production, generation, and transmission of energy that could be useful to a person in planning an attack on critical infrastructure.¹⁵

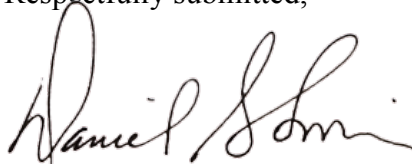
G. Requested Order

As explained herein, GRDA respectfully requests that DOE issue an emergency order directing the generation of electricity to provide reactive power from Unit No. 1 of the GREC from April 16, 2017 to (i) July 15, 2017, or (ii) the date on which GREC No. 3 or No. 2 is brought online, whichever is earlier, in the event that Southwest Power Pool, Inc. (“SPP”) determines that generation from Unit No. 1 is needed to maintain grid reliability, subject to the requirements that Unit No. 1 remain offline unless requested to generate by SPP pursuant to a DOE Section 202(c) order.

III. CONCLUSION

GRDA respectfully requests that DOE take the emergency action requested herein as soon as possible to address the imminent shortage of reactive power that GRDA faces in its service area. GRDA stands ready to answer any questions that DOE may have, and to provide any additional information that DOE requires.

Respectfully submitted,



Daniel S. Sullivan
Chief Executive Officer
Grand River Dam Authority

Cc: Patricia A. Hoffman, Principal Deputy Assistant Secretary and Acting Assistant Secretary, DOE Office of Electricity Delivery & Energy Reliability

Attachments

¹⁴ 16 U.S.C. § 824a(c)(2).

¹⁵ See 18 C.F.R. § 388.113(d)(1)(i). GRDA requests the bracketed information be designated critical electric infrastructure information for as long as permissible. See 18 C.F.R. § 388.113(d)(1)(ii).

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of April, 2017, caused copies of the foregoing documents to be served on the parties listed below by causing copies of the same to be sent via overnight delivery.

Michael Bardee
Director, Office of Electric Reliability
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Mail code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Southwest Power Pool, Inc.
c/o Lanny Nickell, Vice President, Engineering
415 North McKinley Street, Suite 140
Little Rock, AR 72205

Ronald W. Ciesiel
General Manager
Southwest Power Pool Regional Entity
201 Worthen Drive
Little Rock, AR 72223

/s/ Nathan Reese

Nathan Reese
Assistant General Counsel
Grand River Dam Authority

Attachment A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
BEFORE THE ADMINISTRATOR

In the Matter of:

Grand River Dam Authority,

Respondent.

Administrative Compliance Order on Consent
AED-CAA-113(a)-2016-0002

ADMINISTRATIVE COMPLIANCE ORDER

A. PRELIMINARY STATEMENT

1. This Administrative Compliance Order (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(a) of the Clean Air Act (the “CAA” or “Act”), 42 U.S.C. § 7413(a)(3) and (4).
2. On the EPA’s behalf, Phillip A. Brooks, Division Director of the Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, is delegated the authority to issue this Order under Section 113(a) of the Act.
3. Respondent is Grand River Dam Authority, an agency of the state of Oklahoma. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e). Respondent owns and/or operates the Grand River Energy Center (hereafter, the “Facility”), located in the state of Oklahoma.
4. Respondent signs this Order on consent.

B. STATUTORY AND REGULATORY BACKGROUND

5. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants (“HAPs”) which may have an adverse effect on health or the environment.

6. Pursuant to Section 112 of the CAA, the EPA finalized National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Subpart UUUUU on December 16, 2011, 77 FR 9304 (Feb. 16, 2012) (40 C.F.R. Part 63 Subpart UUUUU), commonly known as the “Mercury and Air Toxics Standards.” *Id.* (hereafter, “MATS”). The MATS adopt emission limits on mercury, acid gases and other toxic pollutants for affected coal and oil-fired electric generating utility units (“EGUs”).
7. Pursuant to 40 C.F.R. § 63.9981, the MATS applies to owners or operators of coal-fired EGUs or oil-fired EGUs as defined in 40 C.F.R. § 63.10042.
8. Pursuant to 40 C.F.R. § 63.2, “owner or operator” is defined as “any person who owns, leases, operates, controls, or supervises a stationary source.”
9. Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3), and 40 C.F.R. § 63.2 defines a “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
10. Pursuant to 40 C.F.R. § 63.2, “affected source” is defined as “the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act.”
11. Pursuant to 40 C.F.R. § 63.9982, the affected source to which the provisions of the MATS, 40 C.F.R. Part 63, Subpart UUUUU, applies is the collection of all existing coal- or oil-fired EGUs, as defined in 40 C.F.R. § 63.10042, within a subcategory, [and] ... each new or reconstructed coal- or oil-fired EGU, as defined in 40 C.F.R. § 63.10042.
12. On December 16, 2011, in parallel with finalizing the MATS, the Office of Enforcement and Compliance Assurance issued a policy memorandum describing its intended approach regarding issuance of Section 113(a) administrative orders (“Orders”) to sources that are unable to comply

with the MATS but that may need to operate for up to a year to address a specific and documented reliability concern. See The Environmental Protection Agency's Enforcement Response Policy For Use Of Clean Air Act Section 113(a) Administrative Orders In Relation To Electric Reliability And The Mercury and Air Toxics Standard (hereafter, "2011 MATS Enforcement Policy"). The 2011 MATS Enforcement Policy is limited in application to units that are critical for reliability purposes.

13. In issuing the 2011 MATS Enforcement Policy, the EPA believed that there would be few, if any, cases in which affected sources would not be able to comply with the MATS within the compliance period specified by Section 112(i)(3) of the CAA (including, as applicable, any extensions permitted under Section 112(i)(3)(B)), which has proven to be the case. Nonetheless, the EPA acknowledged that there may be isolated instances in which the deactivation or retirement of a unit or a delay in installation of controls due to factors beyond the owner's/operator's control could have an adverse, localized impact on electric reliability that could not be timely predicted or planned for with specificity. In such instances, sources could find themselves in the position of either operating in noncompliance with the MATS or halting operations and thereby potentially impacting electric reliability. Thus, although the EPA generally does not speak publicly to the intended scope of its enforcement efforts in advance of the date when a violation may occur, the Agency issued the 2011 MATS Enforcement Policy to describe the EPA's intended enforcement response in such instances and to provide confidence with respect to electric reliability. The policy is informed, as are EPA's enforcement actions in general, by the need to find an appropriate balance between critical public interests, bearing in mind the resources and process time required for any enforcement response.
14. The 2011 MATS Enforcement Policy specifies that to qualify for an Order in connection with it, an owner/operator must, in summary, provide early written notice of its compliance plans to

the Planning Authority¹ for the area in which the source is located, timely request an Order and provide notice of such request to the EPA, FERC, its Planning Authority, any state public utility or service commission, and any state, tribal or local environmental agencies, with jurisdiction over the area in which the EGU is located, and submit a complete request for an Order.

15. A complete request pursuant to the 2011 MATS Enforcement Policy must include the following elements: copies of the early notice provided to the Planning Authority; written analysis of the reliability risk, which demonstrates that operation of the unit after the MATS Compliance Date is critical to maintaining electric reliability; written concurrence with the reliability analysis by the relevant Planning Authority (or a written explanation of why such concurrence cannot be provided); copies of any written comments received from third parties in favor of, or opposed to, operation of the unit after the MATS Compliance Date; a plan to achieve compliance with the MATS no later than one year after the MATS Compliance Date; and identification of the level of operation required to avoid the reliability risk and proposed operational limits and/or work practices to minimize or mitigate emissions to the extent practicable during non-compliant operation.
16. With respect to the demonstration of reliability risk, the 2011 MATS Enforcement Policy states that the analysis provided in an Order request should demonstrate that operation of the unit after the MATS Compliance Date is critical to maintaining electric reliability, and that failure to operate the unit would: (a) result in the violation of at least one of the reliability criteria required to be filed with the Commission, and, in the case of the Electric Reliability Council of

¹ Planning Authorities are the entities tasked, under NERC reliability standards, with addressing electric reliability through grid planning. In the 2011 MATS Enforcement Policy, Planning Authority was defined as “the entity defined as such in the “Glossary of Terms Used in NERC Reliability Standards,” available at: http://www.nerc.com/docs/standards/rs/Reliability_Standards_Complete_Set.pdf, or any successor term thereto approved by FERC, and includes, in relevant jurisdictions, RTOs and ISOs.”

Texas, with the Texas Public Utility Commission; or (b) cause reserves to fall below the required system reserve margin.

17. Although the EPA's issuance of an Order is not conditioned upon the approval or concurrence of any entity, in light of the complexity of the electric system and the local nature of many reliability issues, for purposes of using its Section 113(a) Order authority in connection with the 2011 MATS Enforcement Policy, the EPA has sought advice in the identification and/or analysis of reliability risks, as necessary and on a case-by-case basis from reliability experts, including, but not limited to, the Federal Energy Regulatory Commission ("FERC"), Regional Transmission Operators ("RTOs"), Independent System Operators and other Planning Authorities, as EPA indicated it would do in the 2011 MATS Enforcement Policy.
18. The 2011 MATS Enforcement Policy specifically stated that an owner/operator interested in receiving a Section 113(a) administrative order pursuant to the policy should provide FERC with a copy of its complete and timely written request to the EPA.
19. On May 17, 2012, FERC issued a policy statement explaining how it intended to provide advice to the EPA on requests for an administrative order pursuant to the 2011 MATS Enforcement Policy. See Policy Statement of the Commission's Role Regarding the Environmental Protection Agency's Mercury and Air Toxics Standards, 139 FERC ¶ 61,131 (2012) ("FERC Policy Statement"). The FERC Policy Statement provided that the Commission will advise the EPA by submitting written Commission comments to the EPA based on the Commission's review of the information provided in an informational filing containing the copy of the request for the administrative order provided to the Commission in an AD docket. *Id.* at Paragraph 21. Further, the FERC Policy Statement indicated that the Commission's comments would provide advice to the EPA on whether, based on the Commission's review of the informational filing, there might be a violation of a Commission-approved Reliability Standard, and may also identify issues

within its jurisdiction other than a potential violation of a Commission-approved Reliability Standard. *Id.*

C. FINDINGS

20. Respondent owns and/or operates an existing coal-fired electric utility steam generating unit, as defined in 40 C.F.R. § 63.10042.
21. Respondent's operation at the Facility is subject to the MATS.
22. On November 28, 2012, Respondent received a one year extension pursuant to 40 C.F.R. 63.6(i)(4)(i)(A) from its permitting authority, extending the date by which it must comply with the MATS to April 15, 2016. *See* November 28, 2012 Letter from Steven A. Thompson, Oklahoma Department of Environmental Quality to Grand River Dam Authority.
23. On February 19, 2015, Respondent submitted a timely and complete request for an Order pursuant to the 2011 MATS Enforcement Policy to the EPA, with a copy to FERC. That request can be found in the FERC AD docket, AD15-6-000 (hereafter "Order Request").
24. Pursuant to the Order Request, Respondent seeks an Order from April 16, 2016 through April 15, 2017, on the grounds that it will not be able to comply with the MATS at Unit No. 1 of the Grand River Energy Center located near Chouteau, Oklahoma, without violating its system reserve margin of 12%, until the construction of a new, highly efficient natural gas-fired combined cycle combustion turbine (Unit No. 3) is completed as a replacement for Unit No. 1. Unit No. 3 will not be operational until shortly after April 16, 2017. *See id.*
25. More specifically, the Order Request states that Respondent, "a load serving member of the Southwest Power Pool (SPP) [Respondent's Planning Authority], states that it will be unable to meet its required reserve margin of 12 percent capacity if Unit No. 1 is retired before new Unit No. 3 becomes operational. Order Request at 6; *see also*, Southwest Power Pool, Criteria 2.1.9 (Minimum Required Capacity Margin) (revised July 29, 2014), available at

<http://www.spp.org/publications/SPP%20Criteria%20&%20Appendices%20July%2029,%202014.pdf>. Respondent indicates that the untimely loss of Unit No. 1 would prevent it from meeting its basic load obligations by 245 MW. *Id.* Additionally, Respondent states that Unit No. 1 has been used for local voltage support, noting that “there were six instances in 2014 where the GRDA System Operator requested either additional capacitive or reactive voltage support from Unit No. 1 to address voltage problems on the transmission system.” Order Request at 7. Respondent further claims that it has “experienced problems under certain conditions obtaining firm or non-firm transmission service to deliver power purchases from outside of the GRDA balancing area” when one or both of its existing units are offline, and without an administrative order, it “is concerned that transmission constraints will make importing sufficient replacement capacity and energy very difficult.” *Id.*

26. In a memorandum attached to Respondent’s submission, SPP concurred with Respondent’s reserve margin assessment. See Order Request, Attachment C (SPP January 27, 2014 Memorandum) at 2 (“[a] review of GRDA’s supply adequacy without GRDA unit 15-1 indicates that the firm resources available to GRDA fall below their 12% minimum capacity margin requirement in 2016”). Additionally, SPP concurred that SPP “has observed, over the last year, the need to commit GRDA Unit 1 for relief from high voltages ... [and that] SPP concurs with GRDA’s assessment regarding GRDA Unit 1’s criticality for reliability absent other system changes.” Order Request, Attachment E (SPP February 6, 2015 Letter) at 1.
27. FERC reviewed the reliability risk presented in the request in accordance with the FERC Policy Statement and on April 16, 2015 found that “the loss of GRDA’s Unit No. 1 would result in GRDA falling below the 12 percent capacity reserve requirement stipulated in SPP Criteria 2.1.9 unless GRDA is able to procure replacement capacity for the unit and associated firm transmission service,” and “[a]bsent a significant change in future circumstances, [FERC’s] view is that GRDA’s

Unit No. 1 is needed as requested by GRDA to maintain electric reliability.” See Commission Comments On Grand River Dam Authority’s Request For EPA Administrative Order (April 16, 2015), p. 4, Docket No. AD15-6-000. Additionally, FERC notes that “the reliability of the Bulk-Power System depends in part on whether utilities meet an appropriate planning reserve margin.” *Id.*

28. Respondent proposes to minimize emissions by implementing a bidding approach with SPP, in a manner consistent with the SPP Tariff and market rules, to limit the total electricity generated by Unit No. 1 while maintaining its reserve margin. See Order Request at 12-13. Specifically, Respondent shall bid Unit No. 1 to achieve a total annual capacity factor of not more than 50% during the period from April 16, 2016 up to April 16, 2017, which is lower than its historical operation as a base load facility of approximately 70% annual capacity. *Id.* Although the monthly capacity factor of Unit No. 1 would vary to allow Respondent to meet its reserve margin requirements throughout the period covered by this Order, Respondent states that reducing the annual capacity factor to 50% will result in approximately 30% lower total emissions during the period from April 16, 2016 up to April 16, 2017. *Id.*

D. ORDER

29. Respondent is ordered to take the actions described in this section of this Order.
30. From April 16, 2016 through April 15, 2017, Respondent shall implement a bidding approach with SPP, while maintaining Respondent’s reserve margin, in a manner consistent with the SPP Tariff and market rules, to limit the total electricity generated by Unit No. 1 to achieve a total annual capacity factor of not more than 50% during the period from April 16, 2016 through April 15, 2017.
31. By 11:59 pm April 15, 2017, Respondent shall achieve full compliance with the MATS at Unit No. 1 at the Facility by permanently ceasing operation as a coal-fired unit.

