**UNITED STATES OF AMERICA**
**BEFORE THE**
**UNITED STATES DEPARTMENT OF ENERGY**

**Order No. 202-25-7**

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# REQUEST FOR INTERVENTION, REHEARING, AND STAY BY MICHIGAN ATTORNEY GENERAL DANA NESSEL


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Pursuant to section 313*l* of the Federal Power Act ("the Act"), 16 U.S.C. § 825*l*, Michigan Attorney General Dana Nessel, on behalf of the people of the State of Michigan, requests that the Department of Energy (Department or DOE) grant rehearing of Order No. 202-25-7 (August 20, 2025) ("Extension Order" or "Order"). The Order invokes the Department's emergency authority under section 202(c) to command the J.H. Campbell power plant (J.H. Campbell or the Campbell Plant) in West Olive, Michigan to remain in operation until November 19, 2025, thereby extending the effect of Order No. 202-25-3 (the "May 23 Order"), which had prevented the long-scheduled retirement of that facility.

The Order is an unlawful abuse of the Department's emergency authority. Until now, the Department has reserved section 202(c) for real emergencies like natural disasters and extreme weather, and has typically acted at the behest of grid operators or governmental bodies. In the Order, acting on its own motion and without notice, the Department declares that the retirement of J.H. Campbell presents an emergency. But the Order's emergency determination cannot bear even the mildest scrutiny.

The scheduled retirement of J.H. Campbell was the culmination of a carefully planned process that unfolded over four years. Under the oversight of the Michigan Public Service Commission (MPSC), Consumers Energy (Consumers) executed a plan to retire an old and inefficient facility, J.H. Campbell, and replace it largely with newer resources that would both increase Consumers' available generation capacity and save its ratepayers money. J.H. Campbell's proposed retirement was also studied

carefully by the Midcontinent Independent System Operator (MISO), the regional grid operator, which determined that the facility could retire without causing reliability issues.

In the Order, the Department uses its authority under section 202(c) in a manner untethered from the need to identify a real emergency and unhindered by the statutory requirement that the actions it orders go no further than necessary to address the emergency. The result of this overreach will be unnecessary costs imposed on already-overburdened ratepayers, needless pollution emitted into Michigan and its neighboring states, and an unprecedented intrusion into the authority of states and the Federal Energy Regulatory Commission to regulate the resource adequacy of our electric grid.

## I. MOTION TO INTERVENE

The Michigan Attorney General,[1] on behalf of the people of the State of Michigan, moves to intervene in this proceeding and thereby to become a party for purposes of Section 313*l* of the Act, 16 U.S.C. § 825*l*. The People of the State of Michigan have an interest in and are aggrieved by the Order in several ways. First, households and businesses in Michigan will pay higher electricity bills as a result of the Order. The retirement of J.H. Campbell and its replacement with more cost-

[1] *See* MCL 14.28 ("The attorney general . . . may, when in [her] own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested."). *See also In re Certified Question*, 465 Mich 537, 543-545; 638 NW2d 409 (2002); *Gremore v Peoples Community Hospital Authority*, 8 Mich App 56; 153 NW2d 377 (1967); *People v O'Hara*, 278 Mich 281; 270 NW2d 298 (1936).

effective resources were elements of a careful plan expected to save Michigan ratepayers nearly $600 million.[2] By ordering the continued operation of J.H. Campbell, the Order ensures that Michigan ratepayers will pay higher costs. Although the precise amounts of costs are not yet known, Consumers Energy, the operator and primary owner of the Campbell Plant, noted a "net financial impact" of $29 million to continue operating the plant through June;[3] this appears to reflect nearly $1 million in costs net of revenues per day over that period.

Second, the People of the State of Michigan will suffer environmental harms as a result of the Order. J.H. Campbell is a significant source of particulate matter, nitrogen oxides, sulfur oxides, and carbon dioxide,[4] among other pollutants. By prolonging the operations of J.H. Campbell beyond its planned retirement date, the Order will increase the amount of pollution emitted in the state of Michigan, causing harms to the public health and welfare.[5] Third, the retirement of J.H. Campbell on May 31, 2025, was a critical element of a settlement agreement in Michigan Public Service Commission Case (MPSC) No. U-21090, to which the Michigan Attorney General was a party. Because the Order deprives the Michigan Attorney General of

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[2] *See* Michigan Public Service Commission Case No. U-21090-0867, Reply Brief of Consumers at 1 – 2, available at https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y0000032ZSXAA2.
[3] *See Consumers Energy Company Form 10-Q For the Quarterly Period Ended June 30, 2025*, accessible at https://www.sec.gov/ix?doc=/Archives/edgar/data/0000201533/000081115625000071/cms-20250630.htm ("Between the start of the emergency order and June 30, 2025, the net financial impact of complying with the order was $29 million, for which recovery will be sought through FERC in a subsequent proceeding after a modification to the MISO Tariff is established.").
[4] *See In the Matter of the Application of Consumers Energy Co. for Approval of Its Integrated Res. Plan Pursuant to Mcl 460.6t & for Other Relief.*, No. U-21090, 2022 WL 2915368, at *73 (June 23, 2022).
[5] *See* Affidavit of Douglas Jester, Attachment JJ.

the benefit of her bargain under the settlement agreement, the Michigan Attorney General will suffer a discrete and separate harm as a result of the Order.

Finally, as discussed more fully below, state authority over generation resources has been a bedrock principle of the Federal Power Act for nearly a century. Federal intrusion in that traditional sphere of state control is permitted only consistent with specific procedures not followed here. Michigan's sovereign interest in seeing its state laws followed and not unlawfully disturbed further warrants the Attorney General's intervention.[6]

## II. BACKGROUND

### A. DOE's Historical Use of Section 202(c).

In the past, the Department has used section 202(c) sparingly. The Department used this authority only in response to concrete, particularized emergencies, and subject to limitations to ensure that the Department's reach extends no further than necessary to address the emergency at hand.

Between enactment of the Department of Energy Organization Act in 1977, Pub. L. No. 95-91, and the end of last year, the Department appears to have used section 202(c) nineteen times, not counting amendments and extension orders. DOE's first usage of section 202(c) came in response to the California Energy Crisis in 2000.[7]

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[6] *See Alaska v. U.S. Dep't of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) ("It is common ground that States have an interest, as sovereigns, in exercising 'the power to create and enforce a legal code.'") (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982)).

[7] DOE, *Order Pursuant to Section 202(c) of the Federal Power Act* (Dec. 14, 2000). Section 202(c) was used by the Federal Power Commission prior to the Department of Energy Organization Act's creation

That order was followed by two others directing the operation of the Cross-Sound Cable, a submarine transmission line connecting New York and Connecticut that was complete but that had been delayed from entering service due to environmental permitting issues.[8] But by far the most common usage – comprising 13 of 19 instances – has been in response to extreme weather events such as hurricanes,[9] extreme cold,[10] and extreme heat.[11] In each of these weather-driven cases, the exercise of emergency power was requested by the relevant system operator or responsible utility, or both. And in each, DOE carefully limited its remedy to ensure that generation facilities were only ordered to run in circumstances necessary to address the emergency and in a manner so as to minimize any conflict with environmental requirements.[12] DOE also limited the duration of those orders to the minimum period necessary to address the emergency, often shorter than 10 days.[13]

Prior to the May 23 Order, DOE had used section 202(c) on three occasions to delay the retirement of generation facilities.[14] These cases had key features in

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of DOE. Those uses were generally limited to orders directing interconnection as a result of discrete and sudden emergencies or war. *See* Benjamin Rolsma, *The New Reliability Override*, 57 U. Conn. L. Rev. 789, 822 (2025).

[8] *See* DOE Order No. 202-02-1 (Aug. 16, 2002); DOE Order No. 202-03-01 (Aug. 14, 2003).

[9] *See* DOE Order Nos. 202-05-1 & -2 (Sept. 28, 2005) (response to Hurricane Rita); DOE Order No. 202-08-1 (Sept. 14, 2008) (Hurricane Ike); DOE Order No. 202-20-1 (Aug. 27, 2020) (Hurricane Laura); DOE Order No. 202-24-1 (Oct. 9, 2024) (Hurricane Milton).

[10] *See* DOE Order No. 202-21-1 (Feb. 14, 2021); DOE Order No. 202-22-3 (Dec. 23, 2022); DOE Order No. 202-22-4 (Dec. 24, 2022).

[11] *See* DOE Order No. 202-20-2 (Sept. 6, 2020) (responding to extreme heat in California); DOE Order No. 202-21-2 (responding to extreme heat, wildfires and drought in California); DOE Order Nos. 202-22-1 & 2 and amendments (same).

[12] *See supra* notes 3 – 5.

[13] *Id*.

[14] Nor did the DOE's predecessor agency, the Federal Power Commission, use section 202(c) to delay retirement of any generation units between the section's enactment in 1935 and the formation of DOE in 1977. *See* Rolsma, 57 U. Conn. L. Rev. at 843-46.

common. In each: (i) the order was requested by a system operator or governmental body; (ii) the generation facility had ceased or would soon cease operation due to an inability to comply with environmental laws; (iii) the request aimed to address a concrete and particularized emergency threatening an imminent loss of load; and, (iv) DOE tailored its order to go no further than necessary to address the emergency.

The first such instance came in 2004, when the District of Columbia's Public Service Commission requested an order directing the continued operation of a power plant located in Alexandria, Virginia, owned by the Mirant Corporation (Mirant). After its state regulator found the plant to be out of compliance with its air permit, Mirant abruptly announced that the plant would close.[15] The D.C. Public Service Commission, supported by the local utility, PEPCO, explained that the Mirant facility directly powered downtown D.C. and that, without it, critical federal infrastructure faced an unacceptable risk of blackout.[16] Before acting on the request, the Department commissioned an analysis from the Oak Ridge National Laboratory that confirmed the threat that the plant's closure would pose to reliability in D.C.[17] Based on that study, and based on the severity of the harm that could result from a prolonged power outage to downtown D.C., the Department issued an order directing the continued operation of the Mirant facility.[18] The Department took pains, however, to limit its order to go no further than necessary to address the emergency. The

[15] DOE Order No. 202-05-3 (Dec. 20, 2005) at 1 (explaining that Mirant provided emissions information to its state regulator on August 19, 2005, the regulator demanded immediate action that same day, and Mirant decided to cease operations on August 24).
[16] *Id*. at 2.
[17] *Id*. at 3 – 4.
[18] *Id*. at 5 – 8.

Department directed Mirant to maintain the facility's capacity to respond when needed, but only ordered it to run when one or both of the 230 kV transmission lines serving downtown D.C. were out of service.[19]

Twelve years later, in 2017, the Department received a request from the Grand River Dam Authority (GRDA), an Oklahoma state agency, to direct the continued operation of Unit No. 1 at the Grand River Energy Center. GRDA explained that the Grand River Energy Center was needed to provide dynamic reactive power support to the local grid, a fact confirmed by the region's Reliability Coordinator, the Southwest Power Pool (SPP). GRDA explained, however, that it would be unable to provide reactive power without action from DOE. Unit No.1, the subject of the request, had been ordered to close by an Administrative Order of the Environmental Protection Agency. Unit No. 2 had been struck by lightning and was under repair. And, construction of the new Unit No. 3 had been delayed because flooding in Louisiana interfered with the fabrication of essential project materials.[20] The Department granted GRDA's request, ordering Unit No. 1 to remain in operation for 90 days or until Unit No. 2 or Unit No. 3 were brought online, whichever came first.[21] The Department strictly limited its remedy, directing GRDA only to provide "dynamic reactive power support and not real power generation, and only when called upon by SPP for reliability purposes."[22]

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[19] *Id*. at 10 – 11.
[20] Letter Request of Grand River Dam Authority, April 11, 2017. Available at https://www.energy.gov/sites/default/files/2017/05/f34/GRDA%20public%20202%28c%29%20letter.pdf.
[21] DOE Order No. 202-17-1 at 2.
[22] *Id*.

Later that year, the Department received a pair of requests from PJM and Dominion Virginia (Dominion) to direct the continued operation of Units 1 and 2 of the Yorktown Power Station. PJM and Dominion explained that, based on PJM load flow studies, these units were necessary to prevent uncontrolled power disruptions and shedding of critical loads in the North Hampton Roads area east of Richmond.[23] DOE issued an order directing Dominion to maintain operation at the two units, but to dispatch those units "only when called upon by PJM for reliability purposes."[24] DOE later extended the order several times due to the delayed completion of the transmission line needed to resolve the reliability issue. In doing so, DOE cited the "imminent" risk of load-shedding in the North Hampton Roads area absent extension of the order.[25] In its extension order, the Department continued to limit dispatch of the units only when called upon by PJM for reliability purposes and, further, directed PJM and Dominion to exhaust available resources, including demand response and behind-the-meter generation resources, prior to operating the units.[26]

### B. Executive Order 14262 and the White House Strategy to Prop Up the Coal Industry.

Over the past several months, the White House and the Department have sought to radically transform how section 202(c) of the Federal Power Act is applied, departing in almost every material respect from the longstanding approach described above. As shown below, the Order cannot be understood intelligibly as a response to

[23] DOE Order No. 202-17-2, at 1.
[24] *Id*. at 2.
[25] DOE Order No. 202-17-4, Summary of Findings, Sept. 14, 2017.
[26] DOE Order No. 202-17-4 at 2.

a discrete event or emergency akin to past orders under section 202(c). Rather, it can only be understood as part of a long-term and multi-part strategy to preference coal and other fossil fuel generation over politically disfavored energy sources under the guise of grid reliability concerns.

On April 8, 2025, President Trump issued Executive Order 14262, *Strengthening the Reliability and Security of the United States Electric Grid.*[27] The Order, as well as the prior May 23 Order, are properly considered in the context of Executive Order 14262 that preceded and effectively directed them. Executive Order 14262 directs DOE to: streamline and expedite the issuance of emergency orders under section 202(c) and directs DOE to then take a subsequent series of actions related to use of section 202(c) authority, with the ultimate goal of mandating retention of a broad swath of fossil generation resources in the name of meeting White House-directed national resource adequacy objectives. This includes:

- the development of a uniform methodology for assessing capacity reserve margins and identifying "at-risk" regions;
- establishment of a process by which the developed methodology and any analysis results are regularly assessed; and,
- establishment of a protocol to identify generation resources within a region that are critical to system reliability, a mechanism under section 202(c) to ensure such generation resources are appropriately retained and, for resources over 50MW, are prevented from leaving the bulk-power system or converting their source of fuel.[28]

As explained in more detail below, DOE published its resource adequacy analysis on July 7, which the Department has relied on to support the Order.

[27] Executive Order 14262, 90 Fed. Reg. 15521 (April 14, 2025).
[28] Executive Order 14262 section 3(b), (c).

Executive Order 14262 is premised on an allegedly dire need to meet "existing capacity challenges" and the "unprecedented surge in electricity demand" that are placing "a significant strain on our Nation's electric grid" with "reliable supply of energy from all available electric generation sources." In this way, it builds on the earlier-issued Executive Order 14,156, *Declaring a National Energy Emergency*.[29] But a broader look at the Administration's energy policy makes clear that this Executive Order, and DOE's section 202(c) implementing orders, like the Extension Order aimed at propping up the J.H. Campbell plant, are, in fact, part of a broader pattern in which the Administration has expansively invoked emergency powers to achieve long-standing political objectives,[30] rather than respond to genuine, unforeseen crises. The Executive Order was issued concurrently with three other executive actions aimed at supporting the coal industry that were announced at a White House political event explicitly focused on that objective.[31] This event, and the related Executive Order, are one of several in a series of public actions by the Administration aimed at reversing coal plant retirements and promoting fossil fuel generation.

That alleged grid reliability concerns are purely pretext is made clear by the simultaneous efforts by the Administration to actively disrupt the deployment of new,

[29] Executive Order 14262, section 2.
[30] The President has declared nine national emergencies in 2025 alone—more than any other President in the first seven months of an administration. *See* https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act.
[31] New York Times, *Trump Signs Orders Aimed at Reviving a Struggling Coal Industry* (April 8, 2025); Executive Order 14261, *Reinvigorating Americans Beautiful Clean Coal Industry and Amending Executive Order 14241*, 90 Fed. Reg. 15517 (April 14, 2025); Executive Order 14260, *Protecting American Energy from State Overreach*, 90 Fed. Reg. 15513 (April 14, 2025); *Regulatory Relief for Certain Stationary Sources To Promote American Energy*, 90 Fed. Reg. 16777 (April 21, 2025).

lower-cost electric generating capacity to help meet the very resource adequacy "crisis" it claims to be motivating DOE's extraordinary exercise of emergency power. Over the past two months, the Administration has taken a variety of actions to actively slow deployment of wind and solar energy, despite the fact that these resources generally are among the fastest, lowest cost tools available to meet new electric demand.[32] This has included subjecting these resources to substantial additional political review;[33] adopting new policies to put a thumb on the scale against deployment of these resources on federal land,[34] or in highway corridors;[35] and making it more difficult for these resources to claim tax credits.[36] Perhaps most stark has been the recent issuance of stop work orders halting the completion of new, largely-constructed energy projects,[37] thereby disrupting their ability to provide

[32] U.S. DOE, Clean Energy Resources to Meet Data Center Electricity Demand, https://www.energy.gov/gdo/clean-energy-resources-meet-data-center-electricity-demand [https://perma.cc/M2L3-LPUN ] ("Today, solar energy, land-based wind energy, battery storage, and energy efficiency are some of the most rapidly scalable and cost competitive ways to meet increased electricity demand from data centers").

