

UNITED STATES DEPARTMENT OF ENERGY

Midcontinent Independent System Operator

Order No. 202-25-7

**MOTION TO INTERVENE AND PETITION FOR REHEARING
OF THE STATES OF MINNESOTA AND ILLINOIS**

Pursuant to section 202(c) of the Federal Power Act, 16 U.S.C. §§ 824a(c), 825l, the States of Minnesota and Illinois (“the States”) move to intervene and petition for rehearing of the Department of Energy’s (“DOE”) May 23, 2025, Order No. 202-25-7 (“Renewed Order,” Ex. A)¹ directing the Midcontinent Independent System Operator (“MISO”) and Consumers Energy Company (“Consumers Energy”) to take all measures necessary to ensure that the coal-burning J.H. Campbell Plant (“Campbell Plant”) in West Olive, Michigan “is available to operate” and “to take every step to employ economic dispatch of the Campbell Plant.” The Renewed Order is in effect from 00:00 Eastern Daylight Time (EDT) on August 21, 2025, and expires at 00:00 EDT on November 19, 2025.

This Renewed Order is dated August 20, 2025, and continues the prior DOE Order No. 202-25-3, which directed MISO and Consumers Energy to keep the Campbell Plant available to provide economic dispatch from its planned retirement date through August 20, 2025, expiring at 00:00h on August 21, 2025 (the “Original Campbell Order”).

Pursuant to the Federal Power Act (“the Act”) and Department procedures applying it to

¹ All Exhibits are lettered and attached; to be submitted in separate serial emails to the DOE’s AskCR <askcr@hq.doe.gov> account.

petitions for rehearing, the States hereby file this timely request for rehearing of DOE's Renewed Order. The Renewed Order extends the Original Order, perpetuating the Original Order's flawed analyses, faulty conclusion that an emergency exists for the MISO Regional Transmission Organization ("RTO") for the summer months of 2025, and unlawful directives. This Order exceeds DOE's legal authority in several respects. And even if an emergency did exist and DOE had the legal authority to issue an Order, this Order is not rationally related to meet the purported need. It should be rescinded.

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MOTION TO INTERVENE

The States² move to intervene in this proceeding and thereby to become parties for purposes of Section 3131 of the Act, 16 U.S.C. § 8251. The States have an interest in and are aggrieved by the Renewed Order (Ex. A) in several ways and seek to intervene and petition for rehearing. *FDR v. R.J. Reynolds Vapor Co.*, 606 U.S. ____ (2025) (slip op., at 3–8) (defining an “adversely affected or aggrieved” party within the APA as “anyone even ‘arguably within the zone of interests to be protected or regulated by the statute . . . in question.’” (quoting *Ass’n of Data Processing Svc. Orgs. v. Camp*, 397 U. S. 150, 153 (1970))).

Factual Background

The utilities regulated by the States are members of MISO, the electric grid operator for the central United States. MISO covers the largest geographical range of any independent system operator (“ISO”) in the U.S. The 15 states covered by MISO are: Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Dakota, Texas, and Wisconsin. As the ISO of the electric grid in this region, MISO manages the flow of electricity across the high-voltage, long-distance power lines. To do so, MISO develops rules so that the wholesale electricity transmission system operates reliably and safely. MISO has described this as being like the “air traffic controller” for the grid in its territory,³ meaning that MISO seeks to resolve power congestion (traffic) issues in real-time through its control room and has processes in place to anticipate and avoid emergencies that could lead to the loss of power.

² See Minn. Stat. § 8.01 (“The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts of the state whenever, in the attorney general's opinion, the interests of the state require it.”).

³ “Meet MISO,” <https://www.misoenergy.org/meet-miso/about-miso/industry-foundations/what-we-do/> (last visited June 23, 2025).

On May 23, 2025, the DOE issued the Original Campbell Order pursuant to section 202(c) of the Federal Power Act to MISO. *See* Ex. B; *see also* 16 U.S.C. § 824(c)(1). The Order directed MISO, in coordination with Consumers Energy, the owner of the plant, to ensure that the Campbell Plant remained available for operation during the summer season; expiring on August 20, 2025. *Id.*

This eleventh-hour Original Campbell Order disrupted a longstanding planning sequence handled by state authorities and submitted to MISO. Consumers Energy had already announced its plan to retire the Campbell Plant in 2021, and MISO approved that retirement plan three years ago, in March 2022.⁴

Minnesota and Illinois timely submitted a Petition for Rehearing of the Original Order on June 23, 2025. Ex. D. DOE did not act on that petition within 30 days; and later issued that it had been denied by operation of law given the passage of time. Ex. C. Minnesota and Illinois filed a Petition for Review in the D.C. Circuit Court of Appeals (No. 25-1162, consolidated with 25-1159 and 25-1160) on July 28, 2025.