32. Within 30 days of achieving full compliance with the MATS at the Facility, Respondent shall provide written notice to the EPA indicating that compliance has been achieved and the date by which it was achieved, pursuant to the process specified in paragraph 39 of this Order.

E. OTHER TERMS AND CONDITIONS

33. Respondent admits the jurisdictional allegations contained in Sections A (Preliminary Statement) and B (Statutory and Regulatory Background) of this Order.
34. Respondent neither admits nor denies the findings in Section C (Findings) of this Order.

F. GENERAL PROVISIONS

35. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
36. Nothing in this Order shall relieve Respondent of the duty of achieving and maintaining compliance with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
37. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
38. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set out in paragraph

44 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

39. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other documentation is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

Phillip A. Brooks
Division Director of the Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, US Environmental Protection Agency
Mail Code 2242A, Room 1119
1200 Pennsylvania Ave, NW
Washington, DC 20460 mail or 20004 courier (note Room 1119 on courier packages)

Anupa Ahuja
Air Enforcement Section
Mail Code 6EN-AA
US EPA Region 6
1445 Ross Ave
Dallas, TX 75202
Phone: (214)665-2701

Daniel S. Sullivan
Grand River Dam Authority
P.O. Box 409
226 West Dwain Willis Avenue
Vinita, OK 74301
Phone: (918)256-5545

Britt S. Fleming
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
Phone: (202)298-1863

All notices and submissions shall be considered effective upon receipt.

40. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
41. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.

G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

42. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

H. JUDICIAL REVIEW

43. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

I. TERMINATION

44. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:

- a. 11:59 pm April 15, 2017;
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
BEFORE THE ADMINISTRATOR

In the Matter of:

Grand River Dam Authority,

Respondent.

Administrative Compliance Order on Consent
AED-CAA-113(a)-2016-0002

For United States Environmental Protection Agency, Air Enforcement Division, Office of Enforcement and Compliance Assurance:

4/16/2016
Date



Phillip A. Brooks
Division Director of the Air Enforcement Division, Office of Civil
Enforcement, Office of Enforcement and Compliance Assurance,
US Environmental Protection Agency
Mail Code 2242A, Room 1119
1200 Pennsylvania Ave, NW
Washington, DC 20460 mail or 20004 courier (note Room 1119
on courier packages)

For Grand River Dam Authority:



Signature

April 7, 2016
Date

Printed Name: Daniel S. Sullivan
Title: General Manager/CEO
Address: P.O. Box 409, 226 West Dwain Willis Avenue, Vinita, OK 74301

CERTIFICATE OF SERVICE

I certify that the foregoing "Administrative Compliance Order" in the Matter of Grand River Dam Authority, Order AED-CAA-113(a)-2016-0002, was filed and copies of the same were mailed to the parties as indicated below.

Certified Mail

Daniel S. Sullivan
Grand River Dam Authority
P.O. Box 409
226 West Dwain Willis Avenue
Vinita, OK 74301
Phone: (918)256-5545

Britt S. Fleming
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
Phone: (202)298-1863

Eddie Terrill
Director, Air Quality Division Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

4/18/16
Date


Tawanna Cathey

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
BEFORE THE ADMINISTRATOR

In the Matter of:

Grand River Dam Authority,

Respondent.

Amendment
Administrative Compliance Order on Consent
AED-CAA-113(a)-2016-0002

AMENDMENT – ADMINISTRATIVE COMPLIANCE ORDER

A. PRELIMINARY STATEMENT

1. This is an amendment (the “Amendment”) to the Administrative Compliance Order on Consent, AED-CAA-113(a)-2016-0002, (“Order”) issued on April 16, 2016 by the U.S. Environmental Protection Agency (“EPA”) to the Grand River Dam Authority (“Respondent”). A copy of the Order is attached to this Amendment as Attachment A. Unless otherwise indicated, defined terms in this Amendment have the same meaning as in the Order.

B. FINDINGS

2. From July 1, 2016 to July 2, 2016, a series of events arose from causes beyond the control of Respondent that require amendment to the terms of the Order. Specifically, during a storm, there was a lightning strike at the Facility, which resulted in a significant fire that severely damaged Unit 2 and moderately damaged Unit 1. Unit 1 returned to service on July 20, 2016. Unit 2 is not expected to return to service until after Unit 1 permanently ceases operation as a coal-fired unit on April 15, 2017.
3. As a result of Unit 2, a 520 MW unit, being out of service during the period covered by the Order, Respondent will not be able to meet the terms of operation of Unit 1 detailed in the Order without violating the reliability risks described in paragraphs 24 – 28 of the Order. To address those reliability risks, it is necessary to amend the Order to allow for increased

operation of Unit 1. During the period in July when both units were out of service, voltage support was not required and Respondent was able to make other short term power purchases to meet basic load requirements.

C. ORDER

4. Paragraph 30 of the Order is replaced with the following requirement: From April 16, 2016 through April 15, 2017, Respondent shall implement a bidding approach with SPP, while maintaining Respondent's reserve margin, in a manner consistent with the SPP Tariff and market rules, to limit the total electricity generated by Unit No. 1 to achieve a total annual capacity factor of not more than 80% during the period from April 16, 2016 through April 15, 2017.

D. GENERAL PROVISIONS

5. Unless explicitly modified in this Amendment, all provisions of the Order remain in effect.
6. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Amendment to execute and bind legally the Parties to this document.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
BEFORE THE ADMINISTRATOR

In the Matter of:

Grand River Dam Authority,

Respondent.

Amendment
Administrative Compliance Order on Consent
AED-CAA-113(a)-2016-0002

For United States Environmental Protection Agency, Air Enforcement Division, Office of Enforcement and Compliance Assurance:

9/14/2016
Date


Phillip A. Brooks
Division Director of the Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, US Environmental Protection Agency
Mail Code 2242A, Room 1119
1200 Pennsylvania Ave, NW
Washington, DC 20460 mail or 20004 courier (note Room 1119 on courier packages)

For Grand River Dam Authority:


Signature

Sept. 8, 2016
Date

Printed Name: Daniel S. Sullivan
Title: General Manager/CEO
Address: P.O. Box 409, 226 West Dwain Willis Avenue, Vinita, OK 74301

CERTIFICATE OF SERVICE

I certify that the foregoing "Amendment" to the Administrative Compliance Order in the Matter of Grand River Dam Authority, Amendment AED-CAA-113(a)-2016-0002, was filed and copies of the same were mailed to the parties as indicated below.

Certified Mail

Daniel S. Sullivan
Grand River Dam Authority
P.O. Box 409
226 West Dwain Willis Avenue
Vinita, OK 74301
Phone: (918)256-5545

Britt S. Fleming
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
Phone: (202)298-1863

Eddie Terrill
Director, Air Quality Division Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Date

Tawanna Cathey

Attachment B

Temporary Operating Guide

Title: GRDA Unit #1 Manual Commitment

System Conditions: Intact

Written by: Patrick deLassus (SPP)

Reviewed by: Kevin Sanson (SPP), Jason Smith (SPP), Terry Oxandale (SPP), Will Tootle (SPP), Jeff Wells (GRDA), Mike Stafford (GRDA)

Op-Guide: Effective on: 10/15/2014

Expires on: 11/04/2014

I. Purpose/Background

Due to the low load and high voltage in the GRDA area, GRDA Unit #1 generation will be needed. Generation needs to be online in order to ensure voltage stability until GRDA Unit #2 returns from outage.

II. Monitoring

IDC FG #	Monitored Element	Contingent Element	Owner	Rating (MVA)
xxxxx	GRDA area (Voltage)	System Intact	GRDA	xxx

III. Mitigation

SPP BA will manually commit the GRDA Unit #1 (GRDA_UNIT_1) in order to provide relief from high voltage. Low load and high voltage are also contributing factors to this commitment. This requirement will be terminated once load levels permit.

If the generation from GRDA Unit #1 is unavailable, or otherwise unable to supply voltage support, reconfiguration plans may be needed. If reconfiguration is deemed necessary, GRDA will determine where to reconfiguration will be effective.

IV. Unit Commitment Details

RESOURCE NAME: GRDA_UNIT_1

Unit Start Time: 10/16/2014 00:00

Unit Online Time (Dispatchable):): ***** Extension – Unit is Already Online *****

Unit Release Time (Shutdown): 11/04/2014 00:00 (This will be re-evaluated once GRDA_UNIT_2 returns to service.)

Commit Reason: SPP: LOCAL

The SPP RCs are not obligated to use the directions given above in the recommended order. Depending on the circumstances, the SPP RCs will make the decision on the best and most efficient option that would provide relief adequately.

Attachment C

March 1, 2017

United States Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

Re: Contribution of GRDA Unit 1 to local grid reliability as demonstrated by recent operating experience in SPP

Dear Sir/Madam:

The Southwest Power Pool, Inc. (SPP) Reliability Coordinator (RC) has observed, historically, the need to commit GRDA Unit 1 for relief from high voltages. In fact, the RC created a Temporary Operating Guide for the period October 15 through November 4 of 2014 stating that during a planned maintenance outage of GRDA Unit 2, GRDA Unit 1 must be available for dispatch during instances of low load and high voltage. GRDA Unit 1 was called upon to provide reactive support during the entire period of the Operating Guide. Although SPP no longer requires the Temporary Operating Guide, it nevertheless continues to believe that during future light load conditions when GRDA Unit 2 is unavailable, the commitment and dispatch of GRDA Unit 1 will be a critical resource in maintaining proper system voltage. Moreover, in the absence of GRDA Unit 2 and until GRDA Unit 3 comes online, SPP believes GRDA Unit 1 provides a valuable contribution to the local area's overall grid reliability. Based on the above, SPP concurs with GRDA's assessment regarding GRDA Unit 1's importance for reliability absent other system changes or until GRDA's Unit 2 and Unit 3 are in service.

Please do not hesitate to contact me should you have questions or would like to request additional information.

Respectfully submitted,

A handwritten signature in black ink that reads 'Lanny Nickell'.

Lanny Nickell
Vice President, Engineering
(501) 614-3232 • Fax: (501) 482-2022 • lnickell@spp.org