[33] U.S. Dep't of Interior, Memorandum from Gregory Wischer, Deputy Chief of Staff – Policy, to Assistant Secretaries, Bureau and Office Heads (July 15, 2025), https://www.doi.gov/media/document/departmental-review-procedures-decisions-actions-consultations-and-other

[34] U.S. Dept't of Interior, Order No. 3438, Managing Federal Energy Resources and Protecting the Environment (Aug. 1, 2025), https://www.doi.gov/document-library/secretary-order/so-3438-managing-federal-energy-resources-and-protecting

[35] U.S. Dep't of Transportation, President Trump's Transportation Secretary Sean P. Duffy: Biden-Buttigieg Ignored the Dangers of Wind Turbines Near Railroads & Highways, Put Climate Religion Ahead of Safety (July 29, 2025), https://www.transportation.gov/briefing-room/president-trumps-transportation-secretary-sean-p-duffy-biden-buttigieg-ignored.

[36] Executive Order 14315 § 3(a) (directing the Secretary of Treasury to "strictly enforce the termination of the clean electricity production and investment tax credits"); IRS Notice 2025-42, *available at* https://www.irs.gov/pub/irs-drop/n-25-42.pdf.

[37] Orsted, Revolution Wind receives offshore stop-work order from US Department of the Interior's Bureau of Ocean Energy Management (Aug. 22, 2025), https://orsted.com/en/company-announcement-list/2025/08/revolution-wind-receives-offshore-stop-work-order--145387701; *see also* Diana DiGangi, Trump administration to revoke approval for 2.2-GW Maryland Offshore Wind, Utility Dive (Aug. 27, 2025), https://www.utilitydive.com/news/trump-maryland-offshore-wind-revoke-approval-ocean-city/758717/

hundreds of megawatts of electric generating capacity that their regions are counting on to meet the very increases in demand allegedly motivating the Administration's section 202(c) activities.[38]

### C. The Planned Retirement of JH Campbell

#### *i. Description of J.H. Campbell*

J.H. Campbell is a three-unit coal-fired power plant with a total rated net generating capability of approximately 1,420 megawatts (MW).[39] In its current degraded condition, however, J.H. Campbell has a maximum capacity of 1,180 MW. Unit 1 is 63 years old and has a rated net generating capability of 261 MW and an effective maximum capacity of 220 MW.[40] Unit 2 is 58 years old and has a rated net generating capability of 356 MW and an effective maximum capacity of 260 MW.[41] Unit 3 is 45 years old and has a rated net generating capability of 843 MW and an effective maximum capacity of Unit 3 is 700 MW.[42] Consumers operates the entire Campbell Plant and is the sole owner of Units 1 and 2. Consumers owns about 93% of Unit 3, the Michigan Public Power Agency owns 4.8% of Unit 3, and Wolverine Power Supply Cooperative owns less than 2% of Unit 3.[43]

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[38] ISO Newswire, ISO-NE statement on Revolution Wind stop work order, https://isonewswire.com/2025/08/25/iso-ne-statement-on-revolution-wind-stop-work-order/

[39] Michigan Public Service Commission (MPSC) Case No. U-21585, Direct Testimony of Richard Blumenstock, p. 7, Table 1 (5 Tr 1394-95), Attachment E; *see also* Consumers Energy, J.H. Campbell Complex Retirement,https://www.consumersenergy.com/about-us/electric-generation/campbell-complex-retirement, last checked June 11, 2025 (reporting 1,450 MW of capacity).

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] MPSC Case No. U-21090 (Kapala Direct, 7 Tr 1739), Attachment F; Ex. WPSC-1, p. 19 (Agreement, p. 11), section 2.1, available at https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000001QqldAAC.

J.H. Campbell and Consumers' service territory are located within MISO Local Resource Zone 7. Most of the lower peninsula of Michigan is in MISO Zone 7, except for a small area in the southwest portion of the State, which is in PJM.

*ii. State proceeding approving the retirement of J.H. Campbell*

In 2021, Consumers proposed to retire J.H. Campbell in 2025 for economic reasons. The MPSC thoroughly reviewed the proposed retirement for a year in an integrated resource plan (IRP) proceeding governed by Michigan statute.[44] No party in the case opposed the retirement of Units 1 and 2; and only a few opposed the retirement of Unit 3.[45] The MPSC ultimately approved Consumers' proposed retirement of J.H. Campbell in a settlement joined by most of the parties to the case. A single party appealed the MPSC's decision to approve the retirement of Unit 3, but the Michigan Court of Appeals affirmed that decision in 2023.[46] Both the MPSC and the appeals court found that Michigan would still have more than enough generating capacity to serve demand after J.H. Campbell retired.[47]

Michigan's IRP statute requires electric utilities whose rates are regulated by the MPSC to periodically file an IRP. The IRP is a projection of the utility's load obligations and a plan to meet those obligations.[48] The IRP statute directs the MPSC to approve a plan if the MPSC determines that it "represents the most reasonable

[44] MCL 460.6t.

[45] MPSC Case No. U-21090, Order approving contested settlement, June 23, 2022, p. 8, Attachment G.

[46] *Wolverine Power Supply Coop., Inc. v Michigan Public Service Commission (In re Consumers Energy)*, 2023 Mich. App. LEXIS 2045; 2023 WL 2620437 (March 23, 2023).

[47] *Id*.

[48] MCL 460.6t(3).

and prudent means of meeting the electric utility's energy and capacity needs."[49] To make that decision, the statute instructs the MPSC to consider whether the IRP appropriately balances seven statutory factors: (i) resource adequacy and capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement; (ii) compliance with applicable state and federal environmental regulations; (iii) competitive pricing; (iv) reliability; (v) commodity price risks; (vi) diversity of generation supply; and (vii) whether proposed levels of peak load reduction and energy waste reduction are reasonable and cost effective.[50]

The IRP statute also directs the MPSC to establish – among other things – computer modeling scenarios that must be used to analyze the costs of possible plans in an IRP, including costs associated with plant retirement dates.[51] In the modeling used to prepare its 2021 IRP, Consumers determined that it would be most cost-effective to retire the entire J.H. Campbell plant in 2025.[52] Later in the proceeding, Consumers conducted more modeling that compared other possible retirement dates to a 2025 retirement and again concluded that the most cost-effective retirement date was 2025.[53] Among other things, parties to the IRP case noted that the 2025 retirement of J.H. Campbell would save ratepayers $150 million in avoidable capital expenditures.[54]

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[49] MCL 460.6t(8)(a).
[50] *Id.*
[51] MCL 460.6t(1).
[52] MPSC Case No. U-21090 (Blumenstock Direct, 3 Tr 99 and 147-49), Attachment H, available at https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000001OEXnAAO.
[53] *Id.* (Walz Rebuttal, 3 Tr 364-73 & Ex A-123; Blumenstock Rebuttal, 3 Tr 178-79).
[54] MPSC Case No. U-21090, Order approving contested settlement, *supra* n.45.

After months of litigation, most of the parties reached a settlement agreement, which Consumers filed with the MPSC on April 20, 2022.[55] The settlement agreement approved the retirement of J.H. Campbell – but it also approved the construction, procurement, and extension of other major generating resources. The net effect of these changes was to substantially increase the total generating resources available to MISO Zone 7.

*iii. Effect of Consumers' overall plan on resource adequacy*

MISO measures capacity for resource adequacy purposes in zonal resource credits (ZRCs). One ZRC is equal to one MW of deliverable seasonal accredited capacity, which is the net amount of capacity MISO calculates it can reasonably expect from a resource.[56]

Consumers' IRP projected that the entire J.H. Campbell plant would provide 1,346 ZRCs in 2024, its last full year of planned operation.[57] In recognition of the reduced capacity that would result from the retirement of J.H. Campbell, the settlement authorized Consumers to acquire the Covert gas plant, which Consumers has done.[58] At the time, the Covert plant was in the PJM regional transmission organization – but after acquiring it, Consumers redesignated the Covert plant as

[55] MPSC Case No. U-21090-0777 (Settlement Agreement), available at https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000002gLkGAAU, Attachment I.

[56] MISO Knowledge Base, KA-01402, available at https://help.misoenergy.org/knowledgebase/article/KA-01402/en-us#:~:text=Zonal%20Resource%20Credits%20(ZRC)%20are,Seasonal%20Accredited%20Capacity%20(SAC); MISO, Resource Adequacy, available at https://www.misoenergy.org/planning/resource-adequacy2/resource-adequacy/#t=10&p=0&s=FileName&sd=desc.

[57] MPSC Case No. U-21090, Order approving contested settlement, June 23, 2022, p. 33.

[58] *Id*. at 5.

part of MISO Zone 7.[59] This action added 1,114 ZRCs to Zone 7 – almost enough by itself to offset the ZRCs removed by the Campbell retirement.[60]

The settlement also authorized Consumers to continue operating Units 3 and 4 of the Karn plant – peaking units that burn natural gas and oil – until 2031, rather than retire them in 2023 as originally planned.[61] This action maintained another 784 ZRCs in Zone 7 beyond what was in Consumers' original plan.[62] The settlement agreement also authorized Consumers to develop or acquire 250 ZRCs of new solar generation by mid-2025, increasing to 852 ZRCs by mid-2028; added 94 ZRCs of demand response and energy waste reduction by mid-2025; and added 71 ZRCs of new battery storage in 2024-2027.[63] The settlement also provided that Consumers would issue a solicitation for power purchase agreements (PPAs) that would provide capacity beginning in 2025/2026, right after J.H. Campbell's retirement.[64] The PPA solicitation would seek up to 500 MW of dispatchable generation, and up to 200 MW of clean energy resources.[65]

Overall, the plan approved in the settlement was projected to increase Zone 7's capacity by at least 127 ZRCs by June 2025 – an increase that will grow to at least 923 ZRCs by 2028, not including the 700 MW of additional capacity sought in the PPA solicitations.[66]

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[59] *Id*. at 91.
[60] *Id*. at 50.
[61] *Id*. at 11.
[62] *Id*.
[63] *Id*. at 23.
[64] *Id*. at 6-7. In MISO, the planning year runs from June 1 through May 31.
[65] *Id*.
[66] *Id*. at 24.

*iv. MPSC approval of the settlement and affirmance on appeal*

Consumers' IRP settlement agreement was supported by most parties in the case, including Consumers, Staff, the Attorney General, consumer advocates, a transmission company, commercial and industrial customers, businesses in the advanced energy sector, environmental groups, and third-party energy developers.[67] The MPSC approved the Settlement Agreement on June 23, 2022.[68] The state commission found that the plan embodied in the settlement "is the most reasonable and prudent means of meeting Consumers' energy and capacity needs."[69]

In reaching these conclusions, the MPSC specifically addressed resource adequacy.[70] After discussing the record evidence regarding the Covert plant, Karn units 3 and 4, new battery storage, and ongoing investments in solar, energy waste reduction, and demand response,[71] the MPSC concluded that "the approval of the settlement agreement will enhance resource adequacy in Zone 7 in both the near-term and long-term."[72] One party, Wolverine Power Supply Cooperative, appealed the MPSC's decision to approve the Campbell Plant retirement. The Michigan Court of Appeals affirmed the MPSC. The court specifically addressed resource adequacy, quoted the MPSC's findings about the generating resource additions, and found that the state commission's decision was based on substantial evidence.[73]

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[67] *Id*. at 30-31.
[68] *Id*. at 87-93.
[69] *Id.* at 95.
[70] *Id.* at 90-93.
[71] *Id*.
[72] *Id.* at 92.
[73] *Wolverine Power Supply Coop., Inc. v Michigan Public Service Commission (In re Consumers Energy)*, 2023 Mich. App. LEXIS 2045; 2023 WL 2620437 (March 23, 2023).

*v. Subsequent proceedings before the MPSC show that both Consumers' service territory and Michigan as a whole will have sufficient capacity this summer and for years to come*

Filings in MPSC proceedings regarding capacity supply and resource adequacy demonstrate that there is no capacity shortfall. To the contrary, the most current available information is that both Consumers and MISO Zone 7 will have sufficient capacity this Fall and for years to come. In its current capacity demonstration filing to the MPSC, Consumers projects a surplus of 35 ZRCs for Planning Year 2025-26, a surplus of 484 ZRCs for PY 2026-27, a surplus of 662 ZRCs for PY 2027-28, and a surplus of 851 ZRCs for PY 2028-29.[74] All of these figures exclude any capacity from J.H. Campbell.[75] Consumers also plans to add 1,027 ZRCs of new generation in the next three years.[76]

Consumers' ZRC projections compare Consumers' available resources not just to projected actual demand but to the planning reserve margin requirement (PRMR). MISO establishes the PRMR as the amount of reserve margin target necessary to meet NERC's Loss of Load Expectation (LOLE) standard of 1 day in 10 years.[77] NERC defines the LOLE as "the expected number of days per year for which the available generation capacity is insufficient to serve the daily peak demand."[78]

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[74] MPSC Case No. U-21775, Consumers Energy's Capacity Demonstration Filing, February 24, 2025, Ex. 2, available at: https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs00000bz8crAAA, Attachment J.

[75] MPSC Case No. U-21775, MPSC Order, August 21, 2025, p. 19, available at: https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs000016Zd18AAC, Attachment K.

[76] *Id.*, Ex. 5.

[77] MISO Resource Adequacy Business Practices Manual, BPM-011-r31, p. 27, Section 3.4.2 LOLE Analysis, Attachment L; MPSC Case No. U-21775, Capacity Demonstration Results Report, May 12, 2025, p. 9, Attachment M.

[78] NERC Probabilistic Assessment Technical Guideline, August 2016, p. 2, Attachment N.

For Michigan as a whole, the MPSC Staff finds in its annual capacity demonstration report that – except for one small municipal utility – all Michigan load serving entities "were able to procure the necessary capacity to demonstrate compliance for the current planning year in all four seasons" in Planning Year 2025-26.[79] The Staff Report also finds that there are more than enough resources in Zone 7 to meet the MISO Local Clearing Requirement (LCR) – which is the minimum amount of resources that must be located within a MISO local resource zone to meet the reliability standard.[80] While Zone 7 did not have enough internal resources to meet its entire PRMR, it is not required to do so under MISO rules, and the zone is able to import 785.5 ZRCs of external resources to meet its PRMR for the current planning year.[81]

Looking ahead, the Staff Report projects that Zone 7 will have more than enough resources to meet both its LCR and the PRMR in each of planning years 2026, 2027, and 2028.[82] Zone 7's LCR surplus will increase each year to reach 4,975 ZRCs by Planning Year 2028, and its PRMR surplus will increase each year to reach 3,428 ZRCs by Planning Year 2028.[83]

The MPSC also went on record after the Department issued the May 23 Order that there is no capacity shortfall and no emergency in Consumers' service territory or the broader MISO footprint. In its submittal to FERC in the pending J.H. Campbell

[79] MPSC Case No. U-21775, Capacity Demonstration Results Report, May 12, 2025, p. 6, *supra* n. 77.
[80] *Id*. at 16.
[81] *Id*.
[82] *Id*. at 26, Appendix C.
[83] *Id*.

cost recovery proceeding, the MPSC stated it "adamantly disputes that there is, in fact, an energy emergency that warrants the use of the Federal Power Act to keep the Campbell plant open and operational…"[84] The MPSC noted that Consumers has made sufficient plans in its IRP to serve the electricity needs of its customers 5, 10, and 15 years into the future.[85] The MPSC also noted that Consumers has demonstrated in the state capacity demonstration dockets that it has sufficient capacity to meet its obligations every year since those proceedings began in 2017.[86]

The MPSC also provided a host of reasons why MISO has sufficient capacity and no emergency exists in the broader region:

- MISO's planning resource auction results for the upcoming planning year do not indicate any resource adequacy deficiencies in any part of MISO as all local resource zones had more than enough committed resources to meet their LCRs.[87]
- MISO's Independent Market Monitor (IMM) identified an error in the NERC Long-Term Reliability Assessment on which the Department based Order No. 202-25-3, which NERC ultimately acknowledged and corrected – lowering MISO's risk assessment accordingly.[88]

[84] FERC Docket No. EL25-90, submission of MPSC, June 20, 2025, p. 2, Attachment O.
[85] *Id*. at 5.
[86] *Id*.
[87] *Id*. at 7-8, citing MISO Planning Resource Auction Results for Planning Year 2025-26, published April 2025, corrected and reposted May 29, 2025, Slides 18–21, Attachment B.
[88] *Id*., citing Amanda Durish Cook, MISO IMM Blasts NERC Long-term Assessment, Says RTO in Good RA Spot, RTO INSIDER LLC, June 11, 2025, at p 38, available at /www.rtoinsider.com/107764-miso-imm-blasts-nerc-long-term-assessment/.