On August 20, 2025, the DOE issued the Renewed Order requiring MISO and Consumers Energy to ensure that the Campbell Plant “is available to operate” and “to take every step to employ economic dispatch of the Campbell Plant.” The Renewed Order is in effect from 00:00 Eastern Daylight Time (EDT) on August 21, 2025, and expires at 00:00 EDT on November 19, 2025.

On September 8, 2025, DOE issued a document fashioned as “ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING.” Ex. E.

⁴ *See* Consumers Energy, “2021 Clean Energy Plan,” <https://www.consumersenergy.com/-/media/CE/Documents/company/IRP-2021.pdf> (last accessed June 23, 2025).

Adverse Effects

The States will be adversely affected by the Renewed Order in many of the same ways that they were harmed by the Original Campbell Order. The Renewed Order prevents the planned retirement of the Campbell Plant, with consequent negative impacts on the States.

First, households and businesses in the States, and the States as consumers in their own right, will pay higher electricity bills as a result of the Renewed Order's imposition of costs and cost-recovery to the States. By ordering the Campbell Plant to take all steps necessary to be available and ordering MISO to take all steps necessary for the Campbell Plant to provide economic dispatch, costs are already being incurred and more costs will continue to be generated. Notably, the age of the units is concerning for costs, and Consumers Energy projected in 2021 that retiring Campbell in 2025 would avoid \$365,008,000 in capital expenditures and major maintenance costs.⁵ The Renewed Order would likely require at least a portion of capital expenditures and major maintenance costs, which will drive up costs and impact ratepayer bills. This would be in addition to the cost of rehiring operators and obtaining more coal, among other expenses.

Although the precise amount is not yet known, the Renewed Order provides that cost recovery is available to Consumers Energy through Federal Energy Regulatory Commission ("FERC") proceedings, (¶E). Consumers Energy already initiated a cost recovery complaint before FERC on the Original Campbell Order,⁶ asking to allocate costs (net of market revenues) across

⁵ In the matter of the application of Consumers Energy Company for approval of its integrated resource plan pursuant to MCL 460.6t and for other relief, MPSC Case No. U-21090, Revised Direct Testimony of Norman J. Kapala on Behalf of Consumers Energy Company at 3 (Oct. 2021).

⁶ FERC Docket: EL25-90.

all of MISO Zones 1 through 7 (which includes Minnesota and Illinois). Consumers Energy asked that these costs be apportioned according to load, which would assign costs to the States. MISO filed its answer indicating its general support for adjusting its tariff to account for Consumers Energy's cost recovery petition, meaning the costs will be charged to the States according to their respective share of load. FERC granted cost recovery on August 15, 2025.

The Renewed Order will have substantially the same impact, and more if additional maintenance—deferred or otherwise—needs to be performed to keep the aging (and greatly deteriorated) Campbell Plant units online.

Second, the States will suffer environmental harms as a result of the Order. The Campbell Plant is a significant source of particulate matter, nitrogen oxides, sulfur oxides, and carbon dioxide,⁷ among other pollutants. By extending the operations of the Campbell Plant beyond its planned retirement date, the Order increases the amount of pollution emitted in the state of Michigan and other MISO States, causing harm to the public health and welfare.⁸ The States of Minnesota and Illinois share the upper Midwest region and Great Lakes environment with Michigan. Depending on weather, air emissions in Michigan impact conditions in Minnesota and Illinois. Further, Minnesota and Illinois have an interest in the Great Lakes ecosystem into which pollutants from coal-burning power plants such as mercury are deposited. Such pollution is harmful to state economies including fisheries and recreation, human health, and the environment in general. The Campbell Plant is situated on the shores of Lake Michigan across from Illinois, including the highly populated Chicago metropolitan area. Thus Minnesota and Illinois have an

⁷ 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).

⁸ See Cross-State Air Pollution Rule (CSAPR) and Clean Air Act § 110.

economic, public health, and ecological interest in protecting their environment and natural resources from unnecessary pollution emanating from the Campbell plant. Minnesota and Illinois are harmed because the Order results in the unnecessary consumption of fuel that generates such pollution.