Attachment D

GRDA Unit No. 1 - Reactive Power Production in February 2017

Sum of 2:6832:MVAR CFP #1:O:GRDA #1



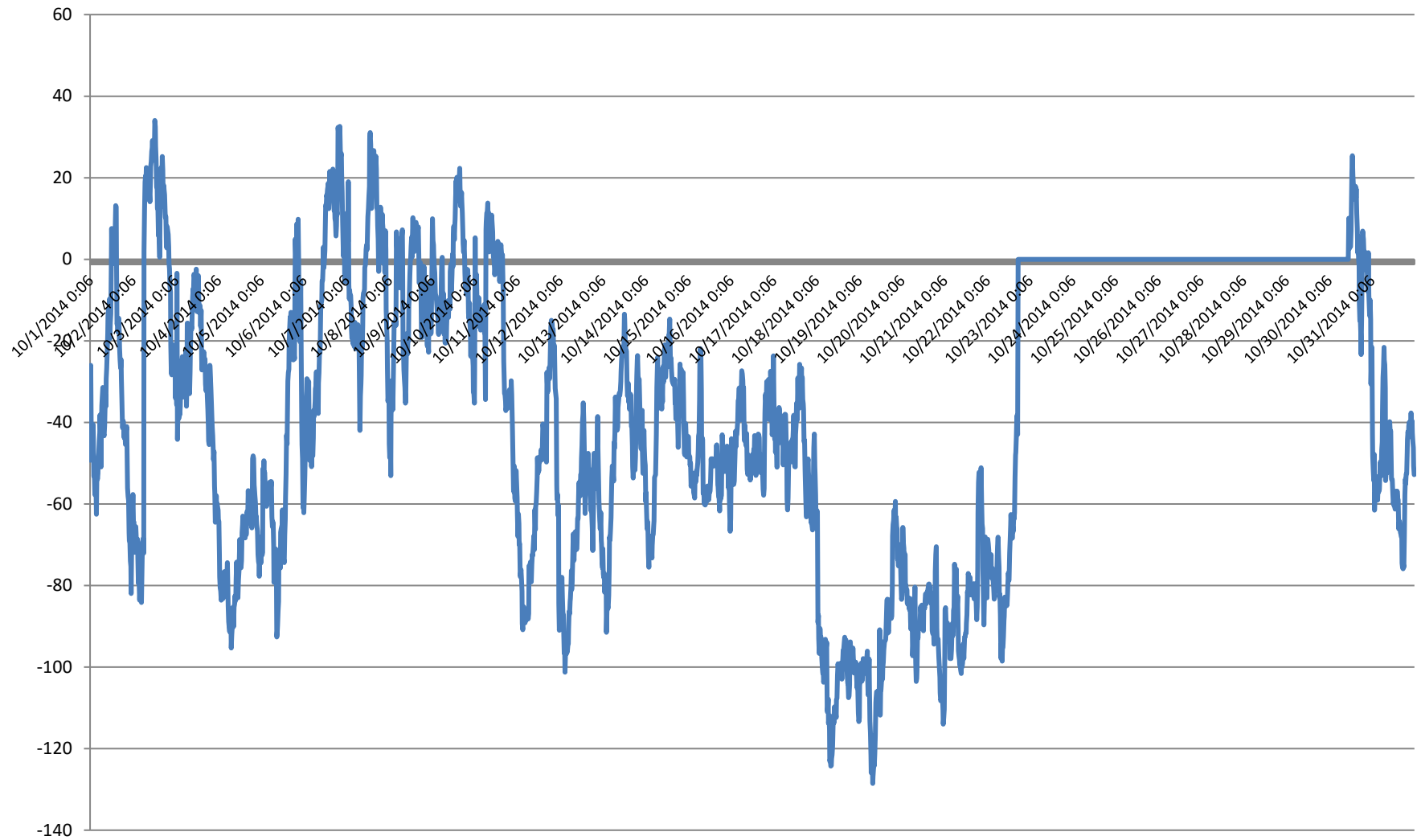
Attachment E

GRDA Unit No. 1 Reactive Power Production in October and November 2014

Sum of 2:6832:MVAR CFP #1

Total

— Total



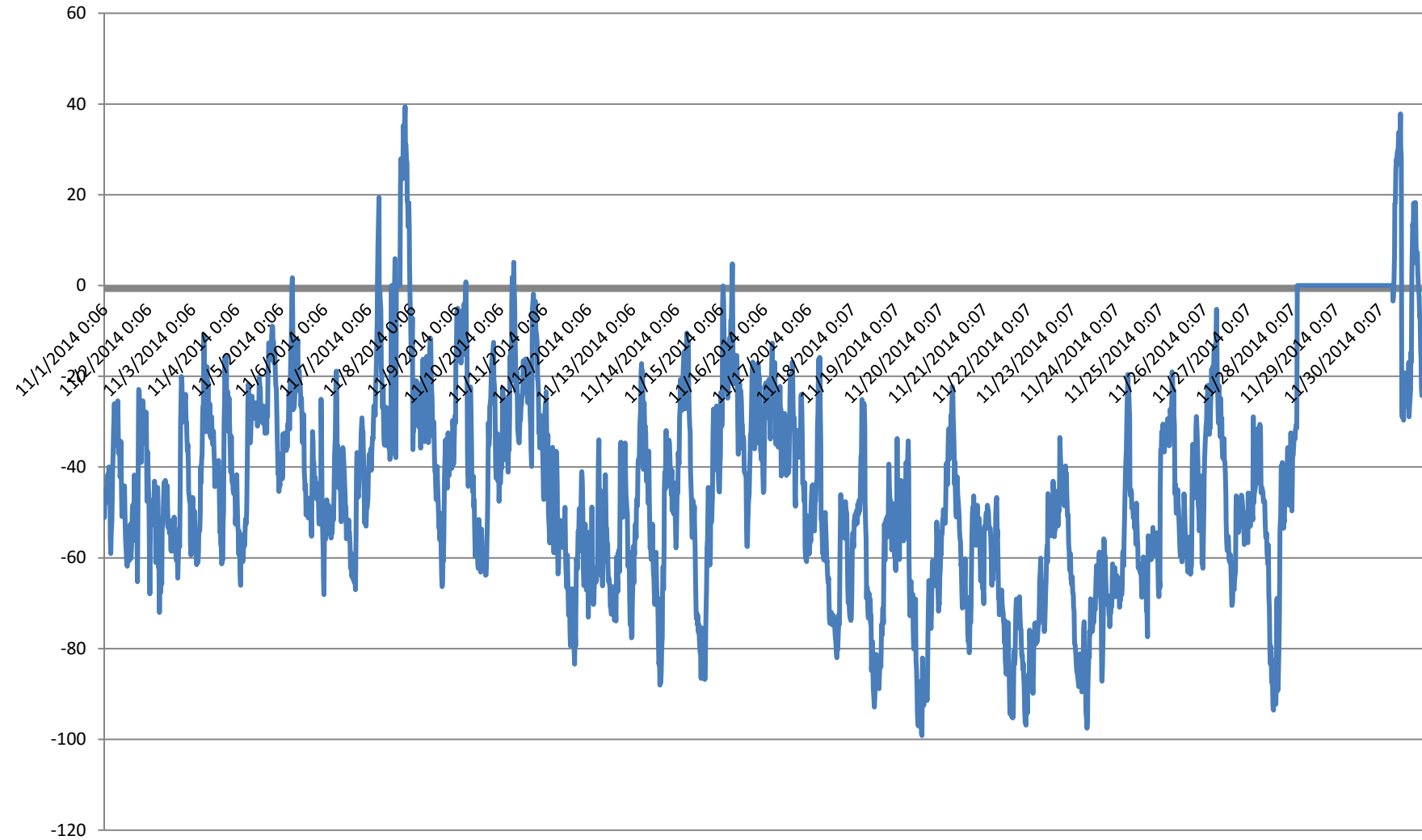
Time

GRDA Unit No. 1 Reactive Power Production in October and November 2014

Sum of 2:6832:MVAR CFP #1

Total

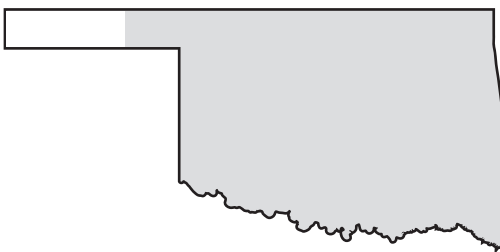
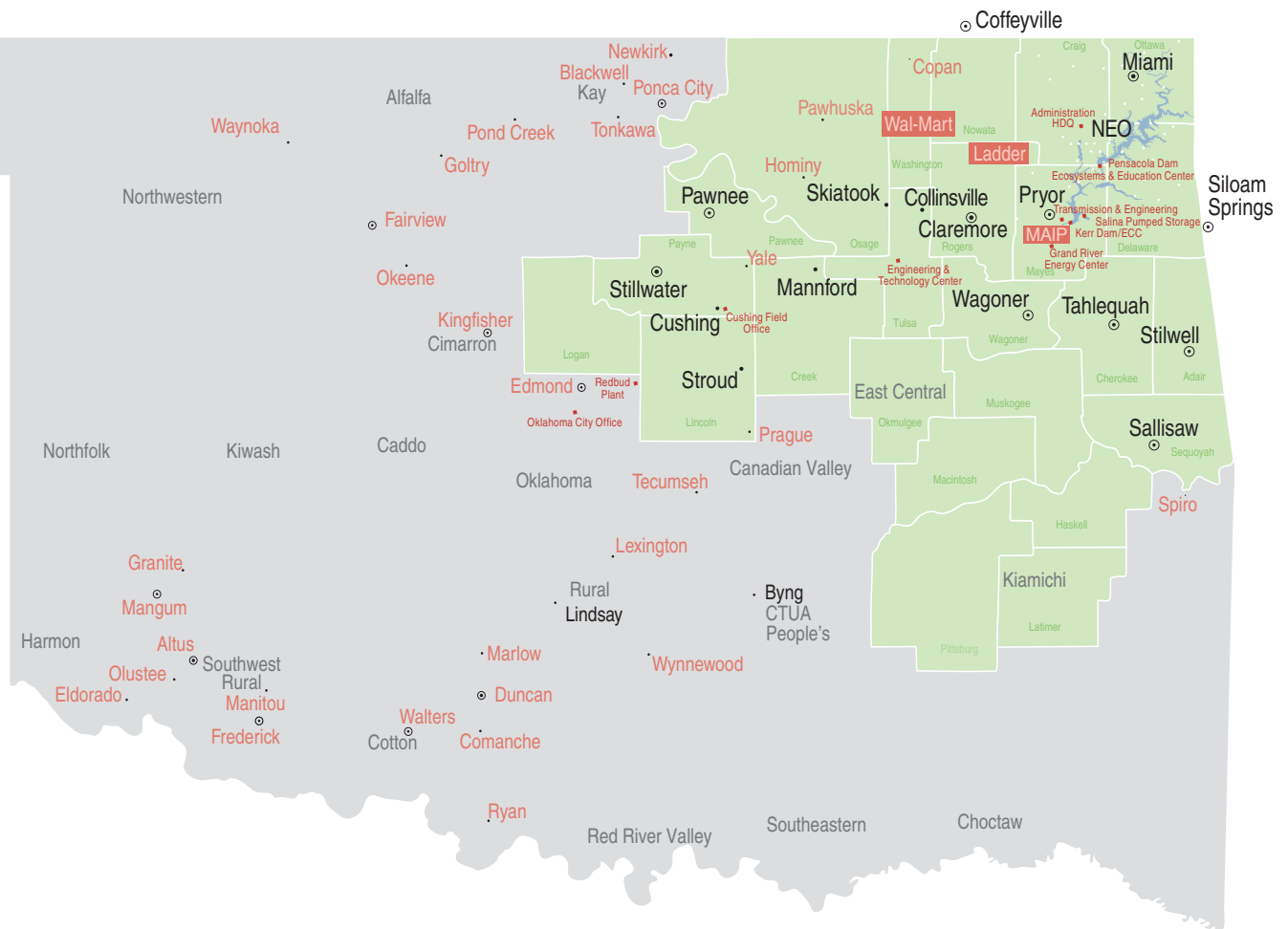
— Total



Time

Attachment F

MAP OF CUSTOMERS AND GRDA FACILITIES



GRDA directly or indirectly provides electricity to some portion of all counties in Oklahoma except for two counties in the panhandle.

Municipal Customers - Served by GRDA in BLACK lettering; many served since 1940s.

Northeast Electric Cooperative - Represented by WHITE DOTs, served since 1946.

Industrial Customers - Represented by ORANGE BOX, Majority located in MidAmerica Industrial Park (MAIP).

Oklahoma Municipal Power Authority - Served since 1985. OMPA's customers in LIGHT ORANGE lettering.

Western Farmers Electric Cooperative - Served since 1983. WFEC's customers in GRAY lettering.

GRDA Facilities - Shown in RED lettering.

See Notes to Financial Statements, Utility Plant for additional information on capital assets.

Source: Grand River Dam Authority

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 36

DOE ORDER NO. 202-17-1



Department of Energy
Washington, DC 20585

Order No. 202-17-1

Pursuant to the authority vested in me by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in Oklahoma due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this order will meet the emergency and serve the public interest.

On April 11, 2017, the Grand River Dam Authority (GRDA), an agency of the state of Oklahoma, filed a *Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* with the United States Department of Energy (Department) to ensure electric system reliability. The GRDA Grand River Energy Center has three generation units: coal-fired Unit No. 1, coal-fired Unit No. 2, and natural gas combined cycle Unit No. 3. GRDA planned to retire Unit No. 1 effective April 16, 2017, because it is not compliant with the Environmental Protection Agency's (EPA) Mercury and Air Toxics Standards, 40 C.F.R. part 63 subpart UUUUU. GRDA was granted two one-year extensions for compliance, but the EPA is barred under the Clean Air Act from issuing further extensions. 42 U.S.C. § 7413(a)(4). Unit No. 1 is needed, however, because the other Grand River Energy Center units are unavailable. Due to a lightning-caused fire, Unit No. 2 is currently offline for repairs, and due to flooding in Louisiana, Unit No. 3's construction is delayed until mid-July at the earliest. Unit No. 1 is thus GRDA's only available unit to provide dynamic reactive power support to the region's Reliability Coordinator, the Southwest Power Pool, Inc. (SPP), during low-load, high-voltage events.

GRDA's application includes a March 1, 2017 letter of support from SPP in which SPP stated it "concurs with GRDA's assessment regarding GRDA Unit 1's importance for reliability." SPP observed that, in the past, it has needed "to commit GRDA Unit 1 for relief from high voltages" and noted that SPP created a Temporary Operating Guide for October 15-November 4, 2014, when Unit No. 2 was undergoing maintenance, to ensure Unit No. 1 would be available during light load conditions. SPP stated Unit No. 1 "will be a critical resource in maintaining proper system voltage."

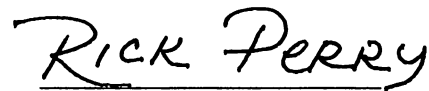
Without sufficient reactive power support, electric system reliability is at risk because excessive voltage could force transmission lines offline, consequently leading to other reliability problems, or could cause electric arcing that would damage transmission facilities. The Federal Energy Regulatory Commission, through the North American Electric Reliability Corporation, regulates grid reliability through mandatory reliability standards, several of which are implicated if Unit No. 1 is unavailable to SPP. These include Reliability Standard VAR-001-4.1 (Voltage and Reactive Control) and transmission operations standards.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the “hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,” be consistent with any applicable environmental law and minimize any adverse environmental impacts. The provision of reactive power support necessitates operation of Unit No. 1, but at levels far below maximum output. The Department has consulted with the EPA and reviewed emissions data provided by GRDA. This Order will continue the operational limitations described in EPA Administrative Compliance Order AED-CAA-113(a)-2016-002, as amended.¹ To minimize adverse environmental impacts and remain consistent with the approach taken by the EPA, this Order limits operation of Unit No. 1 to the provision of dynamic reactive power support and not real power generation, and only when called upon by SPP for reliability purposes.

Based on my determination set forth above, I hereby order:

From April 16, 2017 to (1) July 15, 2017, or (2) the date on which GREC Unit No. 3 or No. 2 is brought online, whichever is earlier, in the event that SPP determines that generation from Unit No. 1 is needed to maintain grid reliability, I direct GRDA to generate electricity to provide dynamic reactive power support from Unit No. 1 of the Grand River Energy Center, subject to the requirement that Unit No. 1 remain offline unless requested to generate by SPP. GRDA and SPP are directed to adopt a Temporary Operating Guide for the period of this Order based on the 2014 guide in Attachment B of the April 11 application, with the additional operational limitations set forth above. GRDA is further required to report to the Department all dates on which Unit No. 1 is run during the effectiveness of this Order and the estimated emissions associated with running Unit No. 1.

Issued in Washington, D.C. at 2:35 pm this 14th day of April, 2017.

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, slightly stylized font.

Rick Perry
Secretary of Energy

¹ Specifically, Unit No. 1 shall achieve a total annual capacity factor of not more than 80% during the period from July 15, 2016, through July 15, 2017.