- An IMM staffer explicitly stated the Campbell Plant is not factored into MISO's clearing prices, is not necessary for reliability, and MISO's auction "already returned a better than one-day-in-10-years standard without the large coal plant."[89]

At an MPSC meeting shortly after the Department issued the May 23 Order, MPSC Chair Dan Scripps said: "We currently produce more energy in Michigan than needed;" and "[t]he unnecessary recent order from the U.S. Department of Energy will increase the cost of power for homes and businesses in Michigan and across the Midwest."[90]

*v. MISO approved the retirement of J.H. Campbell after a detailed study process governed by MISO's FERC-approved tariff*

More than three years before the Secretary issued the May 23 Order, MISO determined through a detailed technical study that retirement of J.H. Campbell would not materially impact reliability in MISO. That determination remains in effect.

Section 38.2.7 of MISO's Open Access Transmission, Energy, and Operating Reserve Markets Tariff requires that the owner of a Generation Resource that is planning to suspend operations of all or a portion of that resource must notify MISO at least 26 weeks in advance by submitting a completed Attachment Y Notice.[91] The

[89] *Id.*
[90] Keith Matheny, *Detroit Free Press,* Trump administration orders Consumers Energy to keep Michigan coal-fired power plant open (May 28, 2025), available at https://www.freep.com/story/news/local/michigan/2025/05/28/trump-consumers-energy-coal-campbell-power-plant-mpsc/83896946007/.
[91] MISO Tariff, Section 38.2.7(a)(i).

Tariff states that MISO will perform an Attachment Y Reliability Study to determine whether the Generation Resource is necessary for the reliability of the Transmission System based on analyses described in the Tariff and criteria in the MISO Business Practices Manuals.[92]

On December 14, 2021, Consumers submitted to MISO an Attachment Y notice of intent to suspend J.H. Campbell Units 1, 2, and 3 effective June 1, 2025.[93] MISO approved the suspension on March 11, 2022.[94] MISO stated that after reviewing the J.H. Campbell suspension for power system reliability impacts, MISO had determined that "the suspension of Campbell Units 1, 2 & 3 would not result in violations of applicable reliability criteria. Therefore, Campbell Units 1, 2 & 3 may suspend without the need for the generators to be designated as a System Support Resource ('SSR') units as defined in the Tariff."[95]

On May 27, 2025, MISO requested that Consumers submit a modified Attachment Y request with a new suspension start date of August 21, 2025, consistent with the date in the May 23 Order.[96] Consumers submitted the modified Attachment Y notice with the new date on May 28, 2025.[97] On May 30, 2025, MISO notified Consumers that with the modification, "the Attachment Y remains as is, still

[92] MISO Tariff, Section 38.2.7(c).
[93] Attachment C (Letter dated December 14, 2021, from Timothy J. Sparks, Consumers Energy, to Andrew Witmeier, MISO, and Attachment Y Notification of Generating Resources Change of Status).
[94] Attachment C (Letter dated March 11, 2022, from Andrew Witmeier, MISO, to Timothy J. Sparks, Consumers Energy, re: Approval of Campbell Units 1, 2 & 3 Attachment Y Suspension Notice).
[95] *Id*.
[96] Attachment C (Email dated May 27, 2025, from Huaitao Zhang, MISO, to Kathy Wetzel, Consumers Energy).
[97] Attachment C (Email dated May 28, 2025, from Rachael Moore, Consumers Energy to Huaitao Zhang, MISO).

approved, except with a new/different start date."[98] On August 21, 2025, Consumers notified MISO of its intent to further modify its Attachment Y notice "such that the Campbell Plant will now suspend on December 3, 2025, to account for the DOE Order period plus a reasonable ramp down period at the close of the DOE Order."99

### D. The May 23 Order and Michigan AG's Request for Rehearing

On May 23, 2025, the Secretary of Energy issued an order pursuant to section 202(c) of the Federal Power Act, determining that an emergency exists in the region of the country served by MISO "due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes" and ordering Consumers and MISO to ensure the continued operation of J.H. Campbell for at least 90 days notwithstanding the longstanding plan to retire the facility on May 31, 2025.

The May 23 Order claimed that an "emergency situation" allegedly necessitated invocation of section 202(c). It pointed primarily to "*potential* tight reserve margins during the summer 2025 period," citing to the North American Electric Reliability Corporation (NERC) 2025 Summer Reliability Assessment, including the statement that MISO is "at elevated risk of operational reserve shortfalls during periods of high demand or low resource output."[100] The May 23 Order then described the retirement of thermal generation capacity including the retirement of approximately 2,700 MW of coal-fired capacity in Michigan since 2020

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[98] Attachment C (Email dated May 30, 2025, from Marc Keyser, MISO, to Rachael Moore, Consumers Energy).

99 Letter from Sri Maddipati, VP Electric Supply. Consumers Energy, to Andrew Witmeier, Director of Resource Utilization, MISO (August 21, 2025), Attachment LL.

[100] DOE Order 202-25-3 at 1 (emphasis added).

and the scheduled May 31, 2025, retirement of J.H. Campbell.[101] The May 23 Order acknowledged Consumers' acquisition of 1,200 MW of replacement natural gas capacity and MISO's April 2025 conclusion that its auction resulted in "demonstrated sufficient capacity,"[102] but did not reference, let alone consider, the extensive processes that MISO and the MPSC undertook to evaluate and mitigate any reliability or resource adequacy risk that would be caused by the retirement of J.H. Campbell.[103] Nor did the May 23 Order describe any actions that MISO or Consumers had taken or could take to mitigate any alleged emergency conditions short of ordering the continued operation of the plant. Rather, the May 23 Order relied almost exclusively on:

- The general statement in NERC's 2025 Summer Reliability Assessment that there is anticipated to be "elevated risk of operating reserve shortfalls"
- Language in MISO's Planning Resource Auction Results for Planning Year 2025-26 that, "for the northern and central zones, which includes Michigan, 'new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources,'" and that the results "reinforce the need to increase capacity" and,
- Language from the MISO Auction Results that the summer months have, relative to other times, the "highest risk and tighter supply-demand balance."[104]

The May 23 Order concluded that "additional dispatch of the Campbell Plant," for the 90-day duration of the order and on conditions contained in the order, "is necessary to best meet the emergency and serve the public interest."[105] As a result, the May 23 Order mandated that:

[101] *Id.* at 1.
[102] *Id.* at 2.
[103] *See* Section II.C *supra*.
[104] DOE Order 202-25-3 at 2.
[105] DOE Order 202-25-3 at 2.

- MISO and Consumers Energy take all necessary steps to ensure the Campbell Plant is available for dispatch;[106]
- MISO employ economic dispatch of the plant, and that Consumers comply with all such dispatch orders;[107]
- All operation of J.H. Campbell "must comply with applicable environmental requirements . . . to the maximum extent feasible while operating consistent with the emergency conditions."[108]
- MISO submit reports to DOE on plant operations, environmental impacts, and actions taken to comply with the Order.[109]
- "Relevant governmental authorities" take such action as necessary to enable MISO to effectuate the dispatch and operation of the units.[110]
- Consumers request any necessary revisions or waivers to effectuate the order with FERC.[111]

On June 18, 2025, the Michigan Attorney General filed a request for rehearing with the Department, which demonstrated that the May 23 Order was legally unsound and factually baseless.[112] On July 24, the Michigan Attorney General petitioned for review of the May 23 Order in the United States Court of Appeals for the District of Columbia Circuit.[113]

### E. The July 7 Resource Adequacy Report

On July 7, 2025, the Department published "*Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid"* pursuant to EO 14262.[114] The *Resource Adequacy Report* explained that its purpose was "to evaluate both the current state of resource adequacy as well as future pressures

[106] *Id.* at 2 (Ordering Paragraph A).
[107] *Id.* (Ordering Paragraph A).
[108] *Id.* at 3 (Ordering Paragraph C).
[109] *Id.* at 3 (Ordering Paragraph B, D).
[110] *Id.* at 3 (Ordering Paragraph E).
[111] *Id.* at 3 (Ordering Paragraph F).
[112] Michigan AG Request for Rehearing (June 18, 2025), Attachment P.
[113] *Michigan v. U.S. Dep't of Energy*, Petition for Review (D.C. Cir. July 24, 2025), Attachment Q.
[114] U.S. Dep't of Energy, Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid (July 7, 2025), https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf, Attachment R (RAR)

resulting from the combination of announced retirements and large load growth."[115] The *Resource Adequacy Report* acknowledges its required publication under EO 14262 and its intended role in resource adequacy planning: "EO 14262 mandates the development of a uniform methodology for analyzing current and anticipated reserve margins across regions of the bulk power system regulated by the Federal Energy Regulatory Commission (FERC)."[116] DOE plainly stated that one purpose of the *Resource Adequacy Report* is to "guide reliability interventions."[117]

Despite the *Resource Adequacy Report's* ambition to establish a new mechanism of resource adequacy planning, DOE provided no public notice or request for comment on the methods or reliability standards DOE may have considered. The result of that flawed process is a report riddled with errors, including flawed and unexplained assumptions for load growth projections and resource retirements and additions.[118] The *Resource Adequacy Report* also does not address actions already being taken by states, utilities, and regional grid operators to meet increased load growth or how markets are already responding to increasing demand.[119] Nevertheless, despite this array of assumptions biased towards identifying resource

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[115] *Id.* at i.
[116] *Id.* at vi.
[117] *Id.* at vi.
[118] The Report itself even admits that it is lacking in information held by "entities responsible for the maintenance and operation of the grid," which "could further enhance the robustness of reliability decisions." *Id.* at i.
[119] *See,* Ric OConnell, *GridLab Analysis: Department of Energy Resource Adequacy Report*, GRIDLAB.ORG, July 11, 2025, accessible at https://gridlab.org/gridlab-analysis-department-of-energy-resource-adequacy-report/ (GridLab explaining in its analysis that: "[m]arkets and utilities have already responded with plans to add new capacity and fast track new resources…. [t]hese include PJM's Reliability Resource Initiative, which plans on adding 11 GW of new firm resources by 2030. SPP and MISO both have proposals at FERC (called ERAS) that could add another 30 GW of firm resources…. [t]hose three regional efforts alone would add roughly twice what the DOE assumed for the entire nation.").

adequacy shortfalls, the *Resource Adequacy Report* reported that in its model of current system conditions, MISO "did not experience shortfall events."[120] In other words, the Department found that currently there is no resource adequacy shortfall in MISO.

On August 6, 2025, the Michigan Attorney General joined a coalition of other state attorneys general in filing a Motion to Intervene and Request for Rehearing as to the *Resource Adequacy Report*.[121] Specific issues identified in the Multistate Request for Rehearing included that the *Report* is "arbitrary, capricious, contrary to law, and unsupported by substantial evidence in violation of the Administrative Procedure Act and Federal Power Act because it suffers from numerous analytical, mathematical, and empirical flaws" such as those described above and more fully in the Multistate Request.[122] On September 5, 2025, the Department sent a letter to the state attorneys general stating that the Resource Adequacy Report was not an order reviewable under section 313 of the Federal Power Act, but was "simply a report that details the current condition of the United States electrical grid."[123]

**F. The Extension Order**

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[120] RAR at 20.

[121] *See* Motion to Intervene and Request for Rehearing by the Attorneys General of Maryland, Washington, Minnesota, Michigan, Illinois, Arizona, Colorado, Connecticut, and New York, *In re: Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid, July 2025*, (the "Multistate Request for Rehearing" or "Multistate Request"), Attachment S. The challenges to the Report raised in that Multistate Request are hereby incorporated by reference in this rehearing request.

[122] *Id.* at Section III ("Statement of Issues and Specifications of Errors"). Also on August 6, 2025, the Natural Resources Defense Council, the Ecology Cetner, Environmental Defense Fund, Environmental Law and Policy Center, Public Citizen, Sierra Club, and Vote Solar, filed a Request for Rehearing as to the DOE Report.

[123] Letter of Tina Francone to State Attorneys General (Sept. 5, 2025), Attachment T.

On August 20, 2025, the Department issued this Order. In the nearly ninety days that had passed since the initial Order, DOE had ample time to seek comment as to whether an extension was necessary or conduct other process. It chose not to. Instead, DOE again acted on its own motion, without notice, and on the eve of the Order's August 21st expiration.

The Extension Order relies both on the summer-specific "emergency" purportedly justifying the original Order as well as new "emergency" conditions "likely to continue" for "*years*".[124]

First, as to the Summer "emergency," the Order reasons that the Campbell Plant will remain necessary "to maintain reliability in MISO this summer."[125] After recounting the flawed basis for the May 23 Order, as "evidence[]" of that "need," the Extension Order points to the fact that the Campbell Plant generated 664,000 MWh (gross) in June, that MISO issued various alerts in June, July, and August, and that a NOAA report predicted that Michigan had a 40% chance of higher-than normal temperatures this summer.[126]

Second, the Order asserts a general resource adequacy "problem" in MISO supposedly dating as far back as 2022 and as far in the future as 2030.[127] In support, the Order catalogues steps MISO has taken to *remedy* resource adequacy concerns. Those include a 2021 filing with FERC seeking authority, which FERC granted over

[124] Order No. 202-25-7 at 7 (emphasis added).
[125] *Id.* at 2.
[126] *Id.* at 2-3.
[127] *Id.* at 3-7.

three years ago, to establish resource adequacy requirements throughout the year.[128] The Order also points to a 2023 MISO study, which predicted that by 2027 there would be a risk of loss of load in the Fall equal to the risk in the Summer—without acknowledging that that same report predicted that the Summer risk would be much lower than it had been in 2023.[129] And, the Order notes a 2024 MISO report that identified non-summer resource adequacy concerns, but ignores that same report's discussion of the ways in which MISO has already "shifted from its annual summer-focused resource adequacy construct to a new framework that establishes resource adequacy requirements on a seasonal basis for four distinct seasons."[130] The Order also points to a report issued on June 6, 2025, by the Organization of MISO States and MISO, which predicted capacity deficits beginning in 2027 and growing through 2030.[131] But the Order itself acknowledged that the report identified a 3.1 GW *surplus* of capacity in Summer 2026 and that MISO is already taking actions to address the distant, potential resource adequacy deficits.[132] Finally, the Extension Order relies on EO 14262 and DOE's *Resource Adequacy Report* to substantiate a general "energy crisis." In discussing the general "energy crisis" and general resource

[128] *Id.* at 3; *see* M*idcontinent Independent System Operator, Inc.,* FERC Docket No. ER22-495-000 (Nov. 30, 2021). This request was approved by FERC on August 31, 2022. Midcontinent Independent System Operator, Inc.*,* 180 FERC ¶ 61,141 (2022).
[129] *See* Extension Order at 4; *see Attributes Roadmap*, MISO (Dec. 2023) at 11, https://cdn.misoenergy.org/2023%20Attributes%20Roadmap631174.pdf, Attachment U.
[130] *MISO's Response to the Reliability Imperative*, MISO (Updated Feb. 2024), https://cdn.misoenergy.org/2024+Reliability+Imperative+report+Feb.+21+Final504018.pdf, Attachment V; *see* Extension Order at 4.
[131] Extension Order at 4-5; *see 2025 OMS-MISO Survey Results*, OMS and MISO (Updated June 6, 2025), Attachment W.
[132] Extension Order at 5 (citing M*idcontinent Independent System Operator, Inc.,* 192 FERC ¶ 61,064 (2025) (approving MISO's proposed ERAS process)).

adequacy "problem" stretching across most of a decade, the Order never identifies what role, if any, J.H. Campbell's continued operation over the subsequent 90 days might play in remedying that "crisis" or "problem."

Nevertheless, the Order concludes that "continued operation of the Campbell Plant" will "best meet" an emergency that will "continue in the near term" and is "likely to continue in subsequent years." Accordingly, the Order mandates that the Campbell Plant "remain in operation until November 19, 2025."[133] It further orders that:

- MISO and Consumers Energy "take all measures necessary to ensure that the Campbell Plant is available to operate."[134]
- MISO "take every step to employ economic dispatch of the Campbell Plant to minimize cost to ratepayers."[135]
- Operation of the Campbell Plant "must comply with applicable environmental requirements, . . . to the maximum extent feasible while operating consistent with the emergency conditions."[136]
- MISO submit reports to DOE on plant operations, environmental impacts, and actions taken to comply with the Order.[137]
- Consumers request any necessary revisions or waivers to effectuate the order with FERC.[138]
- The Campbell Plant "shall not be considered a capacity resource."[139]

### G. The September 8 Rehearing Order

On September 8, 2025, DOE issued an Order (the Rehearing Order) addressing arguments raised by Michigan and other parties in their respective requests for

[133] *Id.* at 7.
[134] *Id.* at 8 (Ordering Paragraph A)
[135] *Id.*
[136] *Id.* (Ordering Paragraph C).
[137] Id. (Ordering Paragraph D).
[138] *Id.* (Ordering Paragraph E).
[139] *Id.* (Ordering Paragraph G).

rehearing of the May 23 Order.[140] Although DOE had previously denied rehearing of the May 23 Order by operation of law—i.e., by declining to respond—the Rehearing Order provided some responses to the arguments presented in parties' previous requests for rehearing, retroactively "modified" the May 23 Order in limited respect, and otherwise "sustained" the "result" of the May 23 Order.[141] The Rehearing Order also granted Michigan's motion to intervene, but purported to "take no position" as to whether Michigan is an "aggrieved" party under Section 313 of the Federal Power Act.[142]

[140] DOE Order No. 202-25-3B (Sept. 8, 2025) (Rehearing Order) .
[141] *See* Rehearing Order at p. 24.
[142] Rehearing Order at 23-24; *see* 16 U.S.C. § 825*l*.