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 37

DOE ORDER NO. 202-17-2



Department of Energy
Washington, DC 20585

Order No. 202-17-2

Pursuant to the authority vested in me by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in the Commonwealth of Virginia due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

On June 13, 2017, PJM Interconnection, L.L.C. (PJM), the Regional Transmission Organization (RTO) whose service territory includes the North Hampton Roads area east of Richmond, Virginia, filed a *Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* with the United States Department of Energy (Department) "to preserve the reliability of [the] bulk power transmission system in the North Hampton Roads area." Virginia Electric and Power Company (Dominion Energy Virginia), the electric utility serving the area, owns two coal-fired units at its Yorktown Power Station (Yorktown Unit 1 and Yorktown Unit 2). In November 2011, and again in October 2012, Dominion Energy Virginia notified PJM of its plan to deactivate both units, effective December 31, 2014, because the units were not equipped to comply with the Environmental Protection Agency's (EPA) Mercury and Air Toxics Standards (MATS), 40 C.F.R. part 63 subpart UUUUU. On June 24, 2014, pursuant to 40 C.F.R. 63.6(i)(4)(i)(A), the Virginia Department of Environmental Quality granted Dominion Energy Virginia a one-year MATS compliance extension for Yorktown Units 1 and 2. On April 16, 2016, pursuant to section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (4), EPA issued an Administrative Compliance Order (ACO) through April 15, 2017. Since the ACO expired, Dominion Energy Virginia has not achieved full compliance with the MATS for Yorktown Units 1 and 2. Section 113(a) of the Clean Air Act bars further compliance extensions.

Due to anticipated heightened electricity demand or peak load conditions associated with hot summer weather, PJM load flow studies indicate that generation from Yorktown Units 1 and 2 will likely be needed to prevent the possibility of uncontrolled power disruptions and shedding of critical loads in the North Hampton Roads area. The application refers to the need to run Yorktown Units 1 and 2 in this situation as "Scenario One." The application also introduces a "Scenario Two," which concerns the need for Yorktown Units 1 and 2 during transmission outages to support construction of system upgrades previously ordered by PJM through its Regional Transmission Expansion Planning Process (RTEPP). Scenario Two will not be applicable until Dominion Energy Virginia obtains permitting approval for the RTEPP upgrade, which the application indicates has not yet occurred.

On June 12, 2017, Dominion Energy Virginia wrote to the Department of Energy that it “agrees with [PJM’s] Emergency Request and will operate in accordance with its provisions.”

Electric system reliability is at risk during the next ninety days absent the availability of Yorktown Units 1 and 2 during peak load conditions and contingency events detailed in the application. The Federal Energy Regulatory Commission, through the North American Electric Reliability Corporation, regulates grid reliability through mandatory reliability standards, several of which are implicated if Yorktown Units 1 and 2 are unavailable to PJM, including Reliability Standard TPL-001-4 (Transmission System Planning Performance Requirements).

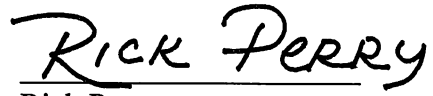
FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the “hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable,” be consistent with any applicable environmental law or regulation and minimize any adverse environmental impacts. Anticipated load conditions may necessitate operation of Yorktown Units 1 and 2. To minimize adverse environmental impacts and remain consistent with the approach taken by the EPA, this Order authorizes operation of Yorktown Units 1 and 2 only when called upon by PJM for reliability purposes. The Department has consulted with the EPA and authorities in York County, Virginia and has reviewed estimated emissions and water usage data provided by PJM. This Order will continue the operational limitations described in EPA’s above-referenced ACO, AED-CAA-113(a)-2016-0005.

Based on my determination set forth above, I hereby order:

From June 16, 2017 to September 14, 2017, in the event that PJM determines that generation from Yorktown Units 1 and 2 is needed to maintain grid reliability, I order Dominion Energy Virginia to operate Units 1 and 2 of the Yorktown Power Station as directed by PJM only as needed to address reliability issues. PJM and Dominion Energy Virginia must develop and implement a dispatch methodology to operate Yorktown Units 1 and 2 only when called upon to address reliability needs. PJM and Dominion Energy Virginia are directed to provide the dispatch methodology to the Department upon implementation, and to report all dates on which Yorktown Units 1 and 2 are operated as well as the estimated emissions and water usage data associated with their operation by September 14, 2017, or the date upon which a renewal request is submitted, whichever occurs first.

Renewal of this Order, should it be needed, must be requested prior to its expiration. If the conditions creating the emergency remain substantially unchanged, a renewal request should be submitted at least 14 calendar days before this Order expires. If the conditions change—for example, if Dominion Energy Virginia obtains all permitting approvals for the RTEPP upgrade and identifies the date on which construction would begin—a renewal request should be submitted a minimum of 21 calendar days in advance of the expiration of this Order.

Issued in Washington, D.C. at 5:14 pm this 16th day of June, 2017.

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive style with a horizontal line underneath the name.

Rick Perry
Secretary of Energy

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 38

DOE ORDER NO. 202-17-4 SUMMARY OF FINDINGS

Summary of Findings Department of Energy Order No. 202-17-4

September 14, 2017

Section 202(c) of the Federal Power Act (FPA) (codified at 16 U.S.C. § 824a(c)), through section 301(b) of the Department of Energy Organization Act (codified at 42 U.S.C. § 7151(b)), authorizes the Secretary of Energy, upon finding “that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes,” to issue an order “requir[ing] . . . 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.” 16 U.S.C. § 824a(c)(1). If the order “may result in a conflict with [an] environmental law or regulation,” then the Secretary must “ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable . . . environmental law or regulation and minimizes any adverse environmental impacts.” *Id.* § 824a(c)(2). Orders issued under FPA section 202(c) “that may result in a conflict with [an] environmental law or regulation” expire 90 days after they are issued, but the Secretary “may renew or reissue such order[s] . . . for subsequent periods, not to exceed 90 days for each period, as [the Secretary] determines necessary to meet the emergency and serve the public interest.” *Id.* § 824a(c)(4)(A).

The Department’s regulations implementing FPA section 202(c) define the term “emergency” to mean, among other situations, “a specific inadequate power supply situation.” 10 C.F.R. § 205.371. The regulations do not exhaustively list what qualifies as an emergency, but they note specifically 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.” *Id.*

On June 13, 2017, PJM filed a *Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act* (Order Application) (included in the docket¹ of this Order) with the Department “to preserve the reliability of [the] bulk power transmission system in the North Hampton Roads area.” Virginia Electric and Power Company² (Dominion), the electric utility serving the area, owns the coal-fired, power generating Units 1 and 2 at the Yorktown Power Station in Yorktown, Virginia. In November 2011 and October 2012, Dominion notified PJM of its plan to deactivate Units 1 and 2, respectively, effective December 31, 2014, because the units were not equipped to

¹ The docket of this Order is available at <https://www.energy.gov/oe/downloads/federal-power-act-section-202c-dominion-energy-virginia-june-2017>.

² See Dominion Energy, Inc., Form 10-Q filing, at 1 (Aug. 3, 2017), included in the docket of this Order.

comply with the Environmental Protection Agency's (EPA) Mercury and Air Toxics Standards (MATS), 40 C.F.R. part 63 subpart UUUUU. On June 24, 2014, pursuant to 40 C.F.R. § 63.6(i)(4)(i)(A), the Virginia Department of Environmental Quality granted Dominion a one-year MATS compliance extension for Yorktown Units 1 and 2.

On April 16, 2016, pursuant to section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (4), the EPA issued an Administrative Compliance Order (ACO) through April 15, 2017. The ACO implemented a 2011 MATS Enforcement Policy regarding issuance of section 113(a) administrative orders to sources that are unable to comply with the MATS but that may need to operate for up to a year to address a specific and documented reliability concern. The 2011 MATS Enforcement Policy was limited in application to units critical for reliability purposes. The EPA found that operation of Yorktown Units 1 and 2 met the policy criteria, as verified by the Federal Energy Regulatory Commission (FERC). Dominion has not achieved full compliance with the MATS for Yorktown Units 1 or 2 since the ACO expired, and section 113(a) of the Clean Air Act bars further compliance extensions.

Since Dominion's decision to retire the coal-fired Yorktown units, PJM has planned for their permanent deactivation by including required transmission upgrades in its own Regional Transmission Expansion Planning Process. PJM is subject to federal reliability standards enforced by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization designated by FERC. PJM holds the highest-level reliability responsibilities for the system it manages as a certified Reliability Coordinator, Balancing Authority, and Transmission Operator. PJM is also registered with NERC as a Planning Coordinator and Transmission Planner, among other functions. NERC Compliance Registry Active Entities List (updated Sept. 7, 2017), included in the docket of this Order. PJM applies reliability criteria to evaluate transmission system conditions and then develops the transmission solutions needed to ensure compliance with the reliability standards. The PJM Board of Managers approves those solutions in a Regional Transmission Expansion Plan (RTEP). Through its Transmission Expansion Advisory Committee (TEAC) and Sub-Regional RTEP Committees, PJM works with stakeholders throughout the RTEP's development. PJM Manual 14B, "Regional Planning Process," included in the docket of this Order. The PJM Board of Managers approved the transmission upgrades necessitated by the retirement of Yorktown Units 1 and 2 on May 17, 2012. TEAC Recommendations to the PJM Board (PJM Staff Whitepaper), May 2012, at 12, included in the docket of this Order.

PJM's approved solution was the Skiffes Creek Transmission Project, which consists of three components: a 500kV line, a 230kV line rebuild, and a new switching station. United States Army Corps of Engineers (Army Corps), Memorandum for the Record re: Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application, CENAO-WR-RS (NAO-2012-00080 / 13-V0408), at 1, included in the docket of this Order. A

number of issues in the North Hampton Roads area, many of which are interrelated, needed to be addressed to avoid overloading transmission lines with too much power, as detailed in PJM's Deactivation Study. Yorktown Units 1 and 2 Generator Deactivation Notification: Deactivation Study Results – updated June 26, 2017 (PJM Deactivation Study), included in the docket of this Order. *See also Va. Elec. & Power Co.*, Commission Comments on Requests for EPA Administrative Orders, Docket No. AD16-11-000, 153 FERC ¶ 61,265 at PP 14-16 (2015).

PJM completed a series of analyses consistent with RTEP procedures, finding that only the Skiffes Creek Transmission Project—and none of the stakeholder-proposed alternatives—addressed the full range of potential reliability violations. Order Application, app. I, at 16. For example, reliance on operation of the oil-fired Yorktown Unit 3 generator would not address thermal overload and voltage violations on the 230kV and 115kV bulk electric system that PJM identified because of significant environmental operating restrictions and other plant operation constraints associated with that unit, including an 8 percent capacity factor limitation. *See id.*, app. II, at 18. As a result, PJM did not recommend reliance on Yorktown Unit 3 as a sustainable alternative solution to the identified reliability criteria violations. *Id.*

As part of PJM's analyses, Dominion transmission staff provided PJM with an analysis of system needs as well as potential solutions to the retirement of generating units at Yorktown and elsewhere. Dominion Update to Retirement Study Results (Mar. 10, 2012), included in the docket of this Order. Dominion's analysis, which was based on PJM's initial determination of reliability criteria violations that needed to be addressed, was independently validated by PJM and publicly vetted through the PJM stakeholder process before PJM staff recommended that the Board of Managers approve the Skiffes Creek Transmission Project. PJM Staff Whitepaper at 12, included in the docket of this Order.

PJM, as the Regional Transmission Organization (RTO) responsible for transmission system operation across multiple states, including Virginia, maintains its expert determination that the Skiffes Creek Transmission Project is the most effective and efficient solution to address the identified reliability criteria violations. Order Application, app. I, at 16. As recently as March 1, 2017, PJM provided the Army Corps with an analysis of proposed alternatives and found that none of them sufficiently resolved the identified violations. Letter to Col. Jason E. Kelly, U.S. Army Corps of Engineers (Mar. 1, 2017), included in the docket of this Order. PJM's subsequent RTEP materials reaffirm the need for the Skiffes Creek Transmission Project, even considering the updated, steadily rising load forecasts in the recently released 2017 PJM Load Forecast Report (included in the docket of this Order). *See* PJM Interconnection, L.L.C., 2017 RTEP Process Scope & Input Assumptions, rev. 1, at 25-27 (Aug. 3, 2017), included in the docket of this Order.

Construction of the Skiffes Creek Transmission Project began in July 2017 and is expected to take approximately 18-20 months. *Order No. 202-17-2 Renewal Application Filing* (Renewal Application) at 3. Until the Project is completed, a plan known as the North Hampton Remedial Action Scheme (RAS) remains in effect. According to NERC's Glossary of Terms, a RAS is "[a] scheme designed to detect predetermined System conditions and automatically take corrective actions that may include, but are not limited to, adjusting or tripping generation ([megawatts] and [megavolt amperes (reactive)]), tripping load, or reconfiguring a System(s)." Glossary of Terms Used in NERC Reliability Standards (updated Aug. 1, 2017), at 24, included in the docket of this Order.

To preserve the grid's reliability, the North Hampton RAS would allow PJM, the grid operator, to drop load—that is, shut off power to certain customers—to prevent voltage collapse. Dominion presented this RAS to PJM in January 2017, and the SERC Reliability Corporation, the NERC-delegated regional reliability enforcement entity, approved it that same month. See Dave Rees, *Dominion Virginia Power Sets Plan for Emergency Blackouts*, Daily Press, Jan. 13, 2017, included in the docket of this Order. If Yorktown Units 1 and 2 were unavailable, many N-1-1 contingencies could result in voltage collapse and thermal overloads. New Remedial Action Scheme, North Hampton RAS (Presentation to PJM), at 4, included in the docket of this Order; PJM Deactivation Study, included in the docket of this Order. According to FERC, "An N-1-1 contingency is a sequence of events consisting of an initial loss of a single generator or transmission element, followed by system adjustment, followed by another loss of a single generator or transmission element." *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket No. AD14-14-000, 153 FERC ¶ 61,221 at P 30 n.61 (2015).

The North Hampton RAS is on standby for use at PJM's discretion. If PJM detects the loss of certain facilities, it could trip the remaining feeds to the Yorktown area and drop service to approximately 150,000 customers, preventing voltage collapse. Rotating outages would follow until the system returns to normal operating parameters. New Remedial Action Scheme, North Hampton RAS (Presentation to PJM), at 6, included in the docket of this Order. According to U.S. Census estimates, the region PJM identifies as the North Hampton Roads load area in its Order Application had a population of more than 660,000 as of July 2016. At a minimum, rotating outages under the RAS would therefore impact, directly or indirectly, several hundred thousand people. United States Census Bureau, QuickFacts database, available at <https://www.census.gov/quickfacts/fact/table/US/PST045216>.

On July 3, 2017, the Army Corps issued a permit to Dominion for the Skiffes Creek Transmission Project pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and section 404 of the Clean Water Act (33 U.S.C. § 1344). On July

10, 2017, Dominion commenced construction of the Skiffes Creek Transmission Project. Renewal Application at 3.

On August 24, 2017, PJM filed its Renewal Application with DOE. The filing included all reports required by Order No. 202-17-2 (included in the docket of this Order). PJM said that construction of the Project was still expected to take 18-20 months, and that periodic transmission outages would be necessary to proceed apace with the Project. The same day, Dominion wrote to the Department that it “agrees with the Renewal Application and will operate in accordance with its provisions.” Further, Dominion acknowledged that a 202(c) order “is not a long term solution to the reliability issues in the North Hampton Roads area on the Virginia Peninsula.” The Skiffes Creek Transmission Project, underway as of July 2017, is the long-term solution.

On September 7, 2017, the Department received comments from Sierra Club opposing PJM’s renewal request. On September 13, 2017, the Department received an answer to Sierra Club’s comments from PJM. Both documents are included in the docket of this Order.

Discussion

Order No. 202-17-2 directs operation of Yorktown Units 1 and 2 as needed to address reliability issues, subject to a dispatch methodology submitted to the Department for review. The reliability issues noted in Order No. 202-17-2 were described as Scenario One, increased load due to weather-related temperature extremes, and Scenario Two, decreased transmission capacity required by the RTEP upgrade. Scenario Two was contemplated but not yet applicable when Order No. 202-17-2 was issued because the Army Corps permit application for the Skiffes Creek Transmission Project was still pending. On July 3, the Army Corps issued Permit No. NAO-2012-00080, resulting in the potential need to operate Yorktown Units 1 and 2 to address both Scenario One and Two reliability issues. To date, in accordance with Order No. 202-17-2, PJM has directed operation of Yorktown Units 1 and/or 2 for all or part of 13 days. PJM Interconnection, L.L.C., Report on Yorktown Units 1 and 2 Operations Pursuant to Order No. 202-17-2, Attachment 1, included in the docket of this Order; Telephone call to Steven Pincus, Associate General Counsel, PJM, Sept. 11, 2017.

Scenario One applies when load conditions exceed a certain threshold due to local transmission issues that would cause PJM to operate the system outside its normal operating parameters.³ Weather-related temperature extremes are one example of such a local transmission issue. Scenario Two is also triggered when load conditions exceed a certain threshold, but the threshold is lowered depending on the particular construction-related transmission outages in effect as the Skiffes Creek Transmission Project is built.

³ Exact load thresholds were submitted as critical electric infrastructure information and are thus not described here so as not to provide vulnerability information on critical infrastructure.

Because the Project minimizes environmental impacts by utilizing existing transmission line rights-of-way to the extent possible, portions of existing transmission lines must be taken offline for upgrades. Under either scenario, when the relevant thresholds are exceeded, to prevent system overload and uncontrolled power disruptions, PJM must implement the North Hampton RAS. The only sufficient alternative to the RAS and its resulting outages for up to approximately 150,000 customers is the emergency operation of Yorktown Units 1 and 2. The demand response available to PJM is a small fraction of the load threshold and is “not sufficient to ensure reliable service.” Order Application, app. II, at 18. Likewise, Dominion has limited demand-side management and curtailment capabilities, insufficient for reliability purposes even when fully deployed. *See id.*, app. III, at 21.

Activating the RAS would immediately interrupt service to load in the North Hampton Roads area. PJM asserts that, according to the RAS, during certain high load conditions, this “load shedding” could result in the loss of roughly 950 MW of electric power—that is, the loss of service to over 150,000 North Hampton Roads area customers. Order Application at 9. This service interruption could last hours or even days. *See* North Hampton RAS Presentation to PJM, at 8, included in the docket of this Order. Activating the RAS is not a gradual approach that presents a wide range of likely impacts; it is an extreme measure with immediate consequences to 150,000 customers. While the RAS is designed to prevent more catastrophic, uncontrolled grid impacts from occurring, load shedding of this magnitude is significant, and would trigger mandatory reporting both to DOE and FERC. DOE Form OE-417 requires reporting within one hour for “[l]oad shedding of 100 Megawatts or more implemented under emergency operational policy,” and within six hours for “[l]oss of electric service to more than 50,000 customers for 1 hour or more.” This is the same level of reporting triggered by a cyber or other hostile attack on grid resources. Form OE-417, Electric Emergency Incident and Disturbance Report, https://www.oe.netl.doe.gov/docs/OE417_Form_03312018.pdf. Similarly, FERC and NERC mandate notification for a variety of serious events including when a bulk electric system emergency triggers automatic load shedding of 100 MW or more, as in the RAS. *See* North American Electric Reliability Corporation, Reliability Standard EOP-004-3 (Event Reporting), http://www.nerc.com/_layouts/PrintStandard.aspx?standardnumber=EOP-004-3&title=Event%20Reporting.

To underscore the potential impact of RAS activation, the estimated 150,000 impacted customers are counted by meter, not individual. One or more meters could translate to large household or commercial or industrial facilities, including those critical to health and safety systems. Whether counted as 150,000 or that amount multiplied several times over, the anticipated impact of this emergency situation is on par with or exceeds the impacts described in prior 202(c) orders. *Crisp Cnty. Power Comm’n v. Ga. Power Co.*, 35 FPC 629, 630-31 (1966) (ordering interconnection to prevent, in part,

outages lasting more than an hour and affecting 500 to 2,000 customers on Crisp County, Georgia's system). *City of Cleveland, Ohio v. Cleveland Elec. Illuminating Co.*, 47 FPC 747, 749 (1972) (ensuring reliable service was provided to the approximately 20% of the city's consumers). Cleveland's 1970 Census-reported population was 750,903, suggesting that just over 150,000 individuals were affected by the 1972 202(c) order. See <https://www.census.gov/population/www/documentation/twps0027/tab20.txt>. As described earlier, the U.S. Census estimated the population of the North Hampton Roads load area at nearly 661,000 people just over a year ago.

A benefit of the planning efforts mandated by federal reliability standards is that entities such as PJM can accurately forecast the impacts to the bulk power system in steady-state and various contingency event situations. Thus, as reliability planning continues to mature, there should be fewer electric energy shortages that take bulk power system owners, operators, and regulators by surprise. That planners can identify conditions under which shortages may occur, however, does not rule out electric energy shortages constituting emergencies under FPA section 202(c) and the Department's implementing regulations. It is impossible to plan for every contingency, and challenges may arise even when implementing the most prudent plans. FPA section 202(c) affords the Secretary of Energy discretion in finding when an emergency exists and how best to meet the emergency and serve the public interest.

Here, an emergency exists due to the imminent possibility of implementing the North Hampton RAS under a range of both steady-state and contingency events, including potential transmission congestion preventing the delivery of available generation to the North Hampton Roads area. PJM Deactivation Study at 1-2, included in the docket of this Order. The RAS would leave approximately 150,000 customers without power, including residential, industrial, commercial, health and safety facilities, major national defense, and educational institutions. See Order Application, app. IV, at 30-31. That creates serious health and safety issues. Issuance of today's Order meets the emergency and serves the public interest.

In these circumstances, transmission outages, like those contemplated for or otherwise in connection with the construction of the Skiffes Creek Transmission Project, constitute an emergency for purposes of a section 202(c) order. As stated earlier, the Department's implementing regulations, in their current form since 1981, contemplate that "[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities [may create] an emergency." 10 C.F.R. § 205.371. The regulations add that "[i]n such cases, the impacted 'entity' will be expected to make firm arrangements to resolve the problem until new facilities become available, so that a continuing emergency order is not needed." *Id.* PJM, the impacted entity in this case, requested today's Order. Through the RTEP, PJM made firm arrangements to resolve the problem through the Skiffes Creek Transmission Project, which is now permitted and under construction. That construction was delayed due to events beyond

PJM's control has no bearing on the likelihood of power outages for 150,000 customers. Such a power loss event would also constitute an emergency as contemplated by FERC in its Public Utility Regulatory Policies Act of 1978 regulations, which define "system emergency" as "a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property." 18 C.F.R. § 292.101(b)(4). The risk faced by 150,000 customers will continue, assuming the Skiffes Creek Transmission Project construction schedule is met, for approximately another 18 months. Today's Order is limited in time and specifically tailored to address an emergency contemplated both in the authorizing statute and the Department's implementing regulations.

Between 2005 and 2007, DOE issued orders under similar circumstances, directing the Mirant Potomac River Generation Station to operate until two new 230kV transmission lines could be built to ensure reliability to a portion of the District of Columbia. See Order No. 202-5-3 (relying on DOE regulatory definition of emergency as including extended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities). In a series of orders under FPA section 202(c), the Secretary ordered operation of the generation units while the two existing 230kV lines that supplied the central District of Columbia area were temporarily and sequentially removed from service to connect the new lines. Neither the problems leading up to the closure of the generating units nor the need for a particular transmission solution were unexpected. Nevertheless, the Department found that imminent power shortages, faced if contingency events occurred, constituted an emergency under the Federal Power Act. Order Nos. 202-5-3, 202-6-1, 202-6-2, 202-7-1, and 202-7-2.

In this matter, the likelihood of RAS activation is not theoretical. While Order No. 202-17-2 was in effect, PJM had to call upon Yorktown Units 1 and/or 2 on 13 days over three months. Absent Order No. 202-17-2, the RAS would have been activated instead. The alternatives available to PJM and Dominion are not sufficient to ensure reliability without available capacity from Yorktown Units 1 and 2. As described, PJM and Dominion cannot mobilize adequate alternatives to counter the loss of transmission during construction of the Skiffes Creek Transmission Project. For example, demand response resources, while potentially helpful at the margin, are insufficient to address either Scenario One or Scenario Two. See Order Application, app. II, at 18. Further, PJM's recent RTEP Input Assumptions and Scope Whitepaper indicates that Dominion theoretically has up to 130 MW of distributed solar generation available during the summer. 2017 RTEP Process Scope and Input Assumptions, rev. 1, tbl.3.2, at 18 (Aug. 3, 2017), included in the docket of this Order. Outside of ramp-up and ramp-down times, each Yorktown Unit typically ran at 100 MW output or higher, day or night, when operational while Order No. 202-17-2 was in effect. PJM Interconnection, L.L.C., Report on Yorktown Units 1 and 2 Operations Pursuant to Order No. 202-17-2, Attachment 1. Distributed generation is an intermittent resource; even under ideal conditions, with full-capacity, daytime generation and load reduction at the height of the

summer, distributed generation generally would still not have offset the baseload generating capacity needed to ensure reliability on the North Hampton Roads area grid. And any flexibility for scheduling the Skiffes Creek Transmission Project's construction during historically low-load periods ended when the EPA ACO expired, as expeditious completion of the Project is now the priority. Therefore, even if PJM and Dominion made full use of available alternatives, capacity from Yorktown Unit 1, 2, or both would still be necessary to meet the emergency and serve the public interest.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law or regulation be limited to the "hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, [be] consistent with any applicable . . . environmental law or regulation and minimize[] any adverse environmental impacts." Certain load conditions may necessitate operation of Yorktown Units 1 and 2.

To minimize the hours of operation and adverse environmental impacts, the Order contains certain limitations. First, DOE maintains consistency with EPA's approach in the 2016 ACO by authorizing operation of Yorktown Units 1 and 2 only when called upon by PJM for reliability purposes. The Department consulted with EPA and has reviewed data provided by PJM and Dominion on operations, air emissions, and water usage. This Order will continue the operational limitations described in EPA's above-referenced ACO, AED-CAA-113(a)-2016-0005. Second, DOE requires that PJM and Dominion, consistent with good utility practice, first exhaust all reasonably and practically available resources, including demand response and behind-the-meter generation resources, before operating Yorktown Units 1 and 2. Third, DOE requires continued compliance with the June 27 dispatch methodology, which was reviewed by the Department, and which remains subject to continuing oversight by the Department. In particular, the dispatch methodology establishes Yorktown Units 1 and 2 commitment procedures, describes the utilization and trip conditions of the North Hampton RAS for mitigating congestion on the Virginia Peninsula or North Hampton Roads area, and describes Dominion's mitigation options for the existing James River tower contingency. The dispatch methodology is an operating protocol that limits the ability of PJM to dispatch Yorktown Units 1 and 2 only when needed to mitigate reliability issues associated with scheduled and emergency transmission outages directly related to the Skiffes Creek Transmission Project and other local transmission issues. The EPA ACO recognized that such a dispatch methodology, under which PJM determines when the Yorktown units are needed for reliability issues, serves the objective of minimizing emissions. ACO at 8-9, included in the docket of this Order. Fourth, to track when Yorktown Units 1 and 2 are operated to maintain grid reliability and to monitor associated air emissions and water usage, reports will be required every two weeks going forward. If the Department becomes concerned with PJM or Dominion's compliance with this Order, enforcement actions are available, up to and including termination of the underlying order.

While DOE has constrained PJM's operations with regard to Yorktown Units 1 and 2, it is necessary to preserve reasonable discretion for PJM, as a Transmission Operator, to address the second-to-second operational challenges of grid management. This follows DOE's practice in earlier orders issued under FPA section 202(c), which prioritized reliability concerns as identified and assessed by the operator. For example, Order No. 202-02-1 (Aug. 16, 2002) ordered Cross-Sound Cable Company, LLC to operate a cable across Long Island Sound, limiting "transmission and delivery of . . . electric capacity and/or energy [to that] necessary in the judgment of the New York Independent System Operator [ISO] to meet the supply and essential reserve margin needs of the Long Island Power Authority [LIPA]," but only "in order for LIPA to serve its firm retail customers after it has implemented all available load reduction measures consistent with good utility practice." Order No. 202-03-1 (Aug. 14, 2003) directed operation of the same cable, but specifically ordered the New York ISO and ISO New England to require Cross-Sound Cable Company to operate the cable. That order also required both RTOs to "consult with each other and with appropriate reliability organizations." Today's Order similarly requires PJM to identify and mitigate reliability issues in accordance with DOE's specified operational limitations.