## III. STATEMENT OF ISSUES AND SPECIFICATIONS OF ERROR

As explained in Section IV below, the Michigan Department of Attorney General submits the following statement of issues and specifications of error:

1. The Order is contrary to law because it fails to establish the existence of an emergency under section 202(c) or the Department's regulations implementing section 202(c), and fails to provide substantial evidence to support its emergency finding. The statutory text, legislative history, judicial construction and DOE's regulations all confirm that an "emergency" is an occurrence that is sudden, unexpected and requiring immediate action. The Order introduces no facts that would satisfy that definition. 16 U.S.C. § 824a(c); 10 C.F.R. § 205.371; *Richmond Power and Light v. FERC*, 574 F.2d 610, 615 (D.C. Cir. 1978); *Otter Tail Power Co. v. Fed. Power Comm.*, 429 F.2d 232, 233-34 (1970).

2. The Order is contrary to law because it exceeds the Department's statutory authority. Abusing a statute meant only for emergencies, the Order intrudes on authority reserved to States and to other federal regulators to regulate resource adequacy. Section 202(c) does not vest DOE with general regulatory authority over resource adequacy, or the authority to decide which power plants may retire except for so long as a true emergency exists. The Department may not "discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority." *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 724–25, (2022) (quoting *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 324 (2014))(internal quotations omitted).

3. The Order fails to present substantial evidence for its emergency determination and fails to exercise reasoned decision-making by ignoring critical facts and shortcomings in its analysis. Specifically, the Order: (i) fails to explain or acknowledge that the *Resource Adequacy Report* (itself procedurally, methodologically, and substantively flawed) flatly contradicts the Order's emergency finding; (ii) fails to acknowledge that MISO approved the retirement of J.H. Campbell through the study process governed by its FERC-approved tariff; (iii) the Order makes no effort to review the proceedings before the MPSC, or to note any consultation with Michigan officials as required by 42 U.S.C. § 7113; and (iv) the Order fails to provide any specific evidence or reasoning why J.H. Campbell must remain in operation, why alternative measures are inadequate, and generally why avoiding retirement of the Campbell Plant would "best meet the emergency and serve the public interest." *See, e.g.*, 16 U.S.C. § 824a(c); 10 C.F.R. § 205.373; 16 U.S.C. § 824*l*(b) (factual assertions in orders under the Federal Power Act much be supported by substantial evidence); *E.g. Emera Maine v. FERC*, 854 F.3d 9, 22 (D.C. Cir. 2017) (order under the Federal Power Act must reflect "a principled and

reasoned decision supported by the evidentiary record" (quotation marks omitted)); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) (an "agency must make findings that support its decision, and those findings must be supported by substantial evidence").

4. The Order is contrary to law because section 202(c) provides no authority for the Department to command a generator to engage in "economic dispatch," 16 U.S.C. § 824a(c); *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001) (absent statutory authorization, an agency's "action is plainly contrary to law and cannot stand"), and arbitrary and capricious because, even if the Department had such authority, it provides no reasoned basis for commanding "economic dispatch" as necessary to "best meet the emergency and serve the public interest." 16 U.S.C. § 824a(c); 5 U.S.C. § 706(2).

5. The Order is arbitrary and capricious and contrary to law because the Department failed to limit its remedy as required by section 202(c)(2). The Order fails to adhere to the temporal constraint, the environmental constraints, and the renewal procedural requirements imposed by section 202(c)(2). 16 U.S.C. § 824a(c)(2), (4)(B); 5 U.S.C. § 706(2).

6. The Order violates the National Environmental Policy Act because it fails to assess the environmental consequences of a major federal action significantly affecting the human environment. 42 U.S.C. § 4321; *et seq*.

## IV. REQUEST FOR REHEARING

### A. The Department Has Failed to Establish the Existence of an Emergency under Section 202(c) or the Department's Regulations Implementing Section 202(c).

#### *i. Congress limited DOE's authority under section 202(c) to the unique circumstances of war or emergency*

Section 202(c) confers an extraordinary power. Enacted in 1935, section 202(c) empowered the Federal Power Commission to command action from market participants and—crucially—to do so freed from most of the core procedural

safeguards, jurisdictional boundaries, and substantive limitations that undergird the rest of the Federal Power Act. While the rest of the Act authorizes action only after opportunity for hearing,[143] section 202(c) allows the Federal Power Commission (now the Department) to act on its own motion and without prior notice. And in profound contrast to the rest the Federal Power Act and general utility law principles,[144] section 202(c) empowers the Department to require utilities to incur costs—through a command to provide generation or transmission service—without first considering the impact to ratepayers or whether the resulting rates will be just and reasonable. It comes as no surprise, therefore, that when Congress granted the Commission this extraordinary power, Congress restricted its use to extraordinary circumstances. Section 202(c) authorizes action only "[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." The Act permits some measure of flexibility with respect to what type of events may cause the

[143] *See e.g.*, 16 U.S.C. §§ 824a(b), 824a(e), 824a-1(a), 824a-3(f), 824a-4, 824b(a)(4), 824c(b), 824d, 824e, 824f, 824i(b), 824j, 824j-1, 824k, 824m, 824o & 824p.

[144] Two cornerstones of the law of regulated utilities are the filed rate doctrine and the rule against retroactive ratemaking. As FERC has explained, "a central purpose of the filed rate doctrine and the rule against retroactive ratemaking is to protect ratepayers from being subjected to an additional surcharge above the rate on file for service already performed." *Old Dominion Elec. Coop.*, 154 FERC ¶ 61,155 (2016). In its June 6, 2025, complaint filed in FERC Docket No. EL25-90, Consumers asserted that the filed rate doctrine and the rule against retroactive ratemaking are inapplicable in the context of an order under section 202(c). *Consumers Energy v. MISO*, 192 FERC ¶ 61,158 at P 14; *see* Attachment X. The Commission granted Consumers' petition, enabling retroactive rates to recover the costs of the May 23 Order. *Id.* at P 35.

emergency, allowing for "other causes" beyond those enumerated, and affords the Secretary a measure of discretion in his evaluation of what constitutes an "emergency," 16 USC 824a(c)(1) . But the Act is clear that any such event, including a "shortage of electric energy," must be one that constitutes an "emergency," a determination that may extend only to such "emergencies" as fall within the meaning of that term using the traditional tools of statutory interpretation.[145] That the statute directs the Secretary to determine how "best" to meet such an "emergency" in his "judgment" "is not a roving license to ignore the statutory text. It is but a direction to exercise discretion within defined statutory limits."[146]

Because the Act does not define "emergency," the Department must look first to the public meaning of that word at the time of enactment.[147] Webster's New International Dictionary of the English Language (1930) defined "emergency" as a "sudden or unexpected appearance or occurrence . . . . An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency." Contemporary dictionaries likewise define "emergency" to refer to a circumstance that is "unexpectedly arising, and urgently demanding immediate attention."[148]

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[145] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395, 401 (2024) (role of court is always to "interpret the statute and effectuate the will of Congress, including when the statute "delegates discretionary authority to an agency")
[146] *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007).
[147] *See* Bostock v. Clayton Cnty., Georgia, 590 U.S. 644, 654 (2020); *id.* at 657-58 (relying on dictionary definitions contemporaneous with statutory enactment to determine public meaning).
[148] *See Acuity Ins. Co. v. McDonald's Towing & Rescue, Inc.,* 747 F. App'x 377, 380–81 (6th Cir. 2018) (addressing a statute that leaves "emergency" undefined and quoting 7 Oxford English Dictionary 231 (2012) among others to supply a definition).

These definitions accord with the legislative history of the Federal Power Act, which characterized section 202(c) as a temporary authority to be used in response to "crises":

> This is a temporary power designed to avoid a repetition of the conditions during the last war, when a serious power shortage arose. Drought and other natural emergencies have created similar crises in certain sections of the country; such conditions should find a federal agency ready to do all that can be done in order to prevent a break-down in electric supply.[149]

The few courts that have had occasion to opine on the meaning of "emergency" in section 202(c) have likewise emphasized that the provision applies in very limited circumstances, and not as a tool to address longer-term, structural concerns. In *Richmond Power and Light v. FERC*, the D.C. Circuit upheld the Federal Power Commission's judgment that, after the immediate aftermath of the 1973 oil embargo had ended, the lingering need for additional electricity to address the Nation's pressing but longer-term dependence on foreign oil—the dominant feature of national energy policy at the time—was not an "emergency" under the Act, noting that section 202(c) "speaks of 'temporary' emergencies, epitomized by wartime disturbances."[150]

In *Otter Tail Power Co. v. Fed. Power Comm'n,* the U.S. Court of Appeals for the Eighth Circuit described section 202(c) as enabling the Commission to "react to a war or national disaster."[151] The court also distinguished section 202(c) from section 202(b), under which the Commission may also order interconnections, but only after a hearing. The court explained that, whereas section 202(b) "applies to a crisis which

[149] S. Rep. No. 74-621 at 49 (1935).
[150] 574 F.2d 610, 615 (D.C. Cir. 1978).
[151] 429 F.2d 232, 234 (8th Cir. 1970).

is likely to develop in the foreseeable future but which does not necessitate immediate action on the part of the Commission," section 202(c) "enables the Commission to proceed without notice or hearing" to address immediate crises.[152]

Through its regulations, the Department has also interpreted "emergency" for purposes of section 202(c) to mean circumstances that arise suddenly and unexpectedly:

> "Emergency," as used herein, 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 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.[153]

In the Rehearing Order, DOE claims to be unconstrained by the definition of emergency in its own regulations.[154] "It is 'axiomatic,' however, 'that an agency is bound by its own regulations.'"[155] "Although it is within the power of [an] agency to amend or repeal its own regulations, [an] agency is not free to ignore or violate its regulations while they remain in effect."[156] DOE was required to adhere to its own definition of "emergency" here.

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[152] *Id.*
[153] 10 C.F.R. § 205.371.
[154] *See* Rehearing Order ¶ 21.
[155] *Nat'l Env't Dev. Assoc.'s Clean Air Project v. E.P.A.*, 752 F.3d 999, 1009 (D.C. Cir. 2014) (quoting *Panhandle Eastern Pipe Line Co. v. FERC,* 613 F.2d 1120, 1135 (D.C. Cir. 1979) (holding that an agency does not have authority to "play fast and loose with its own regulations")).
[156] *Id.* (quoting *U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C. Cir. 1978)).

While the regulations contemplate that "[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities" may be relevant, the regulation merely acknowledges that such circumstances *"can result in* an emergency as contemplated in these regulations."[157] They do not constitute an emergency themselves, in part because the regulations are clear that an emergency must be "*unexpected*."[158] In fact, the Department addressed this very issue when promulgating the regulations in 1981 and made clear that the definition was *not* intended to be used as a substitute for long-term planning: "The DOE does not intend these regulations to replace prudent utility planning and system expansion."[159] That is why the Department specifically clarified the definition of "emergency" "to indicate that, while a utility may rely upon these regulations for assistance during a period of *unexpected* inadequate supply of electricity, it must solve long-term problems itself."[160]

In summary, the plain meaning of the statutory text, its legislative history, judicial construction, and the Department's own regulations all establish that an "emergency," including one occasioned by a "shortage of electric energy," must be sudden, unexpected, and demanding of "immediate action."

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[157] 10 C.F.R. § 205.371.
[158] *Id.* (emphasis added)
[159] Dep't of Energy, Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power, 46 Fed. Reg. 39,984, 39,985 (Aug. 6, 1981).
[160] *Id.* (emphasis added).

*ii. The Order fails to present facts establishing an emergency under section 202(c) or the Department's regulations*

Even taken as complete and accurate claims (which they are not), the factual assertions made in the Order fail to describe an "emergency" at any point in time, and certainly not throughout the entire effective period of the Order, August 21 through November 19, 2025. To begin, the Order does not claim that the retirement of J.H. Campbell was sudden or unexpected. Nor could it. The retirement of J.H. Campbell was carefully planned over a period of years and was approved by the MPSC through a public proceeding. Further, Consumers' plan to retire J.H. Campbell included a commitment to procure replacement resources that improved its capacity position. And Consumers' proposal to retire J.H. Campbell was approved in advance by MISO after a thorough review of its impact on reliability.

Nothing in the Order suggests that there is an emergency circumstance; that is, a condition that is sudden, unexpected, or demanding of immediate attention. The section of the Order intended to substantiate the emergency, entitled "Continuing Emergency Conditions," contains three sub-sections. First, it recounts routine alerts issued by MISO in June and July of 2025 accompanied by the statement "the summer season has not yet ended."[161] This section is presumably intended to substantiate the continuation of emergency conditions from the date of the Order through the end of the summer period. Second, it notes various resource adequacy initiatives undertaken by MISO in an attempt to show that "MISO's resource

[161] Order at 2.

adequacy problems are not limited to the summer."[162] And, third, it makes claims about projections of capacity shortfalls years in the future. These assertions, even taken in their best light, do not substantiate the existence of an emergency over the effective period of this Order, August 21 to November 19, 2025.

In addition, it is ambiguous from the face of the Extension Order whether the Department intends to continue to rely on the rationales it put forward in support of the May 23 Order, and repeated in brief in the Extension Order.[163] If the Department does intend to so rely, the responses and rebuttals that were presented in the Michigan Attorney General's June 18 Request for Rehearing of the May 23 Order, make clear that these rationales fail to support a proper emergency determination under section 202(c)—and, that they fail to provide substantial evidence for the Department's conclusions—and are hereby incorporated by reference.[164]

*a. Routine alerts issued by MISO in June and July 2025 did not represent an emergency then, and certainly do not indicate that an emergency will exist over the period of the Order*

The Order begins its effort to substantiate an emergency for purposes of section 202(c) by recounting events that occurred during the period covered by the May 23 Order. These events did not constitute an emergency during Summer 2025, and they certainly do not provide evidence of emergency conditions over the period of this Extension Order. The Order points to three facts: (1) the Campbell plant

[162] Order at 3.
[163] Extension Order at 1-2 (summarizing the reasoning in Order No. 202-25-3 and stating that "the emergency conditions that led to the issuance of Order No. 202-25-3 continue").
[164] Michigan AG Request for Rehearing (June 18, 2025), *supra* n. 111, at 23-32.

produced approximately 664,000 MWh (gross) in June 2025 (its lowest generation total for the month of June in years); (2) MISO issued various alerts during the month of June, including an Energy Emergency Alert (EEA) Level 1 on June 23 (the lowest level EEA, undertaken when "the grid is stable"[165]); and (3) MISO called a Max Gen Alert and a Max Gen Warning on July 28 and July 29, respectively (even lower designations that EEA Level 1, also made when the grid is stable[166]). None of these facts come close to establishing an emergency circumstance under section 202(c).

The Order observes that "the Campbell Plant generated approximately 664,000 MWh, running at 61% capacity" in June 2025.[167] This fact appears intended to support the previous sentence, which states that "the Campbell Plant was called on by MISO to generate large amounts of electricity."[168] But this generation total in no way indicates an emergency circumstance. The May 23 Order, unlike past 202(c) orders, did not limit the Campbell Plant's dispatch to emergency circumstances or when called upon by MISO.[169] Rather, it directed MISO to employ economic dispatch of the Campbell Plant.[170] As explained below, dispatching the plant on an economic basis (after it is committed "must run") is expected to result in significantly more frequent operation than what would be required merely to respond to discrete supply shortages or meet emergency needs.

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[165] MISO, Grid Conditions Explainer, Attachment Y.
[166] *Id*.
[167] Order at 3.
[168] *Id*. at 2.
[169] Michigan AG Rehearing Request, *supra* n. 121, at 44-51.
[170] May 23 Order at 2.

In other words, the simple fact that the Campbell Plant dispatched during this period, as DOE required it to do, in no way indicates an emergency circumstance, or that it was "called on by MISO" in any sense relevant to an emergency need or finding.

Moreover, by its own historical standards, the Campbell Plant did not "generate large amounts of electricity" in June 2025. In fact, it generated substantially less in June 2025, 615,812 MWh, than it had during any of the last five Junes.

**Net Generation from J.H. Campbell**[171]

| Month | MWh (net) |
|---|---|
| June 2021 | 767,137 |
| June 2022 | 958,431 |
| June 2023 | 694,018 |
| June 2024 | 649,691 |
| June 2025 | 615,812 |
| **Average** | **737,017** |

The net generation figures above come from DOE's Energy Information Administration (EIA). For reasons it did not make clear, the Order cited gross generation from the Campbell Plant reported by EPA. Gross generation is the

[171] EIA, Form EIA-923.

relevant metric when considering pollution impacts. Net generation is the relevant metric when considering a power plant's contribution to the bulk power system.

Next, the Order points to various routine "alerts" as purported evidence of a section 202(c) emergency. The Order observes that on June 23, MISO issued an EEA Level 1. What the Order does not say is that EEA Level 1 is the lowest such alert. According to MISO, it issues an EEA Level 1 when "the grid is stable."[172] NERC defines the term to mean a circumstance where the "Balancing Authority is experiencing conditions where all available generation resources are committed to meet firm Load, firm transactions, and reserve commitments, and is concerned about sustaining its required Contingency Reserves. Non-firm wholesale energy sales (other than those that are recallable to meet reserve requirements) have been curtailed."[173] In other words, declaration of an EEA Level 1 is an indicator of concern, but not an indicator of a true emergency.