In considering renewal or reissuance of an order under FPA section 202(c) that may conflict with an environmental law or regulation, DOE is required to "consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation" and to include "conditions as such Federal agency determines necessary . . . to the extent practicable." 16 U.S.C. § 824a(c)(4). The EPA is the primary federal agency in this case with expertise in the protected environmental interest, specifically MATS and section 316(b) of the Clean Water Act, and the Department consulted with EPA after receiving the Renewal Application. Email from Acting Assistant Administrator Starfield, Office of Enforcement and Compliance Assurance, to Acting Under Secretary for Science and Energy Hoffman (Sept. 11, 2017), included in the docket of this Order. After consulting with EPA, and consistent with that consultation, the Department found that the only appropriate short-term emissions limitation on Yorktown Units 1 and 2 would be to curtail operating hours to the maximum extent practical for reliability purposes.

Pursuant to the National Environmental Policy Act of 1969, the Department has determined that issuance of this Order fits within the category of actions included in Categorical Exclusion (CX) B4.4 and otherwise meets the requirements for application of a CX. The Order fits within the category of actions because it authorizes "[p]ower marketing services and power management activities (including, but not limited to, storage, load shaping and balancing, seasonal exchanges, and other similar activities), provided that the operations of generating projects would remain within normal operating limits." Records of Categorical Exclusion Determination, Order No. 202-17-4, Sept. 11, 2017, included in the docket of this Order.

Summary of Findings for Department of Energy Order No. 202-17-4

For the reasons stated above, the Secretary of Energy finds that an emergency exists threatening imminent electric energy shortages, and that this Order is necessary to address the emergency and serve the public interest in the North Hampton Roads area. The limitations on operation set forth in Order No. 202-17-4 and outlined above are, to the maximum extent practicable, consistent with applicable environmental laws or regulation and minimize any adverse environmental impacts, and the reporting requirements for operations and estimated emissions ensure transparency of implementation.

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 39

GRACE HAUSER AFFIDAVIT

UNITED STATES OF AMERICA
BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY

Order No. 202-26-30

AFFIDAVIT OF GRACE MARIE HAUSER

Grace Marie Hauser states that the following information is true and accurate to the best of my knowledge and belief:

1. I work as a technical analyst at the Environmental Defense Fund, a nonprofit environmental organization. Previously, I studied the environmental health impacts of oil and gas wells as a graduate student researcher at the Yale School of Public Health and as a research fellow with the FracTracker Alliance.
2. I have a bachelors degree in environmental sciences from Northwestern University and a masters degree in public health from the Yale School of Public Health.
3. I have used the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA)¹ and the Clean Air Markets Program Data resource (CAMPD)² in my work.
4. CAMPD is a web-based repository of unit-level CO₂, NO_x, SO₂, and mercury emissions data for power plants. It is publicly available and maintained by the U.S. Environmental Protection Agency (EPA).
5. The COBRA tool is a web-based model developed and maintained by EPA to estimate the public health benefits due to reductions in air pollutants, namely PM_{2.5}, NO_x, SO₂, and VOCs. The web version of COBRA uses 2023 data for its baseline emissions.
6. The COBRA tool allows for the modeling of health impacts over time, based on emissions over a particular year, and allows a user to specify particular scenarios of emission controls.
7. COBRA produces a location-specific and facility-specific estimate. This means that the tool measures the health impacts that are related to local meteorological conditions and the population distribution downwind from all generation units at a facility.
8. COBRA's calculated impacts aren't simply a function of tons of air pollutants emitted; they're a function of tons emitted from the particular facility, into the location-specific airshed, across specified times of a year, and affecting the particular population that resides in the neighboring areas.

¹ U.S. EPA, Clean Air Markets Program Data (CAMPD), <https://campd.epa.gov>.

² U.S. EPA, Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), <https://www.epa.gov/cobra>.

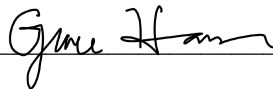
9. To estimate the health impacts of running Unit 1 at the Curtis H. Stanton Energy Center (“Stanton Unit 1”) during the pendency of DOE Order No. 202-26-30, I used the COBRA tool as follows.
10. I first selected the relevant county in Florida—Orange County.
11. I then identified the relevant sector—Fuel Combustion: Electric Utility—and subsectors—Coal and Bituminous.
12. I am aware that Units 1 and 2 at the Curtis H. Stanton Energy Center are the only coal-fired power plants in Orange County, Florida.
13. I then selected a 100% reduction in each of the relevant pollutants.
14. Together, these parameters reflect the closure of both coal units, Unit 1 and Unit 2, at the Curtis H. Stanton Energy Center.
15. Finally, I selected a discount rate—2%.
16. According to the COBRA tool, those harms include 20-31 excess deaths, as well as thousands of lost school and work days across the states in the contiguous U.S. In total, the COBRA tool estimates that the total monetized value of health effects is between \$328 million and \$484 million in 2023 dollars.
17. These figures are an estimate for the health benefits over time, for a year’s worth of emissions reductions from the closure of both Stanton Unit 1 and Unit 2.
18. These figures also provide an estimate of the health harms resulting from the continued operation of the Curtis H. Stanton Energy Center.
19. To estimate the health impacts of running just Unit 1 at the Curtis H. Stanton Energy Center (“Stanton Unit 1”) during the pendency of DOE Order No. 202-26-30, I multiplied the health impacts produced by COBRA by the proportion of the total Curtis H. Stanton Energy Center emissions produced by Stanton Unit 1, according to CAMPD data.
20. CAMPD’s web-based repository includes unit-level CO₂, NO_x, SO₂, and mercury emissions data of generation facilities.
21. To estimate the proportion of emissions of SO₂ and NO_x from Unit 1 of the Curtis H. Stanton Energy Center, I used CAMPD as follows.
22. I first selected the relevant data type—Emissions.
23. I then selected the relevant data subtype—Annual Emissions.
24. I then selected the relevant aggregation level—Unit (No Aggregation).
25. I then selected the relevant time period—2023.
26. I then entered the Facility name—Curtis H. Stanton Energy Center (564).
27. The resulting data provides 2023 emissions values for the Curtis H. Stanton Energy Center and is available on the EPA CAMPD website at <https://campd.epa.gov/>, or by accessing the specific data set at the following web link: <https://campd.epa.gov/data/custom-data-download?bookmarkId=1790>.
28. According to CAMPD, the annual SO₂ emissions from Stanton Unit 1 in 2023 were 847.04 tons, and the annual NO_x emissions were 2,140.52 tons; the annual SO₂ emissions from Stanton Unit 2 in 2023 were 620.69 tons, and the annual NO_x emissions were 1,356.02 tons.

29. Therefore, Stanton Unit 1 was, on average, responsible for 57.7% of SO₂ and 61.2% NO_x emissions from the Curtis H. Stanton Energy Center's coal generation operations in 2023.
30. As a rough approximation, therefore, Unit 1's total emissions represent somewhere between 57.7% and 61.2% of the total coal generation emission from the Curtis H. Stanton Energy Center in 2023. By applying these proportions to the harms estimated by the COBRA tool, I modeled the harms associated with the continued operation of Stanton Unit 1 for all contiguous U.S. states.
31. By applying the lower 57.7% emissions attribution to the total emission of the Curtis H. Stanton Energy Center, Stanton Unit 1 would be responsible for 11-18 deaths, thousands of missed work/school days, and \$189.5-\$279.6 million (2023 USD) in monetized health harms.
32. By applying the higher 61.2% emissions attribution to the total emissions of the Curtis H. Stanton Energy Center, Stanton Unit 1 would be responsible for 12-19 deaths, thousands of missed work/school days, and \$201.0-\$296.5 million (2023 USD) in monetized health harms.
33. This range approach preserves the location- and facility-specific qualities that are essential to a defensible estimate, operates under the reasonable assumption that harms scale proportionately with emissions within this facility, and — critically — avoids the error of assuming a simple 1:1 ratio of emissions to harms.
34. I understand that DOE Order No. 202-26-30 requires Stanton Unit 1 to remain in operation from June 4, 2026, through September 1, 2026.
35. As a rough approximation, the benefits from closing Stanton Unit 1 for the three-month period of DOE Order No. 202-26-30 would be at least one quarter the benefits of a year-long closure.
36. Since Florida is a summer peaking state, the benefits are very likely to be greater than one quarter.
37. To precisely estimate the harm from the continued operation of Stanton Unit 1, one would need to know, or model, which generation resources are displaced by its operation. Such precision is unrealistic. But it is almost certainly true that most of the generation displaced by the continued operation of Stanton Unit 1 comes from natural gas combined cycle plants.
38. The health impacts from running those plants vary depending on location, time of year, and the specific technologies employed by the plant, but they are invariably less than coal.
39. Accordingly, I can conclude that the continued operation of Stanton Unit 1 will have a net harmful effect on public health in Florida.
40. I have also reviewed the document titled, *SEC 1 Gross Generation (5_1_25 - 6_23_26)_1*, an excel spreadsheet provided by Orlando Utilities Commission, which includes an hourly calculation of generation in MW of load served by Stanton Unit 1.
41. I have determined that based on the data provided that the Stanton Unit 1 continues to generate electricity.
42. Based on the data provided, I have also determined that between the date of DOE's issuance of DOE Order No. 202-26-30 on June 4, 2026, and the last date provided in the dataset—June 23, 2026—that Stanton Unit 1 has increased its average daily generation output by 242 MW.

43. Based on the data provided, I have also determined that this generation output is a 46.2% increase to the generation output from the same time period between June 4, 2025-June 23, 2025.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Chicago, Illinois on July 2, 2026.



Grace Marie Hauser

Attachment A

CAMPD
(Stanton Energy Center)

State	Facility Name	Facility ID	Unit ID	Associated Stacks	Year	Operating Time Count	Sum of the Operating Time
FL	Curtis H. Stanton Energy Center	564	1		2023	7222	7206.31
FL	Curtis H. Stanton Energy Center	564	2		2023	7482	7468.59
FL	Curtis H. Stanton Energy Center	564	1 & 2		2023	14704	14674.90

	SO2	NOx
Stanton Unit 1	57.7%	61.2%
Stanton Unit 2	42.3%	38.8%
Sum	100.0%	100.0%

Gross Load (MWh)	Steam Load (1000 lb)	SO2 Mass (short tons)	SO2 Rate (lbs/mmBtu)	CO2 Mass (short tons)
1657528.26		847.041	0.0702	1655072.656
2023164.68		620.686	0.0513	1875194.788
3680692.94		1467.727		3530267.444

CO2 Rate (short tons/mmBtu)	NOx Mass (short tons)	NOx Rate (lbs/mmBtu)	Heat Input (mmBtu)	Primary Fuel Type
0.0936	2140.515	0.2388	17344061.89	Coal
0.0936	1356.019	0.1357	19690787.99	Coal
	3496.534		37034849.88	Coal

Secondary Fuel Type	Unit Type	SO2 Controls	NOx Controls
Pipeline Natural Gas	Dry bottom wall-fired boiler	Wet Lime FGD	Low NOx Burner Technology (Dry Bottom only)
Other Gas, Pipeline Natu	Dry bottom wall-fired boiler	Wet Lime FGD	Low NOx Burner Technology (Dry Bottom only) Select
Other Gas, Pipeline Natu	Dry bottom wall-fired boiler	Wet Lime FGD	Low NOx Burner Technology (Dry Bottom only) Select

PM Controls	Hg Controls	Program Code
Electrostatic Precipitator		ARP, MATS
Electrostatic Precipitator		ARP, MATS
Electrostatic Precipitator		ARP, MATS

Attachment B

COBRA
(Stanton Energy Center)

Total Health Benefits		
	\$328,444,227	\$484,481,966
	Low Value	High Value

Total Health Benefits (\$)		
	COBRA Low Value	COBRA High Value
Lower bound (57.7%)	189,512,318.98	279,546,094.38
Upper bound (61.2%)	201,007,866.92	296,502,963.19

	Change in Incidence	Monetary Value
Total Mortality	20.694 / 31.385	\$302,054,091 / \$458,091,830
Mortality, All Cause (PM)	9.046 / 19.737	\$132,034,766 / \$288,072,506
Mortality, O3 Short-term Exposure (O3)	0.500	\$7,304,198
Mortality, O3 Long-term Exposure (O3)	11.148	\$162,715,127
Nonfatal Heart Attacks (PM)	6.620	\$556,760
Infant Mortality (PM)	0.070	\$1,097,117
Total Hospital Admits, All Respiratory	2.312	\$52,462
Hospital Admits, All Respiratory (PM)	0.873	\$26,616
Hospital Admits, All Respiratory (O3)	1.439	\$25,846
Total Emergency Room Visits, Respiratory	44.455	\$72,210
Emergency Room Visits, Respiratory (PM)	7.662	\$12,446
Emergency Room Visits, Respiratory (O3)	36.793	\$59,764
Total Asthma Onset	91.519	\$6,980,822
Asthma Onset (PM)	19.877	\$1,516,175
Asthma Onset (O3)	71.642	\$5,464,647
Total Asthma Symptoms	14445.793	\$4,168,294
Asthma Symptoms, Albuterol Use (PM)	3647.332	\$2,334
Asthma Symptoms, Chest Tightness (O3)	2974.190	\$1,147,419
Asthma Symptoms, Cough (O3)	3509.930	\$1,354,103
Asthma Symptoms, Shortness of Breath (O3)	1501.666	\$579,331
Asthma Symptoms, Wheeze (O3)	2812.675	\$1,085,108
Emergency Room Visits, Asthma (O3)	0.202	\$168
Lung Cancer (PM)	0.676	\$30,346
Hospital Admits, Cardio-Cerebro/Peripheral Vascular Disease (PM)	1.411	\$40,583
Hospital Admits, Alzheimers Disease (PM)	3.835	\$85,829
Hospital Admits, Parkinsons Disease (PM)	0.573	\$13,670
Stroke (PM)	0.602	\$37,950
Total Hay Fever/Rhinitis	583.907	\$650,592
Hay Fever/Rhinitis (PM)	125.968	\$140,354
Hay Fever/Rhinitis (O3)	457.939	\$510,238
Cardiac Arrest, Out of Hospital (PM)	0.134	\$8,259
Emergency Room Visits, All Cardiac (PM)	3.097	\$6,677
Minor Restricted Activity Days (PM)	6463.361	\$812,574
School Loss Days (O3)	6730.261	\$11,430,095
Work Loss Days (PM)	1092.972	\$345,729
Total PM Health Effects	11384.109 / 11394.800	\$136,768,185 / \$292,805,925
Total O3 Health Effects	18108.386	\$191,676,042

Change in Incidence, Total Mortality		
	COBRA Low Value	COBRA High Value
Lower bound (57.7%)	-11.940438	-18.109145
Upper bound (61.2%)	-12.664728	-19.20762

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Federal Power Act Section 202(c)
Emergency Order: Orlando Utilities Commission
Regarding the Stanton Energy Center

Order No. 202-26-26

Exhibit to
Motion to Intervene and Request for Rehearing and Stay of
Public Interest Organizations

EXHIBIT 40

BRENNAN CENTER, LIST OF DECLARED NATIONAL EMERGENCIES
UNDER THE NATIONAL EMERGENCIES ACT

Declared National Emergencies Under the National Emergencies Act

Emergencies that are still in effect today are shaded in the table below.

Emergencies that did *not* involve the International Emergency Economic Powers Act (IEEPA) are indicated with an asterisk (*)

	Declaration	Date	Title	Citation/Status
1.	E.O. 12170	11/14/79	Blocking Iranian Government Property	3 C.F.R., 1979 Comp., pp. 457-458; <i>most recently continued by notice of 11/05/25, see 90 FR 50735.</i>
2.	E.O. 12211	04/17/80	Further Prohibitions on Transactions with Iran	3 C.F.R., 1980 Comp., pp. 253-255; <i>prohibitions revoked but national emergency left in effect by E.O. 12282 of 01/19/81. National emergency does not appear to have ever been terminated or continued.</i>
3.	E.O. 12444	10/14/83	Continuation of Export Control Regulations	3 C.F.R., 1983 Comp., pp. 214-215; <i>revoked by E.O. 12451 of 12/20/83.</i>
4.	E.O. 12470	03/30/84	Continuation of Export Control Regulations	3 C.F.R., 1984 Comp., pp. 168-169; <i>revoked by E.O. 12525 of 07/12/85.</i>
5.	E.O. 12513	05/01/85	Prohibiting Trade and Certain Other Transactions Involving Nicaragua	3 C.F.R., 1985 Comp., p. 342; <i>revoked by E.O. 12707 of 03/13/90.</i>
6.	E.O. 12532	09/09/85	Prohibiting Trade and Certain Other Transactions Involving South Africa	3 C.F.R., 1985 Comp., pp. 387-391; <i>revoked by E.O. 12769 of 07/10/91.</i>
7.	E.O. 12543	01/07/86	Prohibiting Trade and Certain Transactions Involving Libya	3 C.F.R., 1986 Comp., pp. 181-182; <i>revoked by E.O. 13357 of 09/20/04.</i>
8.	E.O. 12635	04/08/88	Prohibiting Certain Transactions with Respect to Panama	3 C.F.R., 1988 Comp., pp. 563-564; <i>revoked by E.O. 12710 of 04/05/90.</i>
9.	E.O. 12722	08/02/90	Blocking Iraqi Government Property and Prohibiting Transactions with Iraq	3 C.F.R., 1990 Comp., pp. 294-295; <i>expanded in scope by E.O. 12743 of 01/18/91; revoked by E.O. 13350 of 07/29/04.</i>

10.	E.O. 12730	09/30/90	Continuation of Export Control Regulations	3 C.F.R., 1990 Comp., pp. 305-306; <i>revoked by E.O. 12867 of 09/30/93.</i>
11.	E.O. 12735	11/16/90	Chemical and Biological Weapons Proliferation	3 C.F.R., 1990 Comp., pp. 313-316; <i>revoked by E.O. 12938 of 11/14/94.</i>
12.	E.O. 12775	10/04/91	Prohibiting Certain Transactions with Respect to Haiti	3 C.F.R., 1991 Comp., pp. 349-350; <i>revoked by E.O. 12932 of 10/14/94.</i>
13.	E.O. 12808	05/30/92	Blocking "Yugoslav Government" Property and Property of the Governments of Serbia and Montenegro	3 C.F.R., 1992 Comp., pp. 305-306; <i>revoked by E.O. 13304 of 05/28/03.</i>
14.	E.O. 12865	09/26/93	Prohibiting Certain Transactions Involving UNITA	3 C.F.R., 1993 Comp., pp. 636-638; <i>revoked by E.O. 13298 of 05/06/03.</i>
15.	E.O. 12868	09/30/93	Measures to Restrict the Participation by United States Persons in Weapons Proliferation Activities	3 C.F.R., 1993 Comp., pp. 650-651; <i>revoked by E.O. 12930 of 09/29/94.</i>
16.	E.O. 12923	06/30/94	Continuation of Export Control Regulations	3 C.F.R., 1994 Comp., pp. 916-917; <i>revoked by E.O. 12924 of 08/19/94.</i>
17.	E.O. 12924	08/19/94	Continuation of Export Control Regulations	3 C.F.R., 1994 Comp., pp. 917-919; <i>revoked by E.O. 13206 of 04/04/01.</i>
18.	E.O. 12930	09/29/94	Measures to Restrict the Participation by United States Persons in Weapons Proliferation Activities	3 C.F.R., 1994 Comp., pp. 924-925; <i>revoked by E.O. 12938 of 11/14/94.</i>
19.	E.O. 12934	10/25/94	Blocking Property and Additional Measures With Respect to the Bosnian Serb- Controlled Areas of the Republic of Bosnia and Herzegovina	3 C.F.R., 1994 Comp., pp. 930-932; <i>revoked by E.O. 13304 of 05/28/03.</i>
20.	E.O. 12938	11/14/94	Proliferation of Weapons of Mass Destruction	3 C.F.R., 1994 Comp., pp. 950-954; <i>amended by E.O. 13094 of 07/30/98, E.O. 13382 of 06/28/05, and E.O. 13883 of 08/01/19; most recently continued by notice of 11/05/25, see 90 FR 50737.</i>
21.	E.O. 12947	01/23/95	Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process	3 C.F.R., 1995 Comp., pp. 319-320; <i>amended by E.O. 13099 of 08/20/98, E.O. 13224 of 09/23/01, and E.O. 13372 of 02/16/05; revoked by E.O. 13886 of 09/09/19. E.O. 13224 is listed as a separate emergency and remains in effect.</i>

22.	E.O. 12957	03/15/95	Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources	3 C.F.R., 1995 Comp., pp. 332-333; <i>supplemented by E.O. 12959 of 05/06/95; revoked in part by E.O. 13059 of 08/19/97; expanded by E.O. 13553 of 09/28/10, E.O. 13606 of 04/22/12 (amended by E.O. 14312 of 06/30/25), E.O. 13846 of 08/06/18, E.O. 13902 of 01/10/20, E.O. 13949 of 09/21/20, and E.O. 14382 of 02/06/26 (modified by E.O. 14389 of 02/20/26); most recently continued by notice of 03/02/26, see 91 FR 10937. Technically lapsed for two months in 2018, because the 2017 one-year extension was issued on 01/13/17, see 82 FR 6187, and the subsequent renewal notice was not issued until 03/12/18, see 83 FR 11393).</i>
23.	E.O. 12978	10/21/95	Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers	3 C.F.R., 1995 Comp., pp. 415-417; <i>amended by E.O. 13286 of 02/28/03; most recently continued by notice of 10/16/25, see 90 FR 48391.</i>
24.	Proc. 6867*	03/01/96	Regulation of the Anchorage and Movement of Vessels with Respect to Cuba	3 C.F.R., 1996 Comp., pp.; <i>expanded by Proc. 7757 of 02/26/04; modified by Proc. 9398 of 02/24/16 and Proc. 9699 of 02/22/18; most recently continued by notice of 02/13/26, see 91 FR 7799.</i>
25.	E.O. 13047	05/22/97	Prohibiting New Investment in Burma	3 C.F.R., 1997 Comp., pp. 202-204; <i>revoked in part by E.O. 13310 of 07/28/03; expanded by E.O. 13448 of 10/18/07, E.O. 13464 of 04/30/08, E.O. 13619 of 07/11/12, and E.O. 13651 of 08/06/13; terminated by E.O. 13742 of 10/07/16.</i>
26.	E.O. 13067	11/03/97	Blocking Sudanese Government Property and Prohibiting Transactions with Sudan	3 C.F.R., 1997 Comp., pp. 230-231; <i>expanded by E.O. 13400 of 04/26/06, E.O. 13412 of 10/13/06, and E.O. 14098 of 05/04/23; revoked in part by E.O. 13761 of 01/13/17; most recently continued by notice of 10/16/25, see 90 FR 48393.</i>

27.	E.O. 13088	06/09/98	Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting New Investment in the Republic of Serbia in Response to the Situation in Kosovo	3 C.F.R., 1998 Comp., pp. 191-193; <i>revoked by</i> E.O. 13304 of 05/28/03.
28.	E.O. 13129	07/04/99	Blocking Property and Prohibiting Transactions with the Taliban	3 C.F.R. 1999 Comp., pp. 200-203; <i>revoked by</i> E.O. 13268 of 07/02/02.
29.	E.O. 13159	06/21/00	Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons	3 C.F.R. 2000 Comp., pp. 277-278; <i>expired as of 06/21/13 pursuant to section 202(d) of the National Emergencies Act</i> ; E.O. 13617 , issued 06/25/12, <i>declared a new national emergency that had the practical effect of protecting the same property and interests blocked by</i> E.O. 13159 .
30.	E.O. 13194	01/18/01	Prohibiting the Importation of Rough Diamonds from Sierra Leone	3 C.F.R. 2001 Comp., pp. 741-743; <i>expanded by</i> E.O. 12213 of 05/22/01; <i>revoked by</i> E.O. 13324 of 01/15/04.
31.	E.O. 13219	06/26/01	Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans	3 C.F.R. 2001 Comp., pp. 778-782; <i>revised by</i> E.O. 13304 of 05/28/03; <i>scope expanded by</i> E.O. 14033 of 06/08/21 and E.O. 14140 of 01/08/25; <i>most recently continued by notice of</i> 06/22/26 , see 91 FR 38233.
32.	E.O. 13222	08/17/01	Continuation of Export Control Regulations	3 C.F.R. 2001 Comp., pp. 783-784; <i>originally modified</i> E.O. 12947 of 01/23/95, <i>now revoked</i> ; <i>amended by</i> E.O. 13637 of 03/08/13; <i>most recently continued by notice of</i> 08/04/25 , see 90 FR 37999.
33.	Proc. 7463*	09/14/01	Declaration of National Emergency by Reason of Certain Terrorist Attacks	3 C.F.R. 2001 Comp., p. 263; <i>expanded by</i> E.O. 13223 of 09/14/01; <i>*E.O. 13235</i> of 11/16/01; and E.O. 13321 of 12/17/03; <i>most recently continued by notice of</i> 08/29/25 , see 90 FR 42695. <i>*Most expansions of authority under this declaration were announced as amendments to</i> E.O. 13223 , <i>including:</i> E.O. 13253 of 01/16/02, E.O. 13286 of 02/28/03, and E.O. 13814 of 10/20/17.

34.	E.O. 13224	09/23/01	Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism	3 C.F.R. 2001 Comp., pp.786-789; <i>amended by E.O. 13268 of 07/02/02, E.O. 13284 of 01/23/03, E.O. 13372 of 02/16/05, and E.O. 13886 of 09/09/19; most recently continued by notice of 09/08/25, see 90 FR 43903.</i>
35.	E.O. 13288	03/06/03	Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe	3 C.F.R. 2003 Comp., pp. 186-191; <i>amended and superseded in part by E.O. 13391 of 11/22/05; most recently continued by notice of 03/01/23, see 88 FR 13289; terminated by E.O. 14118 of 03/04/24.</i>
36.	E.O. 13303	5/22/03	Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq has an Interest	3 C.F.R. 2003 Comp., pp. 227-229; <i>scope expanded by E.O. 13315 of 08/28/03; substantive provisions terminated but emergency left in place by E.O. 13668 of 05/27/14; most recently continued by notice of 05/04/26, see 91 FR 25071.</i>
37.	E.O. 13338	05/11/04	Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria	3 C.F.R. 2004 Comp., pp. 168-172; <i>clarified E.O. 13399 of 04/25/2006; amended by E.O. 13460 of 02/13/08; scope expanded by E.O. 13572 of 04/29/11, E.O. 13573 of 05/18/11, and E.O. 13606 of 04/22/12; most recently continued by notice of 05/07/25, see 90 FR 19619; E.O. 13338 and other E.O.'s listed revoked by E.O. 14312 of 06/30/25.</i>
38.	E.O. 13348	07/22/04	Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia	3 C.F.R. 2004 Comp., pp. 189-195; <i>revoked by E.O. 13710 of 11/12/15.</i>
39.	Proc. 7924*	09/08/05	To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina	3 C.F.R. 2005 Comp., pp. 104-106; <i>revoked by Proc. 7959 of 11/03/05.</i> <i>**This limited declaration did not initially cite the President's authority under the National Emergencies Act, but the revocation proclamation did. For more information, see Prevailing Wage Requirements and the Emergency Suspension of the Davis-Bacon Act, RL33276, Congressional Research Service, February 16, 2006, 4-7.</i>
40.	E.O. 13396	02/07/06	Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire	3 C.F.R., 2006 Comp., pp. 209-213; <i>terminated by E.O. 13739 of 09/14/16.</i>