Indeed, one need look no further than DOE's own history implementing section 202(c) to conclude that an EEA Level 1 event does not constitute an "emergency" for purposes of the Act. In numerous recent orders, DOE has used Energy Emergency Alert Level 2 as the *minimum* threshold to trigger generation dispatch,[174] including as recently as June 24, 2025,[175] the day after the June 23 EEA

[172] MISO, Grid Conditions Explainer, *supra* n.151.

[173] NERC, Attachment 1-EOP-011-1 Energy Emergency Alerts, Attachment Z.

[174] Department of Energy Order No. 202-22-4 at 4 (PJM); Department of Order No. 202-22-3 at 4 (ERCOT); Department of Energy Order No. 202-22-2 at 4 (BANC); Department of Energy Order No. 202-22-1 (CAISO); Department of Energy Order No. 202-21-2 at 5 (CAISO); Department of Energy Order No. 202-25-5 at 4 (ERCOT);

[175] Department of Energy Order No. 202-25-5 at 4.

Level 1 event in MISO that DOE now points to as reflecting an emergency. DOE has never previously recognized an EEA Level 1 as constituting an emergency for purposes of section 202(c).

The Order next points to "one Max Generation Warning on July 29 and two Max Generation Alerts on July 28 and 29."[176] These alerts are even less severe than the EEA Level 1, and also are made when, in MISO's words, "the grid is stable."[177] MISO defines Max Generation Alert as "Used for situational awareness, this notification serves as an early alert that system conditions *may* require emergency actions." It defines Max Generation Warning as follows: "This notification asks member operators to prepare for a *possible* situation (an [EEA]) where operating reserve requirements may not be met without taking actions."[178] These kinds of routine alerts, meant as communication tools by the grid operator, do not indicate an emergency under section 202(c) and fall well below the threshold DOE used in a separate, contemporaneous 202(c) order.

*b. Nothing in the Order even arguably establishes the existence of an emergency over the period from September 1 through November 19.*

Even if one granted the demonstrably false premise that there was an emergency condition in MISO this Summer, the Summer is now over, but the Order will continue in effect through November 19. The Order fails to introduce any facts at all to substantiate an emergency condition this Fall. This lack of evidence is noteworthy given that in MISO, as in much of the country, peak electricity demand

[176] Order at 3.
[177] MISO, Grid Conditions Explainer, *supra* n. 151.
[178] *Id.*

falls off considerably in the Fall,[179] making the chances of a capacity shortfall considerably lower. Presumably understanding this fact, the Department devotes three paragraphs of the Order to the generic proposition that "MISO's resource adequacy problems are not limited to the summer."[180] Nothing in these three paragraphs even remotely suggests the existence of an emergency over the period of the Order from September 1 through November 19, 2025.

First, the Order observes that, since 2022, MISO has imposed capacity requirements and administered capacity auctions for all four seasons of the year.[181] This fact merely illustrates that MISO has rules in place to ensure resource adequacy in the Fall. It does not mean that capacity shortfalls are likely in the Fall. And, it most certainly does not establish that emergency conditions will arise in MISO *this* Fall. Indeed, while the Order claims support in the fact that MISO has capacity auctions for all four seasons, it neglects to mention the actual results of MISO's Fall 2025 Planning Resource Auction, which showed available generation capacity well in excess of requirements,[182] and a capacity clearing price for Fall 2025 that is 86% lower than the price for Summer 2025.[183]

Next, the Order points to MISO's publication of its "Attributes Roadmap" for the proposition that "it is expected that by the summer of 2027, there will be an equal

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[179] *See* MISO, Load Modeling Process and Results (Apr. 24, 2025), https://cdn.misoenergy.org/20250424%20LOLEWG%20Item%2003%20Load%20Modeling%20Process%20and%20Results692675.pdf, Attachment AA at 6.
[180] Order at 3-4.
[181] *Id*. at 3.
[182] *See* MISO, Planning Resource Auction Results for Planning Year 2025-26, *supra* n.87, at 19 (showing available capacity, i.e. "offer submitted," well in excess of the local capacity requirement ("LCR") for each zone in MISO).
[183] *Id*. at 2 (Summer 2025 price of $666.50 compared to $91.60 for Fall 2025).

loss of load risk in both the summer and fall seasons."[184] As the Order seems to acknowledge, the Attributes Roadmap forecasted almost no risk of loss of load in the Fall for the 2023/2024 period.[185] Nor did it depict an emergency in Fall 2027; the report indicates that the risk of loss of load in Fall 2027 and Summer 2027 converge, but that is because both risks are fairly low.[186] In any event, nothing in the Attributes Roadmap indicates an emergency circumstance in *Fall 2025*, the only period of relevance for whether DOE has met its burden in supporting a section 202(c) order over the next 90 days.

It is of course true that MISO has made statements to the effect that there are reliability risks in all four seasons of the year, and has implemented programs to address those risks. But these statements and programs simply illustrate that MISO is doing its job, not that MISO takes the view that there is an emergency now or that there will be an emergency in Fall 2025. Indeed, despite its apparent reliance on MISO's programs and selectively-quoted statements of its leaders,[187] the Order once again has failed to acknowledge that MISO itself approved the retirement of the Campbell Plant in 2022 and renewed that determination this Spring.[188] It should

[184] Order at 4.
[185] MISO, Attributes Roadmap (Dec. 2023), supra n. 128, at 11.
[186] *Id*. at 13.
[187] The Order quotes at length the testimony of Jennifer Curran before the House Committee on Energy and Finance. Ms. Curran's general description of "resource adequacy and reliability challenges" falls far short of claiming that there is or will be an emergency circumstance during the period of this Order or ever. At the same time, the Order ignores much more straightforward statements by MISO officials, such as those of Todd Ramey, MISO, Senior Vice President of Markets and Digital Strategy, who stated at a May 2025 FERC Technical Conference on Resource Adequacy that "We are confident that the [MISO] footprint will continue to be resource adequate in the near and longer term." *See* FERC Docket No. AD24-11-000, available at https://www.ferc.gov/media/todd-ramey-miso-senior-vice-president-markets-and-digital-strategy, Attachment BB.
[188] See *supra* at section II.C.v.

come as no surprise then, that, unlike in almost all previous section 202(c) orders, the relevant grid operator (here, MISO) has not requested this order as necessary.

Finally, the declaration of a "national energy emergency" by the President is not itself evidence of an "emergency" for purposes of 202(c). Whatever role EO 14262 may have had in "inform[ing] the Secretary's decision" to issue the May 23 Order,[189] it does not provide "substantial evidence" to support the Secretary's determination. The Department may determine how it takes evidence,[190] and the Department may of course take policy direction from the President. But EO 14262 does not provide particularized facts supporting its conclusory statements about a national shortage of energy, and section 202(c) does not allow the Department to substitute the White House's say-so for "substantial evidence."[191]

*c. Projections of capacity shortfalls that will occur years in in the future, even if accurate, do not demonstrate an emergency over the period of the Order*

The Order claims that the "evidence indicates that there is also a potential longer term resource adequacy emergency in MISO."[192] The Order first seeks to support this assertion by quoting from MISO's description of its 2025/2026 Planning Resource Auction results in which it observed that over that year "new capacity additions were insufficient to offset the negative impacts of decreased accreditation,

[189] *See* Rehearing Order ¶ 40,
[190] *See* 16 U.S.C. § 825g,
[191] *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) ("conclusory statements will not do; an 'agency's statement must be one of *reasoning.*'") (*quoting* Butte Cnty., Cal. v. Hogen, 613 F.3d 190, 194 (D.C. Cir. 2010)); *cf.* Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 230 (1938) ("substantial evidence" standard requires "more than a mere scintilla," and statutory provision allowing evidence inconsistent with rules of evidence "does not go so far as to justify orders without a basis in evidence having rational probative force").
[192] Order at 4.

suspensions/retirements and external resources" in the northern and central zones.[193] This statement in no way indicates a "longer term resource adequacy emergency in MISO," even a potential one. The Order neglects to mention that in the same document MISO concluded that the auction had "demonstrated sufficient capacity at the regional, subregional and zonal levels."[194] It also neglects to mention that the change MISO was referring to in that quote was largely a product of a change in accreditation methodology rather a change in physical resources.[195] In its request for rehearing of the May 23 Order, the Michigan AG explained the Department's mistaken reliance on the MISO Planning Resource Auction. [196] In the Rehearing Order, the Department again ignores MISO's conclusion that the auction had demonstrated sufficient capacity.[197] As the Michigan AG previously argued, the Department continues to draw the wrong inference from the MISO Planning Resource Auction:

> The [May 23 Order] also quotes from a slide that states "For North/Central, new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources." But this slide is simply noting that the total capacity of resources offered into the 2025 auction in the North/Central region was lower than what was offered into the 2024 auction. This slide does not say that the total amount of capacity procured in the North/Central region through the auction was inadequate. In other words, this slide is in no way inconsistent with the conclusion in the same report that the "2025 PRA demonstrated sufficient capacity at the regional, subregional and zonal levels." Further, even as a characterization of the total capacity offered into the auction, the Order

[193] *Id*.
[194] MISO, Planning Resource Auction, Results for Planning Year 2025 – 2026 (April 2025), *supra* n. 87, at 12.
[195] *Id.*
[196] Michigan AG Request for Rehearing (June 18, 2025), *supra* n. 111 at 31-32.
[197] Rehearing Order ¶ 38.

> ignored a crucial fact in this slide. The slide shows that the reason for the decrease in capacity offered was not because of a decrease in physical generating capacity, but because of a change in the capacity accreditation of various resources—most notably, the very "dispatchable generation" that the order prioritizes. This change in MISO's capacity accreditation methodology occurred over the previous year. The bar chart shows a reduction in accredited capacity for gas and coal of 3.4 GW, which is greater than the overall reduction in offered capacity.120 In other words, MISO concluded that coal (and gas) resources, such as J.H. Campbell, should be deemed to contribute less to capacity requirements than it had previously assumed.

Next, the Order points to the results of the 2025 OMS-MISO survey. The Order acknowledges that the OMS-MISO survey finds a surplus of capacity through 2026,[198] which is enough to conclude that the OMS-MISO survey is flatly inconsistent with the finding that there exists an emergency over the period of this Order. For the out-years, under the most-conservative set of assumptions the survey shows some gaps between anticipated demand and the volume of resources indicated by survey respondents. But nothing in the survey suggests that those gaps will remain unfilled. To the contrary, the survey's executive summary states that "Queue and market reforms, improved resource deployment timelines and other initiatives will help maintain resource adequacy through 2031."[199] And the Department ignores entirely the survey's alternative assumptions without any attempt to justify such a blinkered view.

### B. Abusing an Authority Meant for True Emergencies, the Order Intrudes on Authority Reserved to States and to Other Federal Regulators.

[198] Order at 5.
[199] OMS-MISO Survey, *supra* n. 130, at 2.

i. *Long-term resource adequacy is regulated by the states, and by FERC under other provisions of the Federal Power Act*

Resource adequacy refers to the capacity of an electric power system to meet demand reliably at all times, including during system peaks and through potential outages. Resource adequacy is "measured at the system level to capture the overall impact of outages of individual components including generators and transmission."[200] Resource adequacy planning is a long-term process, unfolding over years, through which utilities and system operators, under regulatory supervision, ensure resource adequacy. Resource adequacy planning involves technical and economic considerations that go into determining what resources are added to the grid, which resources qualify as "capacity resources," and which resources should retire and when.

With respect to regulatory oversight for resource adequacy, section 201 of the FPA, 16 U.S.C. § 824(b)(1), reserves authority over generation facilities to the states. It states in pertinent part: "The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, *but shall not have jurisdiction*, except as specifically provided in this subchapter and subchapter III of this chapter, *over facilities used for the generation of electric energy* or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or

[200] NREL, Resource Adequacy Basics, available at https://www.nrel.gov/research/resource-adequacy, Attachment CC.

over facilities for the transmission of electric energy consumed wholly by the transmitter."[201]

Some states have retained this authority over resource adequacy in its entirety.[202] Others have directed or permitted their utilities to join RTO/ISOs that, through their tariffs, impose resource adequacy requirements. Those RTO/ISOs also generally establish markets that allow market participants to buy and sell capacity and thereby to facilitate market entry and exit decisions based on price signals. The federal role in long-term resource adequacy is limited: FERC, through its regulation of just and reasonable interstate rates, may regulate certain aspects of resource adequacy in RTO/ISO tariffs as practices affecting wholesale rates.[203]

In Michigan, the regulation of long-term resource adequacy planning has both a state and federal aspect. As a member of MISO, Consumers has a capacity obligation under the MISO tariff. MISO's resource adequacy requirements, however, are designed to be complementary to the primary role of the states in ensuring resource adequacy.[204] Consumers' investment decisions are regulated by the MPSC.

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[201] 16 U.S.C. § 824(b)(1) (emphasis added).

[202] *See Devon Power LLC et al.,* 109 FERC ¶ 61,154, P 47 (2004) ("Resource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there. States have traditionally designated the entities that are responsible for procuring adequate capacity to serve loads within their respective jurisdictions.").

[203] *See Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 483 (D.C. Cir. 2009); 16 U.S.C. §§ 824d & 824e.

[204] *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,215, 62,606 at P 13 (2020) ("approximately 90% of the load in MISO is served by vertically integrated LSEs, the vast majority of which are subject to state integrated resource planning processes. To accommodate the make-up of the MISO's footprint, MISO's proposed Tariff provisions accepted in the February 2018 Order provide that its resource adequacy requirements "are complementary to the reliability mechanisms of the states and the Regional Entities ... within the [MISO] region."); *see also id*. ("MISO's proposed Tariff language explains that the resource adequacy requirements 'are not intended to and shall not in any way affect

Through the state IRP process (described in Section II.C above), the MPSC exercises regulatory authority over Consumers in order to ensure that the utility obtains the amount of capacity it needs to meet its obligations under the MISO tariff, and that it does so at the best value to ratepayers, and with a composition of resources that otherwise complies with state law, including state environmental requirements.

*ii. Section 202(c) does not vest DOE with general regulatory authority over long-term resource adequacy*

The Order demonstrates the Department's belief it can regulate long-term resource adequacy by declaring an emergency under section 202(c), on the thinnest rationale, that lasts for years on end.[205] By declaring a permanent emergency, the Department appears to believe that it can be the ultimate decider of:

(i) which power plants retire and when;

(ii) how much resource adequacy is appropriate for a particular state or region (without any consideration of the cost/benefit tradeoffs),

(iii) which generators may qualify as capacity resources[206] (thereby superseding a carefully considered, highly complex set of capacity

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state actions over entities under the states' jurisdiction.' In other words, unlike the centralized capacity constructs used in the Eastern RTOs/ISOs, MISO's Auction is not—*and has never been*—the primary mechanism for its [Load Serving Entities] to procure capacity."); *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,311, 62,722 at P 75 (2007) ("From the beginning . . . the Commission has recognized the role that state resource planning plays in managing the resource adequacy of [MISO]").

[205] Order at 7 (describing emergency conditions that "will continue in the near term and are also likely to continue in subsequent years"); *see also* Order at 2 ("The emergency conditions that led to the issuance of Order No. 202-25-3 continue, both in the near *and long term*").

[206] *Id.* at 8, Paragraph G (declaring that "the Campbell Plant shall not be considered a capacity resource.").

qualification criteria for generation resources, designed by the states and MISO and approved by state regulators and FERC[207]); and

(iv) and how those generators shall dispatch.[208]

Section 202(c) does not provide the Department with the authority it claims. Had Congress intended to vest regulatory authority over long-term resource adequacy in section 202(c)—displacing both state law and sections 205 and 206 of the Federal Power Act—it would have stated so clearly. But of course it did not. The authorizing language says no more than that DOE may "require by order . . . such generation . . . of electric energy as in its judgment will best meet the emergency and serve the public interest."

Indeed, it defies logic that, had Congress intended to empower DOE to be the general decider of which power plants may retire across every utility and independent power producer across the entire country—a function with profound implications for rates, state sovereignty, and a broad array of other stakeholder interests—that Congress would have done so through what may be the only provision in the Federal Power Act that empowers the regulator to act without first assessing the effect on ratepayers or seeking public input, and one of the only provisions that extends to otherwise non-jurisdictional utilities such as public power entities and those in ERCOT.

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[207] *See, e.g., Coal. of Midwest Power Producers, Inc.*, 166 FERC ¶ 61,159 (2019) (evaluating a complex dispute about the appropriate capacity eligibility approach in MISO)

[208] Order at 8, Paragraph A (directing MISO to "take every step to employ economic dispatch of the Campbell Plant").

But even if the text of section 202(c) could, theoretically, be stretched to such an expansive reading (which it cannot), the United States Supreme Court has emphatically rejected statutory interpretations whereby an agency "claim[s] to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority."[209] That is exactly what the Department seeks to do here. It seeks to discover in a 90-year-old statute a basis to exercise much broader regulatory authority than it ever has in the past. While it is true, as we explain above in section II.A, that the Department has used section 202(c) to delay power plant retirements on three occasions over the 90-year history, it has always done so at the request of a system operator or governmental body and in a manner narrowly tailored to prevent a concrete and particularized emergency. It has never done so simply to impose its policy preferences ahead of the judgment of those bodies responsible for resource adequacy.[210]

Equally clear, the Department lacks authority to declare that the Campbell Plant is not a capacity resource. Whether the Campbell Plant is or is not a "capacity resource" only has legal meaning by reference to MISO's tariff. MISO's tariff is a wholesale electric rate subject to FERC's jurisdiction under sections 205 and 206 of

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[209] *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 724–25, (2022) (quoting *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 324 (2014)) (internal quotations omitted).