41.	E.O. 13405	06/16/06	Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus	3 C.F.R., 2006 Comp., pp. 231-234; <i>expanded by E.O. 14038 of 08/09/21; most recently continued by notice of 05/21/26, see 91 FR 31333.</i>
42.	E.O. 13413	10/27/06	Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo	3 C.F.R., 2006 Comp., pp. 247-249; <i>amended by E.O. 13671 of 07/08/14; most recently continued by notice of 10/16/25, see 90 FR 48395.</i>
43.	E.O. 13441	08/01/07	Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions	72 Fed. Reg. 43499-43501; <i>most recently continued by notice of 07/25/25, see 90 FR 35825.</i>
44.	E.O. 13466	06/26/08	Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals	73 Fed. Reg. 36787-36788; <i>expanded by E.O. 13551 of 08/30/10, E.O. 13570 of 04/18/11, E.O. 13687 of 01/02/15, E.O. 13722 of 03/15/16, and E.O. 13810 of 09/20/17; most recently continued by notice of 06/22/26, see 91 FR 38231.</i>
45.	Proc. 8443*	10/23/09	Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic	74 Fed. Reg. 55439-55440; <i>does not appear to have ever been terminated or continued.</i>
46.	E.O. 13536	04/12/10	Blocking Property of Certain Persons Contributing to the Conflict in Somalia	75 Fed. Reg. 19869-19872; <i>amended by E.O. 13620 of 07/20/12; most recently continued by notice of 04/08/26, see 91 FR 18765.</i>
47.	E.O. 13566	02/25/11	Blocking Property and Prohibiting Certain Transactions Related to Libya	76 Fed. Reg. 11315-11318; <i>expanded by E.O. 13726 of 04/19/16; most recently continued by notice of 02/13/26, see 91 FR 7801.</i>
48.	E.O. 13581	07/24/11	Blocking Property of Transnational Criminal Organizations	76 Fed. Reg. 44757-44759; <i>expanded by E.O. 13863 of 03/15/19; most recently continued by notice of 07/21/25, see 90 FR 34759.</i>
49.	E.O. 13611	05/16/12	Blocking Property of Persons Threatening the Peace, Security, or Stability of Yemen	77 Fed. Reg. 29533-29535; <i>most recently continued by notice of 05/07/26, see 91 FR 25781.</i>

50.	E.O. 13617	06/25/12	Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons	77 Fed. Reg. 38457-38461; <i>revoked by E.O. 13695 of 05/26/15.</i>
51.	E.O. 13660	03/06/14	Blocking Property of Certain Persons Contributing to the Situation in Ukraine	79 Fed. Reg. 13491-13495; <i>expanded by E.O. 13661 of 03/16/14, E.O. 13662 of 03/20/14, and E.O. 14065 of 02/21/22; relied on for additional steps taken in E.O. 13685 of 12/19/14 and E.O. 13849 of 09/20/18; most recently continued by notice of 02/18/26, see 91 FR 8355.</i>
52.	E.O. 13664	04/03/14	Blocking Property of Certain Persons With Respect to South Sudan	79 Fed. Reg. 19281-19285; <i>most recently continued by notice of 03/24/26, see 91 FR 15513.</i>
53.	E.O. 13667	05/12/14	Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic	79 Fed. Reg. 28385-28391; <i>most recently continued by notice of 05/04/26, see 91 FR 25069.</i>
54.	E.O. 13692	03/08/15	Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela	80 Fed. Reg. 12747-12751; <i>expanded by E.O. 13808 of 08/24/17, E.O. 13827 of 03/19/18, E.O. 13835 of 05/21/18, E.O. 13884 of 08/05/19, and E.O. 14245 of 03/24/25 (modified by E.O. 14389 of 02/20/26); most recently continued by notice of 02/18/26, see 91 FR 8357.</i>
55.	E.O. 13694	04/01/15	Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities	80 Fed. Reg. 18077-18079; <i>amended by E.O. 13757 of 12/28/16, E.O. 13984 of 01/19/21, E.O. 14110 of 10/30/23 (revoked by E.O. 14148 of 01/20/25), E.O. 14144 of 01/16/25, and E.O. 14306 on 06/06/25; most recently continued by notice of 03/24/26, see 91 FR 15511.</i>
56.	E.O. 13712	11/22/15	Blocking Property of Certain Persons Contributing to the Situation in Burundi	80 Fed. Reg. 73633-73636; <i>terminated by E.O. 14054 of 11/18/21.</i>
57.	E.O. 13818	12/20/17	Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption	82 Fed. Reg. 60839-60843; <i>most recently continued by notice of 12/10/25, see 90 FR 57863.</i>

58.	E.O. 13848	09/12/18	Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election	83 Fed. Reg. 46843-46848; <i>most recently continued by notice of 08/29/25, see 90 FR 42697.</i>
59.	E.O. 13851	11/27/18	Blocking Property of Certain Persons Contributing to the Situation in Nicaragua	83 Fed. Reg. 61505-61507; <i>relied on for additional steps taken in E.O. 14088 of 10/24/22; most recently continued by notice of 11/20/25, see 90 FR 53193.</i>
60.	Proc. 9844*	02/15/19	Declaring a National Emergency Concerning the Southern Border of the United States	84 Fed. Reg. 4949-4950; <i>continued by notice of 01/15/21, see 86 FR 6557; terminated by Proc. 10142 of 01/20/21; reinstated by Proc. 10886 on 01/20/25, see 90 FR 8327.</i>
61.	E.O. 13873	05/15/19	Executive Order on Securing the Information and Communications Technology and Services Supply Chain	84 Fed. Reg. 22689-22692; <i>expanded by E.O. 13942 of 08/06/20, E.O. 13943 of 08/06/20, E.O. 13971 of 01/05/21, and E.O. 14034 of 06/09/21; most recently continued by notice of 05/11/26, see 91 FR 27181.</i>
62.	E.O. 13882	07/26/19	Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Mali	84 Fed. Reg. 37055-37058; <i>most recently continued by notice of 07/21/25, see 90 FR 34757.</i>
63.	E.O. 13894	10/14/19	Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria	84 Fed. Reg. 55851-55855; <i>continued by notice of 09/30/25, see 89 FR 82929; expanded by E.O. 14142 of 01/15/25 and E.O. 14312 of 06/30/25.</i>
64.	Proc. 9994*	03/13/20	Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak	85 Fed. Reg. 15337-15338; <i>expanded by E.O. 13911 of 03/27/20, E.O. 13912 of 03/27/20, and E.O. 13916 of 04/18/20; further expanded by decisions of the Secretary of Homeland Security of 03/20/20 without additional E.O. at 85 FR 16547 (extended on 04/22/22 by 87 FR 24041) and 85 FR 16548 (extended on 04/22/22 by 87 FR 24048); terminated by H.J. Res. 7 on 04/10/23.</i>
65.	E.O. 13920	05/01/20	Securing the United States Bulk-Power System	85 Fed. Reg. 26595-26599; <i>suspended for 90 days by E.O. 13990 of 01/20/21 (revoked by E.O. 14148 of 01/20/25); does not appear to have been formally terminated or continued.</i>

66.	E.O. 13928	06/11/20	International Criminal Court; Blocking Property of Certain Associates	85 Fed. Reg. 36139-36142; <i>terminated by E.O. 14022 of 04/01/21 (revoked by E.O. 14148 of 01/20/25).</i>
67.	E.O. 13936	07/14/20	The President's Executive Order on Hong Kong Normalization	85 Fed. Reg. 43413-43417; <i>most recently continued by notice of 07/10/25, see 90 FR 31129.</i>
68.	E.O. 13953	09/30/20	Addressing the Threat to the Domestic Supply Chain From Reliance on Critical Minerals From Foreign Adversaries and Supporting the Domestic Mining and Processing Industries	85 Fed. Reg. 62539-62544; <i>does not appear to have ever been terminated or continued.</i>
69.	E.O. 13959	11/12/20	Addressing the Threat From Securities Investments That Finance Communist Chinese Military Companies	85 Fed. Reg. 73185-73189; <i>amended by E.O. 13974 of 01/13/20 and E.O. 14032 of 06/03/21; most recently continued by notice of 11/05/25, see 90 FR 50739.</i>
70.	E.O. 14014	02/10/21	Blocking Property With Respect to the Situation in Burma	86 Fed. Reg. 9429-9432; <i>most recently continued by notice of 02/03/26, see 91 FR 5663.</i>
71.	E.O. 14024	04/15/21	Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation	86 Fed. Reg. 20249-20252; <i>expanded by E.O. 14066 of 03/08/22; relied on for additional steps taken in E.O. 14039 of 08/20/21, E.O. 14068 of 03/11/22, and E.O. 14071 of 04/06/22; expanded by E.O. 14114 of 12/22/23 and E.O. 14329 on 08/06/25 (modified by E.O. 14389 of 02/20/26); modified by E.O. 14384 of 02/06/26; most recently continued by notice of 03/24/26, see 91 FR 15515.</i>
72.	E.O. 14046	09/17/21	Imposing Sanctions on Certain Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia	86 Fed. Reg. 52389-52393; <i>most recently continued by notice of 09/08/25, see 90 FR 43901.</i>
73.	E.O. 14059	12/15/21	Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade	86 Fed. Reg. 71549-71553; <i>further authority invoked in E.O. 14097 of 04/27/23; most recently continued by notice of 12/10/25, see 90 FR 57865.</i>
74.	E.O. 14064	02/11/22	Protecting Certain Property of Da Afghanistan Bank for the Benefit of the People of Afghanistan	87 Fed. Reg. 8391-8393; <i>most recently continued by notice of 01/20/26, see 91 FR 3311.</i>

75.	Proc. 10371*	04/21/22	Declaration of National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Russian-Affiliated Vessels to United States Ports	87 Fed. Reg. 24265-24266; <i>most recently continued by notice of 04/15/26, see 91 FR 20861.</i>
76.	E.O. 14078	07/19/22	Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home	87 Fed. Reg. 43389-43394; <i>most recently continued by notice of 07/15/25, see 90 FR 33869.</i>
77.	E.O. 14105	08/09/23	Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern	88 Fed. Reg. 54867-548; <i>most recently continued by notice of 08/06/25, see 90 FR 38601.</i>
78.	E.O. 14115	02/01/24	Imposing Certain Sanctions on Persons Undermining Peace, Security, and Stability in West Bank	89 Fed. Reg. 7605; <i>most recently continued by notice of 01/14/25, see 90 FR 5467; terminated by E.O. 14148 on 01/20/25, see 90 FR 8237.</i>
79.	E.O. 14117	02/28/24	Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern	89 Fed. Reg. 15421-15430.
80.	E.O. 14144	01/16/25	Strengthening and Promoting Innovation in the Nation's Cybersecurity	90 Fed. Reg. 6755-6771; <i>this order was a modification of E.O. 14028 of 05/12/2021; further amended by E.O. 14306 on 06/06/25.</i>
81.	E.O. 14156	01/206	Declaring a National Energy Emergency	90 Fed. Reg. 8433-8437; <i>expanded by E.O. 14241 of 03/20/25; relied on for additional steps taken in E.O. 14262 of 04/08/25; expanded by E.O. 14386 of 02/11/26, presidential determination 2026-08 of 04/20/26, presidential determination 2026-09 of 04/20/26, presidential determination 2026-10 of 04/20/26, presidential determination 2026-11 of 04/20/26, and presidential determination 2026-12 of 04/20/26; continued by notice of 01/12/26, see 91 FR 1667.</i>
82.	E.O. 14157	01/20/2025	Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists	90 Fed. Reg. 8439-8440.

83.	Proc. 10886	01/20/2025	Declaring a National Emergency at the Southern Border of the United States	90 Fed. Reg. 8327-8329; <i>clarified by E.O. 14167 of 01/20/25; further authority invoked by presidential memorandum on 04/11/25; modified by notice of 07/15/25, see 90 FR 37371; continued by notice of 01/12/26, see 91 FR 1665.</i>
84.	E.O. 14193	02/01/2025	Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border	90 Fed. Reg. 9113; <i>modified by E.O. 14197 of 02/03/25, E.O. 14193 took effect on 03/04/25; amended by E.O. 14226 of 03/02/25, E.O. 14231 of 03/06/25, E.O. 14324 of 07/30/25 (revised by E.O. 14388 of 02/20/26), and E.O. 14325 of 07/31/25; modified by E.O. 14389 of 02/20/26.</i>
85.	E.O. 14194	02/01/2025	Imposing Duties To Address the Situation at Our Southern Border	90 Fed. Reg. 9117; <i>modified by E.O. 14198 of 02/03/25, E.O. 14194 to take effect on 03/04/25; amended by E.O. 14227 of 03/02/25; amended by E.O. 14324 on 07/30/25 (revised by E.O. 14388 of 02/20/26); modified by E.O. 14389 of 02/20/26.</i>
86.	E.O. 14195	02/01/2025	Imposing Duties To Address the Synthetic Opioid Supply Chain in the People's Republic of China	90 Fed. Reg. 9121; <i>amended by E.O. 14200 of 02/05/25, E.O. 14228 of 03/03/25, E.O. 14256 of 04/02/25, E.O. 14259 of 04/08/25, E.O. 14324 of 07/30/25 (revised by E.O. 14388 of 02/20/26), and E.O. 14357 of 11/04/25; modified by E.O. 14389 of 02/20/26.</i>
87.	E.O. 14203	02/06/2025	Imposing Sanctions on the International Criminal Court	90 Fed. Reg. 9369; <i>continued by notice of 01/20/26, see 91 FR 3309.</i>
88.	E.O. 14257	04/02/2025	Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits	90 Fed. Reg. 15041; <i>amended by E.O. 14259 of 04/08/25; modified by E.O. 14266 of 04/09/25, E.O. 14298 of 05/12/25, E.O. 14309 of 06/16/25 and E.O. 14316 of 07/07/25; amended by E.O. 14324 on 07/30/25 (revised by E.O. 14388 of 02/20/26); modified by E.O. 14326 of 07/31/25, E.O. 14334 of 08/11/25, E.O. 14345 of 09/04/25, E.O. 14346 of 09/05/25, E.O. 14358 of 11/04/25, E.O. 14360 of 11/14/25 and E.O. 14389 of 02/20/26; continued by notice of 03/24/26, see 91 FR 15517.</i>
89.	E.O. 14323	07/30/2025	Addressing Threats to the United States by the Government of Brazil	90 Fed. Reg. 37739; <i>modified by E.O. 14361 of 11/20/25 and E.O. 14389 of 02/20/26.</i>

90.	E.O. 14373	01/09/2026	Safeguarding Venezuelan Oil Revenue for the Good of the American and Venezuelan People	91 Fed. Reg. 2045.
91.	E.O 14380	01/29/2026	Addressing Threats to the United States by the Government of Cuba	91 FR 5085; <i>modified by E.O. 14389 of 02/20/26; expanded by E.O. 14404 of 04/01/26.</i>