[210] Nor could the Department find authority by characterizing its intervention as one aimed at "reliability" rather than "resource adequacy." In 2005, to establish a mechanism for addressing reliability, Congress adopted a complex regulatory scheme drawing on technical expertise, providing a public input process, and requiring an assessment of tradeoffs, including cost. *See* Energy Policy Act of 2005, Pub. L. 109–58, § 1211(a), 119 Stat. 594, 941-46 (2005) *(*amending the FPA to adopt a reliability regulatory scheme at section 215, 16 U.S.C. § 824o). That Congress did not see fit to provide DOE any formal role, except in the extremely narrow case of a cybersecurity emergency, *see* 16 U.S.C. § 824o-1, is strong evidence that it did not intend DOE to act as an all-powerful regulator of electric grid reliability by invoking its extant authority under section 202(c).

the Federal Power Act. The Department lacks any authority to alter MISO's tariff or to render a determination as to how the Campbell Plant might be evaluated under the MISO tariff.

### C. The Order Fails to Present Substantial Evidence for its Emergency Determination and Fails to Exercise Reasoned Decision-making by Ignoring Critical Facts.

As described above, the Department has failed to provide facts to substantiate the existence of an emergency over the period of the Order. It also ignores several critical facts that are relevant to its emergency finding, and thereby fails to exercise reasoned decisionmaking.

Again, to the extent the Department intends to rely on the facts it presented in the May 23 Order to substantiate an emergency continues during the period of the Extension Order, the responses and rebuttals of the Michigan AG are incorporated herein.[211] The Department's new facts fare no better.

#### *i. The Order fails to acknowledge that the Department's own* Resource Adequacy Report *Contradicts its Emergency Finding*

On July 7, the Department published the *Resource Adequacy Report*, which described its purpose "to evaluate both the current state of resource adequacy as well as future pressures resulting from the combination of announced retirements and large load growth."[212] The *Resource Adequacy Report* further noted that it was intended to "to identify at-risk region(s) and guide reliability interventions."[213]

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[211] Michigan AG Request for Rehearing (June 18, 2025), *supra* n. 111, at 36-43.
[212] RAR at i.
[213] *Id.*

To evaluate the "current state of resource adequacy," the *Resource Adequacy Report* presented what it referred to as the "current system" model. The current system model found "relative reliability" in every region of the country except ERCOT (Texas), meaning that all regions except ERCOT were assessed to have expected loss of load hours (LOLH) and Normalized Unserved Load % that were lower than (i.e. superior to) the report's benchmark levels.[214] With respect to MISO, the *Resource Adequacy Report* stated: "In the current system model . . . MISO did not experience shortfall events."[215] In other words, the study did not identify any capacity shortfalls in MISO under current system conditions.

Yet, the Order includes only two sentences about the *Resource Adequacy Report*: one acknowledging its existence and the fact that it was developed in response to EO 14262,[216] and a second quoting a general, conclusory statement in the report's Executive Summary about the capability of the "Nation's power grid" to meet growing demand over the long-term. Remarkably, after having published a *Resource Adequacy Report* intended to "identify at-risk region(s)" and "guide reliability interventions" such as this one,[217] the Department declined to even acknowledge that the *findings of that report flatly contradict the conclusion of this*

[214] *Id*. at 7.
[215] *Id*. at 20.
[216] The Order also quotes from the findings made in EO 14262, and the previous EO 14156 about the sufficiency of energy production. *See* Extension Order at 6. But generic and unsubstantiated "findings" included in an Executive Order present no evidence, let alone substantial evidence, supporting the particular conclusions that DOE has reached in issuing the Extension Order.
[217] RAR at vi.

*Order that there is now a resource adequacy emergency in MISO.*[218] It would be difficult to conceive of an agency action that more completely fails to meet the standard of reasoned decisionmaking.

*ii. The Order fails to acknowledge that MISO approved the retirement of J.H. Campbell*

As explained in Section II.C above, after a robust, technical, and considered process, MISO approved the retirement of the three J.H. Campbell units pursuant to the study process governed by its tariff. MISO concluded that "the suspension of Campbell Units 1, 2 & 3 would not result in violations of applicable reliability criteria." As also noted above, MISO has sustained that approval twice; first to coincide with the May 23 Order and again to coincide with the end of this Order. As the system operator, MISO has more in-depth knowledge of its system than the Department does. The Department should have explained why it reached a different conclusion than MISO. Instead, the Order failed even to mention that MISO conducted this study and approved the retirement.

*iii. The Order makes no effort to review the findings of the MPSC or to demonstrate consultation with Michigan as required by 42 U.S.C. § 7113*

The Order acknowledges that Consumers acquired the Covert gas plant, but in all other respects fails to acknowledge the MPSC proceeding that approved Consumers' IRP settlement entailing retirement of J.H. Campbell. As explained

[218] As set forth in the Multistate Request for Rehearing, the Resource Adequacy Report suffers from a litany of procedural, methodological, and substantive flaws. *See supra* n.120. But even under its flawed methodology, it did not find a resource adequacy shortfall in MISO. To the extent the Order is relying on the *Resource Adequacy Report* to make determinations about long-term resource adequacy, Michigan reiterates its unanswered claims. *See id.*

above in Section II.C, acquiring the Covert gas plant was not the only action Consumers took as part of that IRP. The IRP also delayed the retirement of the peaking units at the Karn facility and included the acquisition of other new resources, with the result that Consumers' capacity position was set to improve materially even after the retirement of J.H. Campbell. The Order also ignores the Michigan capacity demonstration proceedings that found both Consumers and MISO Zone 7 have sufficient capacity resources in 2025 and in the years to come.

Section 103 of the Department of Energy Organization Act, 42 U.S.C. § 7113, provides:

> Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials.

The Order plainly conflicts with Michigan's energy plan, as reflected in the MPSC's approval of Consumers' IRP. Equally clearly, the Order does not give "due consideration" to the needs of Michigan. Nor does it appear that the Department made any attempt to resolve the conflict it created through consultation with the appropriate State officials. The Department, therefore, has failed to comply with Section 103 of the Department of Energy Organization Act. The September 8 Rehearing Order acknowledged that Section 103 binds the Department but asserted that the provision did not apply to the May 23 Order because consultation was not "practicable" in that context. This assertion was wrong with respect to the May 23 Order: the retirement date of the Campbell Plant had been established years earlier

and there was ample time for consultation. In any event, consultation certainly was practicable prior to thise Order. "[W]here, as here, Congress has directed an agency to consult with States before taking action that may curtail traditional State powers, . . .the agency [must] heed Congress's direction."219

*iv. The Department had the entire 90-day period after the May 23 Order to determine whether to issue another order and had no excuse not to conduct the statutorily required consultation in that time. The Order fails to provide any specific evidence or reasoning why J.H. Campbell must remain in operation and why alternative measures are inadequate*

Even accepting the Order's contention that there exists a capacity shortfall in MISO, it does not follow that commanding the continued operation of J.H. Campbell is the best or even an appropriate means of alleviating the shortfall. As discussed below, *see infra* IV.D, under 202(c) the Department must adopt a remedy that "best meets" the emergency. Whatever the extent of the Secretary's discretion in making that determination, it must be supported by substantial evidence and reasonable decisionmaking. But the Order musters no evidence—certainly not "substantial evidence" —and offers no reasoning justifying the measure it chose over any other.

The Order does not assert that there is a local problem on the grid that only J.H. Campbell can solve. In this respect, the Order departs markedly from past uses of section 202(c) and from the Department's regulations implementing section 202(c),

219 *Cf.* California Wilderness Coal. v. U.S. Dep't of Energy, 631 F.3d 1072, 1087 (9th Cir. 2011) (vacating DOE action for failure to comply with statutory requirement to consult with affecrted states).

which state that: "Actions under this authority are envisioned as meeting a specific inadequate power supply situation."[220]

Rather, the emergency that the Order purports to identify—insufficient resource adequacy—is one that spans the entire fifteen-state MISO region and one that could presumably be addressed by any number of actions across MISO. And, given that J.H. Campbell amounts to well less than 1% of generation capacity in MISO, there likely were options available that would have had a much greater impact on the overall balance of supply and demand. Further, because J.H. Campbell is an over 60-year-old facility in a largely degraded operational state, there presumably were alternative actions available that could have met the purported need with higher levels of reliability. Indeed, the multitude of possible options available for meeting resource adequacy shows why RTO/ISOs like MISO have employed market mechanisms and why states like Michigan rely on integrated resource planning through which a range of different measure for ensuring resource adequacy are evaluated alongside one another.

Yet the Order does not acknowledge any alternatives or explain whether less burdensome measures were exhausted before taking this action.[221] The question of whether alternative measures could have been used to address the "emergency" is made more challenging by the fact that the Order never quantifies the extent of the

[220] 10 C.F.R. § 205.371.

[221] As explained more completely below, section 202(c) authorizes the Department to order only such actions as are "best" able to meet the emergency. This mandate necessarily requires a comparison to potential alternatives. *See Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 218 (2009) (interpreting "best" as a term requiring a comparison to alternatives and to be the alternative that is "most advantageous" on some relevant metric).

emergency it purports to identify within MISO. But that omission merely highlights rather than excuses the deficiencies of the Order.

One possible alternative may have been demand-side measures. The Department's regulations require applicants seeking an order under section 202(c) to provide a "description of any conservation or load reduction actions that have been implemented . . . [and a] discussion of the achieved or expected results."[222] In the Yorktown case, the Department required Dominion to exhaust all demand response measures before dispatching the facility.[223] And yet here the Department failed to make any inquiry or even to consider whether demand-side measures could have addressed the purported emergency. Similarly, the Department's regulations require applicants to describe their efforts made to obtain additional power through third parties.[224] But again, the Department failed to consider whether MISO could alleviate the purported emergency through access to external resources.

Nor does the Order make any attempt to explain how continued operation of J.H. Campbell would meet the supposed "emergency" at all. The Order claims that an "emergency" exists not only in the near term, but also through *2030*.[225] Plainly, a 90-day extension of the Order cannot "best meet" such an emergency. The Extension Order never even gestures at an explanation.

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[222] 10 C.F.R. § 205.373.
[223] *See* DOE Order No. 202-17-4 (Sept. 14, 2017) ("PJM and Dominion shall exhaust all reasonably and practically available resources, including demand response and behind-the-meter generation resources, prior to operating Yorktown Unit 1 or Yorktown Unit 2.")
[224] 10 C.F.R. § 205.373(h).
[225] Order at 5.

### D. The Department's Direction that MISO Operate J.H. Campbell Using "Economic" Dispatch Is Inconsistent with its Authority under Section 202(c) and is Arbitrary and Capricious.

The Department's Order directs MISO to "take every step to employ economic dispatch of the Campbell Plant."[226] The Order indicates that the use of economic dispatch is intended to "minimize cost to ratepayers."[227] However, this mandate to MISO exceeds the authority provided by section 202(c). Nor does the Order explain how the use of economic dispatch is likely to serve the public interest.

The Order does not define "economic dispatch" or specify how it intends MISO to dispatch the units. In the Energy Policy Act of 2005, Congress adopted a definition of "economic dispatch" that generally conforms to accepted use: "the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities."[228] Drawing on this statutory definition, FERC issued a 2006 report, *Security Constrained Economic Dispatch: Definitions, Practices, Issues, and Recommendations,* that provides a useful explanation of the 2-step process that regions have, in practice, adopted to implement economic dispatch.[229] This process includes (1) day ahead unit commitment, in which grid operators commit generators to be online in the subsequent 24-hour period, *determined based on which generators will be most economic*, taking into account each unit's physical operating

[226] *Id*. at 8 (Ordering Paragraph A)
[227] *Id.*
[228] *See* section 1234(b) of the Energy Policy Act of 2005, 42 U.S.C. § 16432(b).
[229] FERC, *Security Constrained Economic Dispatch: Definitions, Practices, Issues, and Recommendations* (July 31, 2006), https://www.ferc.gov/sites/default/files/2020-05/final-cong-rpt.pdf, Attachment DD.

characteristics, and (2) unit dispatch, in which grid operators dispatch committed resources at specified levels, in real-time, *determined based on what set of units will minimize total system costs*, given actual load, generation, and transmission conditions and constraints.[230]

Section 202(c) authorizes DOE to direct certain actions during emergency conditions. As relevant here, section 202(c)(1) provides DOE with "authority . . . to require by order . . . such generation . . . of electric energy as in its judgment will *best meet the emergency* and serve the public interest." In other words, DOE's power extends only to ordering actions that best meet the emergency that the Department has identified. While section 202(c) provides DOE a degree of discretion to determine the appropriate remedy by authorizing action based on the "judgment" of the Secretary, "the use of the word 'judgment' is not a roving license to ignore the statutory text,"[231] The Department must determine that the remedy:

- Is "best" (rather than merely available[232]),
- would "meet" the emergency—that is, that the solution identified is aimed at the circumstances giving rise to the order (under a reasonable interpretation of "emergency"[233]),

[230] *Id.* at 5-6.
[231] *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007).
[232] *See Entergy Corp.,* 556 U.S. at 218 (interpreting "best" as a term requiring a comparison to alternatives and to be the alternative that is "most advantageous" on some relevant metric); Such comparison need not be burdensome, particularly in circumstances—unlike the one at issue here—where an emergency presents itself unexpectedly and for which the Department has limited time to act. But certainly in this case, where the Department had months to evaluate the continued need for J.H. Campbell, the Department cannot reasonably determine that continued operation is "best" without having compared it to alternatives.
[233] *See* Section IV.A.

- and that it serves "the public interest" (under purposes of the Federal Power Act[234]).

Moreover, the Secretary must exercise that judgment in a rational, reasoned, non-arbitrary manner, supported by substantial evidence. [235]

Economic dispatch is not a rational response to the types of emergencies that section 202(c) actually authorizes DOE to address. Nor would economic dispatch be a rational approach to addressing the circumstance that DOE is purporting to address with its order—a potential capacity shortfall—if that were within its authority under section 202(c). In fact, DOE has made no effort to explain why economic dispatch is a rational remedy here—let alone the "best" means of meeting the "emergency" that it has identified.[236] And, unlike prior Orders, here DOE acted on its own motion without a request or input of MISO and so cannot rely on the expertise of the cognizant grid operator or operating utility requesting a specific remedy to justify the appropriateness of economic dispatch.[237]

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[234] *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976) ([T]he term 'public interest' . . . . take[s] meaning from the purposes of the regulatory legislation").

[235] *Emera Maine v. FERC*, 854 F.3d 9, 22 (D.C. Cir. 2017) (order under the Federal Power Act must reflect "a principled and reasoned decision supported by the evidentiary record" (quotation marks omitted); *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) ("conclusory statements will not do; an 'agency's statement must be one of *reasoning.*'") (*quoting* Butte Cnty., Cal. v. Hogen, 613 F.3d 190, 194 (D.C. Cir. 2010)); 16 U.S.C. 825*l*(b).

[236] ARCO Oil & Gas Co. v. FERC, 932 F.2d 1501, 1504 (D.C. Cir. 1991) ("The Commission's conclusory statements cannot substitute for the reasoned explanation that is wanting in this decision").

[237] *See* DOE Order No. 202-18-1 at 4 ("In this situation, the expertise of the applicant was an important factor. The Department received an application from PJM, which . . . holds the highest-level, federally-regulated reliability responsibilities for the system it manages."), https://www.energy.gov/sites/prod/files/2017/11/f46/Summary%20of%20Findings%20Order%20No.%20202-18-1.pdf.

*i. Economic dispatch is not a rational response to a shortage of electric energy*

Economic dispatch is the standard procedure by which operators (such as MISO) operate the grid. However, outside of normal operations, including during emergency conditions, generation units may be selected "out of merit order" as necessary to ensure that generation and load are balanced. Operating a unit pursuant to economic dispatch is, necessarily, inconsistent with operating the unit in a manner designed to address an emergency, such as a shortage of electric energy. If a unit would be dispatched under purely economic conditions, but electric demand can alternatively be met with other existing supply (or demand response) resources, that unit is *not* necessary to meet the emergency. However, if the unit would, in fact, be needed to address a shortage, it should be dispatched regardless of whether its offer price is above or below the market-clearing price. In other words, economic dispatch is not a dispatch rule that is reasonably tailored to ensure that the unit addresses a shortage of electric energy.

Prior DOE orders, during this and prior Administrations, have contained significant operating constraints to satisfy the statutory requirement that the generation "best meet the emergency and serve the public interest." Orders, including an order issued as recently as June of this year, have specified that units subject to a section 202(c) order should only run in specific emergency alert conditions — specific conditions in which grid operators have exhausted the capacity of other available generators, imports, and voluntary demand response, and failure to call on additional

generation will risk involuntary load shed.[238] Similarly, in its order to delay retirement of the Yorktown plant, DOE recognized that dispatch of the units must be constrained, that continued operation of the units under the standard methodologies used by the local utility (Dominion Energy Virginia) and grid operator (PJM) would not be appropriate, and that Dominion and PJM must exhaust available resources, including demand response and behind-the-meter generation resources, prior to operating Yorktown Units 1 or 2.[239] Similarly, in the case of its 2005 District of Columbia Department of Public Service order, the Department directed Mirant to maintain its facility's capacity to respond when needed, but only ordered it to run when one or both of the 230 kV transmission lines serving downtown D.C. were out of service.[240] And in its 2017 order regarding GRDA's Grand River Energy Center Unit 1, the Department strictly limited its remedy, directing GRDA only to provide "dynamic reactive power support and not real power generation, and only when called upon by SPP for reliability purposes."[241] DOE's Extension Order contains no such constraints, and it fails to explain or justify such deviation from consistent past practice.

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[238] DOE Order 202-25-5 (Order issued during recent heat event authorizing operation of Duke Energy North Carolina resources only during Energy Emergency Alert Level 2 or Level 3 events): *see also* DOE Order No. 202-22-4 (authorization under similar conditions); DOE Order No. 202-22-3 (same); DOE Order 202-22-1 (same); DOE Order No. 202-21-2 (same); DOE Order No. 202-21-1 (same).

[239] DOE Order No. 202-17-2 (providing that Yorktown units 1 and 2 may be dispatched "only when called upon to address reliability needs" and directing PJM and Dominion Energy Virginia "to provide the dispatch methodology to the Department upon implementation, and to report all dates on which Yorktown Units 1 and 2 are operated"); DOE Order No. 202-18-1 at 3 (relying on the fact that DOE "require[d] PJM and Dominion to exhaust available resources, including demand response and behind-the-meter generation resources, prior to operating Yorktown Units 1 or 2").

[240] DOE Order No. 202-05-3 (Dec. 20, 2005), District of Columbia Public Service Commission at 10 – 11.

[241] DOE Order No. 202-17-1 at 2.

### *ii. Economic dispatch is an arbitrary response to any alleged capacity shortage*

Indeed, even on DOE's own terms, the justification for the Order does not support ordering J.H. Campbell to operate whenever MISO's economic dispatch rules would select it to operate. The Order points repeatedly to questions about the sufficiency of electric *capacity* and the ability of MISO to meet load during periods of high demand and low resource output over the next 90 days (and possibly for years to come) as the basis for its emergency determination. For example, the Order concludes that "the emergency conditions that led to the issuance of [the May 23 Order] continue, both in the near and long term."[242] This conclusion was and remains based on NERC's 2025 Summer Reliability Assessment, and specifically the finding that "MISO is at elevated risk of operating reserve shortfalls *during periods of high demand and low resource output*"; concerns about the risk of "*capacity* shortfall for MISO"; the extent to which *capacity* of certain generating resources have retired or may retire; and MISO's *capacity* market auction (the Planning Resource Auction Results for Planning Year 2025-26)."[243] The Extension Order doubles down on the fact that DOE's emergency declaration stems from concerns about the sufficiency of capacity (otherwise referred to in the Extension Order as "resource adequacy"). The Order identifies "resource adequacy problems" outside of the summer period as the basis for continuing the order over the full 90-day period.[244] It acknowledges some reliability measures MISO has taken, but discounts them because they are "unlikely

[242] Order at 2.
[243] *Id*. at 1-2.
[244] *Id,* at 3-4.

to result in the addition of any new generation *capacity* in the next few years."[245] It also points to an alleged "longer term *resource adequacy emergency* in MISO,"[246] for which it relies, in part, on DOE's "July 2025 *Resource Adequacy* Report."[247]

But dispatch of J.H. Campbell at any time other than a specifically identified operating reserve shortfall (e.g., a concrete expected supply/demand imbalance)—let alone dispatch whenever the plant would be called upon by MISO's economic dispatch algorithm—is *not* necessary to address the type of emergency that the DOE order identifies. Even if the order sufficiently justified retention of J.H. Campbell as a capacity resource (which it does not for the reasons outlined above), it would not follow that J.H. Campbell's electric *energy* is needed to address the identified emergency.[248]

The Order does attempt to support the need for a section 202(c) determination by pointing to the amount of electric *energy* that J.H. Campbell was called on to generate by MISO during the period covered by the May 2023 Order.[249] But as explained above, the Department gets this causal story backwards. That J.H. Campbell generated 664,000 MWhs at a 61% capacity factor during the month of June is wholly consistent with the fact that the May 2023 Order *directs MISO to operate*

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[245] *Id.* at 5.
[246] *Id.* at 4.
[247] *Id.* at 6.
[248] *See generally Conn. Dep't of Pub. Util. Control*, 569 F.3d at 479 ("'Capacity' is not electricity itself but the ability to produce it when necessary. It amounts to a kind of call option that electricity transmitters purchase from parties-generally, generators-who can either produce more or consume less when required. The penultimate and most proximate buyers of capacity (before the consumers who ultimately shoulder the costs in their utility bills) are called 'load serving entities' or LSEs-the public utilities that deliver electricity to end users.").
[249] Order at 3.

*the plant using economic dispatch* (including, as explained above, must-run unit commitment). It is not evidence that the plant was *needed* during that time as either a capacity resource or as a source of electric energy.

Given the nature of the alleged emergency identified in the Order, no dispatch from J.H. Campbell should be necessary unless and until called upon by MISO expressly to address an emergency purpose.

*iii. "Economic dispatch" is not in the public interest in this case*

Section 202(c) also requires that DOE determine that a given remedy is in the public interest.[250] The public interest determination is not an independent or sufficient criteria to order any particular action. Rather, Congress's use of the conjunctive "and" in section 202(c)(1) clearly prohibits DOE from ordering actions that the Department believes will advance the public interest if those actions exceed what is needed to address the identified emergency. In fact, DOE acknowledged this limit on its authority in its order denying rehearing of its order directing the retention of the Yorktown power plant.[251] Therefore, for the reasons explained above, economic dispatch is not appropriate even *if* DOE determines that it would advance the public interest.

However, DOE's vague direction to MISO to operate Campbell using "economic dispatch" will not further the public interest."[252] DOE's order does not explain why it believes economic dispatch would be in the public interest, other than a general

[250] 16 USC § 824a (c)(1).
[251] DOE Order 202-18-1 at 4.
[252] *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976) ([T]he term 'public interest' . . . . take[s] meaning from the purposes of the regulatory legislation").

reference to "minimize[ing] cost to ratepayers." However, this justification fails for two reasons. First, the Order's reference to economic dispatch is ambiguous and leaves open the likelihood that Consumers will operate the facility even at times when its operation will have the effect of *increasing* costs to consumers For example, Consumers is likely to commit J.H. Campbell into MISO's day ahead electricity market as a "must run" unit, rather than using Emergency commitment.[253] In other words, Consumers will operate the units at least at minimum load every day rather than when there is a forecasted shortfall (e.g., due to unexpected load, unit outage, or a natural disaster). In such circumstances, J.H. Campbell will run at its minimum operational level regardless of whether doing so is truly economic. The prospect that the costs of J.H. Campbell's operation will exceed its revenues, even if operated using "economic dispatch" is even stronger during the 90-day period covered by the Order than it was during the period covered by the May 23 Order. This is because energy prices during "shoulder" seasons such as the Fall are often significantly lower than during the summer and leave plants such as J.H. Campbell "out of the money" for longer periods of time, even while operating at the minimum operational level.[254] As a result, DOE has not justified, and cannot be reasonably certain, that economic dispatch will "minimize cost to ratepayers"— its sole explanation for the operational

[253] *See* MISO Tariff, Section 39.2.5.b.xxvi (discussing Emergency Commitment Status).
[254] POTOMAC ECONOMICS, 2024 STATE OF THE MARKET REPORT FOR THE MISO ELECTRICITY MARKET: ANALYTIC APPENDIX at 21, Figure A19, at *https://cdn.misoenergy.org/2024%20State%20of%20the%20Market%20Appendix709175.pdf* (showing seasonal differences in energy market prices during peak hours).

profile it has directed MISO to adopt.[255] In other words, DOE's ordering of economic dispatch in this case is arbitrary.

Moreover, by directing economic dispatch, rather than reserving J.H. Campbell for discrete supply shortages by committing it as Emergency status, DOE's order will result in the facility operating significantly more than necessary. Because J.H. Campbell is old, and because Consumers has been deferring maintenance in anticipation of its retirement, a significant step-up in operation caused by must-run commitment and economic dispatch will increase the likelihood that one or more units break, requiring costly maintenance to continue operating. Such repairs would likely further increase costs to ratepayers—costs that would be less likely to occur under an operational order better tailored to the emergency that DOE has identified. For example, DOE could have minimized the risk of ratepayer costs had it directed Consumers and MISO to commit (and ultimately dispatch) the facility only after analysis showing a likely near-term supply/demand imbalance or short-term emergency conditions (such as a heatwave, or the forced outage of a large generator or transmission line). The Order is arbitrary and capricious by ordering operation

[255] In the Rehearing Order, DOE asserts that even must-run dispatch of J.H. Campbell would minimize cost to ratepayers "because a price taker can decrease (but cannot increase) the market price." Rehearing Order at ¶ 49. But even if adding J.H. Campbell to MISO's energy supply decreases market *prices*, ultimate *costs* to ratepayers, including the costs of operation that are recovered by Consumers via FERC-regulated rate recovery, would necessarily increase. *See* 16 U.S.C. § 824a(c)(1) ("the Commission, . . . 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"); Consumers Energy Company v. MISO, 192 FERC ¶ 61,158 (Aug. 15, 2025) (granting Consumers' complaint and requiring MISO to establish a cost-recovery mechanism for the J.H. Campbell plant that would be paid for by customers in MISO Zones 1-7).

that risks increasing costs to ratepayers, the very outcome DOE has said it is looking to avoid.

Second, the Order fails to consider, let alone explain away, the fact that the State of Michigan has made an independent judgment that it would be in the best interest of ratepayers, the state, and the environment, to accept Consumers' proposal to retire J.H. Campbell. As explained above, the State of Michigan and MISO each went through robust processes to assess the need for J.H. Campbell (or lack thereof), as well as the economic and environmental impacts of its continued operation. The State of Michigan was not consulted on DOE's Order, notwithstanding the extensive process that it underwent to evaluate whether retirement would be in the public interest. Here, the public interest is best effectuated by respecting Michigan's considered decision to approve the closure of J.H. Campbell plant, rather than to allow its near continuous operation at ratepayer expense.

Finally, for the reasons explained more fully below, the Order fails to consider the increased air and water pollution that will be caused by J.H. Campbell operating pursuant to economic dispatch instructions. DOE fails to even consider these harms, let alone weigh them against the (alleged) benefits of increased operation, in its determination that economic dispatch of the J.H. Campbell plant will further the public interest.

**E. The Department failed to limit its remedy as required by 202(c)(2).**

Section 202(c) imposes strict substantive limits on the Department's authority to issue emergency orders that "*may result* in a conflict with a requirement of any

Federal, State, or local environmental law or regulation."[256] Congress deliberately included these limitations to prevent section 202(c) from becoming a de facto exemption from environmental regulation. Here, DOE failed to comply with the statute's express constraints and therefore acted unlawfully.

*i. Section 202(c)(2) contains distinct and binding legal constraints*

Congress imposed critical limitations on the scope of any DOE emergency order that may result in a conflict with environmental laws:

*Temporal Constraint.* First, DOE must "ensure that such order requires generation . . . of electric energy only during hours necessary to meet the emergency and serve the public interest."[257] Again, this is a conjunctive requirement such that both conditions—operation in a given hour must be necessary to meet the emergency *and* operation in a given hour must serve the public interest—must be satisfied.[258] Moreover, by referring to the "hours" necessary to meet the emergency, Congress placed a high burden on DOE to demonstrate that the remedy provided was narrowly tailored to the specifics of the emergency that the order is designed to address.

*Environmental Constraint.* Second, the Department must "ensure that such order . . ., to the maximum extent practicable, is consistent with any applicable

[256] 16 U.S.C. § 824a(c)(4)(A).
[257] *Id.* § 824a(c)(2).
[258] DOE Order No. 202-18-1 at 4 (Nov. 6, 2017).

Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts."[259]

*Length Constraint.* Third, any order that may result in a conflict with environmental law must "expire not later than 90 days after it is issued."[260] DOE can renew or reissue orders after the 90-day period, as DOE determines is necessary to meet the emergency and serve the public interest.[261]

*Renewal Constraint.* Finally, section 202(c) requires that "in renewing or reissuing" such an order, DOE must consult with the Environmental Protection Agency[262] and "shall include in any such renewed or reissued order such conditions as [EPA] determines necessary to minimize any adverse environmental impacts to the extent practicable."[263]

iii. *The Extension Order is subject to these binding legal constraints*

The Extension Order is "an order issued under [section 202(c)] that may result in a conflict with a requirement of any Federal, State, or local environmental law or

[259] 16 U.S.C. § 824a(c)(2).
[260] *Id*. § 824a(c)(4)(A).
[261] *Id.*
[262] Section 202(c) specifically directs consultation with "the primary Federal agency with expertise in the environmental interest protected by such law or regulation." 16 U.S.C. § 824a(c)(4)(B). For the purposes of environmental interests primarily affected by coal plants, including emissions of air pollutants, water pollutants, and solid waste, EPA is the relevant primary Federal agency. *See* Department of Energy Order 202-17-4 Summary of Findings at 10, *https://www.energy.gov/sites/prod/files/2017/09/f36/Order%20202-17-4%20Summary%20of%20Findings.pdf*.
[263] 16 U.S.C. § 824a(c)(4)(B).

regulation."[264] Therefore, it must comply with the four legal constraints outlined above.

There are numerous environmental requirements that are affected by the continued operation of the J.H. Campbell facility, including Clean Air Act and Clean Water Act permitting requirements,[265] and Michigan's State Implementation Plan implementing the Clean Air Act's National Ambient Air Quality Standards and Regional Haze requirements,[266] among others. The Extension Order includes no provisions that would prevent the operation of J.H. Campbell from operating in a manner that creates conflicts with these requirements. As a result, the Order "may result" in such a conflict. In fact, in its May 23 Order, the Department acknowledged that, as a result of equivalent operational directives as are included in the Extension Order for the exact same facility,[267] "additional generation may result in a conflict with environmental standards and requirements" and so it was required to limit additional generation from J.H. Campbell.[268] The Extension Order also appears to itself acknowledge that it is subject to the legal constraints. The term of the Extension

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[264] 16 U.S.C. § 824a(c)(4)(A).
[265] *See* Michigan Department of Environment, Great Lakes, and Energy, Renewable Operating Permit Issued to Consumers Energy, J.H. Campbell Generating Complex [J.H. Campbell ROP] (July 2, 2021), Attachment EE.
[266] *See, e.g.,* Michigan Department of Environment, Great Lakes, and Energy Air Quality Division, Supplement to Michigan's August 23, 2021, Regional Haze State Implementation Plan Revision for the Second Planning Period at 2 (March 2025), https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/AQD/State-Implementation-Plan/Notices-and-Activities/MI-Regional-Haze-SIP-Supplement-2021.pdf, Attachment KK ("Overall, EGLE's [Long-Term Strategy] *relies on* on-the-books and on-the-way control measures that include, among other things, the retirements of 30 coal and fossil-fuel fired EGUs at 12 different power plants during the second implementation period. . . . On the way are also the retirements of 3 more coal-fired EGUs required under a settlement agreement by May 31, 2025, representing additional reductions in emissions of 2,346 tpy NOX and 12,850 tpy SO2 based on the 2016 inventory.").
[267] *Compare* Extension Order at 7-9 *with* May 23 Order at 2-3
[268] May 23 Order at 2.

Order is only 90 days—the statutory maximum for orders subject to environmental requirement-based legal constraints—despite the fact that DOE's justification explicitly states that the alleged emergency "will continue in the near term and are also likely to continue in subsequent years."[269] And DOE's order states that it "shall not preclude the need for the Campbell Plant to comply with applicable state, local, or Federal law or regulations *following expiration of this Order,*"[270] acknowledging that the plant is not subject to such laws or regulations during the term of the order.

Moreover, the Order is clearly an order renewing or reissuing a prior order. And that prior order was subject to the legal constraints, as the Department itself acknowledged in the May 2023 Order. As such, the Extension Order is subject to the renewal constraint.

*ii. The Order violates Section 202(c)(2)'s temporal constraint*

DOE has directed the unit to operate for the entire statutory maximum of 90 days. And, as described in more detail *supra,* within that 90-day window, DOE has directed the use of "economic dispatch"—an operational direction that will likely result in Campbell operating at least at its minimum output level, and more likely at the maximum output Consumers can manage, taking into account the state of the facility, continuously for the 90-day period—without providing any other temporal limitation on operations. In other words, the Order appears to assume, without explanation, that an emergency will exist in every hour over the entire 90-day period of the Order that Consumers happens to submit a bid into MISO's energy auction

[269] Order at 7.
[270] *Id* at 8 (Ordering Paragraph 8).

that is lower than the market-clearing price. There is no reason to expect that this will actually be the case.

For these reasons, the Order's direction that MISO economically dispatch J.H. Campbell is flatly inconsistent with section 202(c)'s requirement that emergency orders be limited to "only" those "hours" in which operation is necessary to meet the emergency. DOE cannot transform an hour-by-hour limitation into a blanket summer-season waiver—and, now—throughout the Fall—through hand-waving at "elevated risk" of tight operating reserves and "*potential* electricity shortfalls."

DOE's failure to limit dispatch to discrete periods when the generation is needed to address the purported emergency renders the Order unlawful under the plain terms of § 202(c).

*iii. The Order violates section 202(c)(2)'s environmental constraint*

Section 202(c)(2) also requires DOE to ensure, "to the maximum extent practicable," that its orders (1) are consistent with applicable environmental laws and regulations and (2) "minimize any adverse environmental impacts." The Department makes no serious effort to comply with this mandate.

First, the Order contains no analysis of J.H. Campbell's environmental obligations. J.H. Campbell is subject to air pollution requirements limiting its emissions of $SO_2$, $NO_x$, particulate matter, and mercury, and mandates the use of pollution control equipment such as baghouses, dry sorbent injection, and activated carbon injection systems.[271] DOE does not reference these requirements, direct

[271] *See* J.H. Campbell ROP, supra n. 240.

Consumers to optimize the use of pollution controls or avoid operation during air quality episodes (even if those episodes occur at a time when the marginal energy from J.H. Campbell is not needed to meet electric demand), or provide any guidance for how Consumers is to operate the facility in the event that these requirements would come in conflict with its ability to provide power at any given time. It does not clarify what steps Consumers would have to take to ensure continued operation of pollution control equipment in the event such equipment malfunctioned during the 90-day period. Nor does it appear the Department consulted with the State of Michigan, including its environmental regulator, to identify mechanisms to allow J.H. Campbell to remain available in a way that would minimize conflicts with state environmental laws, which the State was uniquely positioned to advise on and which is required by section 103 of the Department of Energy Organization Act.[272] Instead, the Order offers only generic language about "compliance with applicable requirements… to the maximum extent feasible."[273]

Second, the Order does not establish any operational criteria to "minimize any adverse environmental impacts" as required by section 202(c)(2). This requirement is in addition to the direction to minimize conflicts between operations and environmental requirements. It makes clear that Congress intended DOE to go beyond just avoiding regulatory conflicts and to consider proactively the environmental impact of its emergency orders. But DOE did not design its order to minimize environmental impacts of continued operation of J.H. Campbell. In fact,

[272] *See* 42 U.S.C. § 7113.
[273] Extension Order at 8.

DOE's order runs directly contrary to the objective of minimizing environmental impacts by expressly directing MISO to operate J.H. Campbell on an "economic dispatch" basis. That instruction prioritizes low-cost dispatch irrespective of environmental impact. The Order makes no attempt to explain how such operation ensures compliance with applicable environmental requirements to the "maximum extent feasible."

iv. *The Order violates section 202(c)'s renewal constraint*

DOE was obligated to consult with the EPA on its renewal, and to include in its Extension Order "such conditions as [EPA] determines necessary to minimize any adverse environmental impacts to the extent practicable."[274] DOE includes no indication in its Extension Order that it consulted with EPA. Nor can DOE reasonably claim that it consulted with EPA but failed to include an acknowledgment of such consultation in the Extension Order. DOE has consistently acknowledged consultation with other federal agencies on past renewal orders,[275] and section 202(c) requires that the results of its consultation be made public.[276] As a result, DOE has plainly failed to comply with the renewal constraint when issuing its Extension Order.

[274] *See* 16 U.S.C. § 824a(c)(4)(B).
[275] *See* Department of Energy Order 202-17-4 Summary of Findings at 10,
[276] 16 U.S.C. § 824a(c)(4)(B) ("The conditions, if any, submitted by such Federal agency shall be made available to the public").

**F. The Order Violates NEPA.**

Orders issued under section 202(c) are major federal actions subject to NEPA.[277] Such orders direct federal interventions that may affect environmental conditions. The direction to continue operation of J.H. Campbell is unquestionably a major action that significantly affects the environment. Continued operation of J.H. Campbell will result in significant increases of air and water pollution compared to a scenario in which Campbell retired as planned.[278] The May 23 Order directly conceded this point, stating "the additional generation may result in a conflict with environmental standards and requirements."[279] As discussed above, *supra* IV.E., the Extension Order may, too.

For any DOE action affecting the quality of the environment, DOE must comply with NEPA—including through issuance of an environmental impact statement, environmental assessment, categorical exclusion, or special environmental analysis.[280] DOE has not taken, or even initiated, any such action. As such, it is acting contrary to its own NEPA regulations and to its obligations under NEPA.

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[277] 42 U.S.C. § 4336e(10) (defining a "major federal action" as one in which the agency carrying out such action determines subject to substantial Federal control and responsibility.").
[278] *See* J.H. Campbell ROP, *supra* n. 240; State of Michigan Department of Environmental Quality, Authorization to Discharge Under the National Pollutant Discharge Elimination System, Permit No. MI0001422 (May 29, 2018), Attachment FF, accessible through the Michigan Department of Environment, Great Lakes, and Energy's "MiEnviro Portal," https://www.michigan.gov/egle/maps-data/mienviroportal.
[279] Order at 2.
[280] *See* 10 C.F.R. § 1021.102(b).

DOE has previously sought to comply with NEPA for section 202(c) orders through categorical exclusions or special environmental assessments. Neither have been undertaken in this instance. Moreover, neither would be applicable here.

DOE has previously pointed to categorical exclusion B4.4 for "power management activities." However, that categorical exclusion is applicable only "provided that the operations of generating projects would remain within normal operating limits." Here, the Order explicitly authorizes the J.H. Campbell plant to operate beyond its normal permitted limits. Consequently, neither categorical exclusion B4.4, nor any other available exclusion, applies.

More recently, DOE has, on certain occasions, relied on emergency provisions that can excuse agencies from preparing environmental documents before taking such actions,[281] and instead prepared after-the-fact Special Environmental Analyses in the event that an order results in a significant effect on the environment.[282] However, these instances involved sudden emergencies that provided DOE substantially less notice compared to the months or years of advance warning DOE received regarding J.H Campbell's scheduled retirement. In this case, DOE acted in response to circumstances known well in advance: the long-scheduled retirement of J.H. Campbell on May 31, 2025. Given considerable lead time, DOE had ample

[281] *See* 10 C.F.R. § 1021.343(a); 40 C.F.R. § 1506.12.

[282] *See* DOE, Air Quality and Environmental Justice Memorandum (2021), https://www.energy.gov/sites/default/files/2022-01/sea-05-ercot-air-quality-and-ej-analysis-2021-07-21.pdf, Attachment GG; DOE, 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, Attachment HH.

opportunity to prepare, at a minimum, an EA prior to issuing its Order. DOE's failure to initiate any environmental review thus lacks justification.

The Rehearing Order argues, for the first time, that preparation of a NEPA document would "clearly and fundamentally conflict with the requirements" of Section 202(c).[283] But that defense is belied by the agency's own practice of complying with NEPA in issuing 202(c) orders. Moreover, whatever "fundamental conflict" there might be in a particular case with a genuine, unexpected emergency, the Department's 90-day lead time in this case obviated any potential conflict with NEPA.

Whatever justification may have existed for sidestepping NEPA to address an emergency in the initial Order is plainly unavailable here, as DOE had months to conduct NEPA compliance while the initial Order was in place.

## V. REQUEST FOR STAY

The Michigan Attorney General further moves DOE to stay the Order pending judicial review.[284] The factors governing DOE's decision to grant a stay point uniformly in Michigan's favor.[285]

### A. Michigan and its People Will Suffer Irreparable Injury Absent a Stay

As a result of its continued operation, the J.H. Campbell plant is causing, and will continue to cause, increased air pollution, irreparably harming the People of

[283] Rehearing Order at ¶ 57 (quoting 42 U.S.C. § 4336(a)(3)).
[284] 5 U.S.C. § 705; *see* 18 C.F.R. § 385.212.
[285] *See Ohio v. EPA*, 603 U.S. 279, 291 (2024); *Nken v. Holder*, 556 U.S. 418, 434, 436 (2010).

Michigan. As noted above, J.H. Campbell is a three-unit coal-fired power plant, which, in its current condition, has a maximum capacity of 1,180 MW.[286] Over the three-month period ending June 30, 2025, J.H. Campbell produced between 18,000 MWh and 32,000 MWh per day.[287] To produce that electricity, J.H. Campbell combusted coal, which resulted in the emission of tons of $SO_2$, NOx, and PM 2.5—all air pollutants harmful to human health.[288] As a result of the Extension Order, J.H. Campbell is continuing operations; absent the Extension Order, it would be shuttered and would not emit any harmful pollutants. The generation resources that would make up for J.H. Campbell's absence, by contrast, are all but certain to be cleaner than J.H. Campbell. Accordingly, the effect of the Order is to significantly pollute Michigan's air.

The air pollution emitted by the Campbell Plant is causing, and will continue to cause, harms to public health in Michigan. According to the U.S. EPA's COBRA tool, the harms from a year of J.H. Campbell's continued operation include 27 to 36 excess deaths—8.1 to 13 in Michigan alone—as well as thousands of lost school and work days.[289] As a rough approximation, the effects from continued use of the plant for the three-month period of the Order would be one quarter the effects of a year-long closure—i.e., increased asthma symptoms for thousands of Michigan residents,

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[286] Michigan Public Service Commission (MPSC) Case No. U-21585, Direct Testimony of Richard Blumenstock, p. 7, Table 1 (5 Tr 1394-95), *supra* n. 39.

[287] *See* EPA, Clean Air Markets Program Data, Attachment II.

[288] *See id*.

[289] Jester Affidavit, Attachment JJ, at ¶¶ 15-16. In total, the COBRA tool estimates that the total health effects are the equivalent of $420M to $700Min 2023 dollars. For Michigan alone, the COBRA model estimates effects that are the equivalent of $130M to $200M in harms. *Id.*

hundreds of lost school days and work days, and 2-3 Michiganders' deaths.[290] Such environmental harms, "by [their] nature, can seldom be adequately remedied by money damages." *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545 (1987).

These harms are "actual," "certain," "imminent," and "beyond remediation." *See Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015). A stay of the Extension Order is necessary to prevent these harms.

**B. A Stay Would Not Harm Any Other Party**

No party would be harmed by a stay. A stay of the Extension Order would not harm electricity consumers because the lack of an actual emergency means that a stay would not disrupt the provision of electricity. *See supra* § IV.A.ii. Nor would a stay harm Consumers, which, as noted above, is incurring millions of dollars in costs from the compelled operation of the Campbell Plant. *See supra*.

**C. A Stay Is In the Public Interest**

Because the Extension Order remedies no genuine "emergency," it does not serve any public interest. Rather, the public interest would be served by a stay. *See League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (noting "there is a substantial public interest 'in having governmental agencies abide by the federal 'laws that govern their existence and operations'") (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). A stay would also serve the public interest by protecting Michigan's people (and the people of neighboring states) from the harm that increased air and water pollution from the Campbell Plant is causing and will

[290] *Id.* at ¶ 19.

continue to cause. Finally, a stay is in the public interest because it would prevent the Extension Order from frustrating the settlement agreement in Michigan Public Service Commission Case (MPSC) No. U-21090, to which the Michigan Attorney General, representing the People of Michigan, was a party.

## VI. CONCLUSION

For the foregoing reasons, the Michigan Attorney General's request for intervention, rehearing, and stay should be granted.


Dana Nessel
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Dated: September 11, 2025

List of Exhibits

| | Title |
|---|---|
| | Original Exhibits |
| A | NERC 2025 Reliability Assessment |
| B | MISO Planning Resource Auction Results for Planning Year 2025-26, published April 2025, corrected and reposted May 29, 2025, Slides 18–21. |
| C | Collection of MISO Attachment Y Materials<br>- (Letter dated December 14, 2021, from Timothy J. Sparks, Consumers Energy, to Andrew Witmeier, MISO, and Attachment Y Notification of Generating Resources Change of Status).<br>- (Letter dated March 11, 2022, from Andrew Witmeier, MISO, to Timothy J. Sparks, Consumers Energy, re: Approval of Campbell Units 1, 2 & 3 Attachment Y Suspension Notice).<br>- (Email dated May 27, 2025, from Huaitao Zhang, MISO, to Kathy Wetzel, Consumers Energy).<br>- (Email dated May 28, 2025, from Rachael Moore, Consumers Energy to Huaitao Zhang, MISO).<br>- (Email dated May 30, 2025, from Marc Keyser, MISO, to Rachael Moore, Consumers Energy). |
| D | Consumers' Responses from June 10, 2025 |
| | New Exhibits |
| E | Michigan Public Service Commission (MPSC) Case No. U-21585, Direct Testimony of Richard Blumenstock, p. 7, Table 1 (5 Tr 1394-95); |
| F | MPSC Case No. U-21090 (Kapala Direct, 7 Tr 1739); |
| G | MPSC Case No. U-21090, Order approving contested settlement, June 23, 2022, p. 8. |
| H | MPSC Case No. U-21090 (Blumenstock Direct, 3 Tr 99 and 147-49), available at https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000001OEXnAAO. |
| I | MPSC Case No. U-21090-0777 (Settlement Agreement), available at https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000002gLkGAAU. |
| J | MPSC Case No. U-21775, Consumers Energy's Capacity Demonstration Filing, February 24, 2025, Ex. 2, available at: https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs00000bz8crAAA |
| K | MPSC Case No. U-21775, MPSC Order, August 21, 2025, p. 19, available at: https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs000016Zd18AAC. |
| L | MISO Resource Adequacy Business Practices Manual, BPM-011-r31, p. 27, Section 3.4.2 LOLE Analysis |

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| M | MPSC Case No. U-21775, Capacity Demonstration Results Report, May 12, 2025, p. 9. |
| N | NERC Probabilistic Assessment Technical Guideline, August 2016, p. 2. |
| O | FERC Docket No. EL25-90, submission of MPSC, June 20, 2025, p. 2. |
| | |
| P | MI AG's June 18, 2025 Rehearing Request |
| Q | MI AG's July 24 DC Cir. Petition |
| R | U.S. Dep't of Energy, Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid (July 7, 2025) |
| S | Motion to Intervene and Request for Rehearing by the Attorneys General of Maryland, Washington, Minnesota, Michigan, Illinois, Arizona, Colorado, Connecticut, and New York, *In re: Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid, July 2025*, (the "Multistate Request for Rehearing" or "Multistate Request"). |
| | |
| T | Letter of Tina Francone to State Attorneys General (Sept. 5, 2025) |
| U | *Attributes Roadmap*, MISO (Dec. 2023), https://cdn.misoenergy.org/2023%20Attributes%20Roadmap631174.pdf. |
| V | *MISO's Response to the Reliability Imperative*, MISO (Updated Feb. 2024), https://cdn.misoenergy.org/2024+Reliability+Imperative+report+Feb.+21+Final504018.pdf |
| W | *2025 OMS-MISO Survey Results*, OMS and MISO (Updated June 6, 2025) |
| X | Consumers' June 6, 2025 FERC Complaint, Docket No. EL25-90 |
| Y | MISO, Grid Conditions Explainer |
| Z | NERC, Attachment 1-EOP-011-1 Energy Emergency Alerts. |
| AA | MISO, Load Modeling Process and Results (Apr. 24, 2025), https://cdn.misoenergy.org/20250424%20LOLEWG%20Item%2003%20Load%20Modeling%20Process%20and%20Results692675.pdf |
| | |
| BB | FERC Docket No. AD24-11-000, available at https://www.ferc.gov/media/todd-ramey-miso-senior-vice-president-markets-and-digital-strategy. |
| CC | NREL, Resource Adequacy Basics, available at https://www.nrel.gov/research/resource-adequacy. |
| DD | FERC, *Security Constrained Economic Dispatch: Definitions, Practices, Issues, and Recommendations* (July 31, 2006), https://www.ferc.gov/sites/default/files/2020-05/final-cong-rpt.pdf. |
| EE | Michigan Department of Environment, Great Lakes, and Energy, Renewable Operating Permit Issued to Consumers Energy, J.H. Campbell Generating Complex [J.H. Campbell ROP] (July 2, 2021), accessible through the Michigan Department of Environment, Great Lakes, and Energy's "MiEnviro Portal," https://www.michigan.gov/egle/maps-data/mienviroportal, and also accessible at |

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| | https://www.egle.state.mi.us/aps/downloads/rop/pub_ntce/B2835/B2835%20FINAL%2007-01-21.pdf. |
| FF | State of Michigan Department of Environmental Quality, Authorization to Discharge Under the National Pollutant Discharge Elimination System, Permit No. MI0001422 (May 29, 2018), accessible through the Michigan Department of Environment, Great Lakes, and Energy's "MiEnviro Portal," https://www.michigan.gov/egle/maps-data/mienviroportal. |
| GG | DOE, Air Quality and Environmental Justice Memorandum (2021), https://www.energy.gov/sites/default/files/2022-01/sea-05-ercot-air-quality-and-ej-analysis-2021-07-21.pdf; |
| HH | DOE, 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 |
| II | EPA's "Clean Air Markets Program Data." |
| JJ | Affidavit of Douglas Jester |
| KK | Michigan Department of Environment, Great Lakes, and Energy Air Quality Division, Supplement to Michigan's August 23, 2021, Regional Haze State Implementation Plan Revision for the Second Planning Period at 2 (March 2025), |
| LL | Modified Attachment Y Notice 2025-08-21 re: Modified Suspension Date for Campbell Units 1, 2, & 3 |