Coal-fired power plants also contribute to regional, national, and global greenhouse gas emissions, which cause global climate change. Climate change directly harms the States by imposing significant additional costs for responsive actions, disaster recovery, and resiliency programs. Increased emissions threaten state climate goals and the States' ability to comply with federal and state air pollution requirements.

Minnesota, for example, is experiencing rapid changes including higher winter temperatures and larger, more frequent extreme precipitation events, extreme heat, and drought.⁹ Each of Minnesota's top-ten combined warmest and wettest years on record have occurred since 1998, with 2024 standing as the warmest year on record and 2019 the wettest.¹⁰ Minnesota is already suffering from a significant uptick in devastating, large-area extreme rain events, threatening the state with ever greater frequency and intensity.¹¹ These events damage streets, wastewater facilities, businesses, homes, farms, and natural resources, costing local governments, business owners, and residents millions of dollars in cleanup, repairs, and adaptation expenses.¹² Wildfires are also becoming larger and more frequent, including a rash of devastating fires in the spring of 2025 that consumed more than 32,000 acres and destroyed an estimated 150 structures.

⁹ Minnesota Climate Trends, *Minnesota Department of Natural Resources* (2023), https://www.dnr.state.mn.us/climate/climate_change_info/climate-trends.html.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The spring of 2024 included heavy precipitation and extreme rainfall events, leading to extensive flooding and federal disaster declarations for large parts of the state.¹³ From 1980 to 2024, the annual average for billion-dollar weather and climate disasters in Minnesota is 1.4 events per year, but the annual average from 2020 to 2024 is 4.6 events.¹⁴ The “Lost Winter” of 2023-2024 was the warmest on record, with temperatures averaging 10.9°F above 1991-2020 averages, greatly harming Minnesota’s recreational economy.¹⁵ These impacts will continue, and emissions from the Campbell Plant contribute to them.

Climate change is affecting Illinois in a number of ways. Illinois’ farming industry is vulnerable to cycles of extreme drought and extreme precipitation caused by climate change. In 2023, a severe drought dried up soil throughout the state, with extreme dryness extending down to 20 inches below the surface in some areas.¹⁶ In other years, extreme precipitation has threatened Illinois’ agriculture. For instance, January to June of 2013 was the wettest period ever recorded in Illinois, causing widespread flooding in farmland that forced farmers to delay planting and lose

¹³ “Extreme Rainfall Drenches Northeastern Minnesota,” Minnesota Department of Natural Resources, <https://www.dnr.state.mn.us/climate/journal/extreme-rainfall-northeast-mn-june-18-2024>; “Extreme Rain and Flooding in Southern Minnesota, June 20-22,” Minnesota Department of Natural Resources, (August 9, 2024), <https://www.dnr.state.mn.us/climate/journal/extreme-rain-flooding-southern-minnesota-june-20-22.html>; “Disaster information,” Minnesota Department of Public Safety, <https://dps.mn.gov/divisions/hsem/em-resources/disaster-information> (last visited June 23, 2025).

¹⁴ “Billion Dollar Weather and Climate Disasters, Minnesota Summary, *NOAA National Centers for Environmental Information*, Billion-Dollar Weather and Climate Disasters | Minnesota Summary | National Centers for Environmental Information (NCEI),” <https://www.ncei.noaa.gov/access/billions/state-summary/MN>.

¹⁵ *Id.*

¹⁶ Illinois State Climatologist, Drought Worsens in a Very Dry June (June 30, 2023), <https://stateclimatologist.web.illinois.edu/2023/06/30/drought-worsens-in-a-very-dry-june/> (last visited May 23, 2025).

revenue.¹⁷ Climate change is also intensifying catastrophic extreme weather events. In 2024, the Illinois State Climatologist recorded strong wind, hail, and tornadoes across all of Illinois' 102 counties and the state logged 142 tornadoes—a new annual record.¹⁸ These storms included a July 15, 2024 “derecho” that produced 100 mile-per-hour winds and 48 separate tornados.¹⁹ In the Chicago area alone, the derecho produced 32 tornados, breaking the previous records set by the July 2014 “double derecho” and a March 2023 storm.

Moreover, the States have an interest given their primary responsibility for resource planning and ensuring that there will be adequate and reliable electricity generation. The processes that States employ to ensure reliability—which takes into account planned retirements, new generation projects, transmission infrastructure, and meeting consumer demand—are both sophisticated and robust. The Renewed Order harms Minnesota and Illinois by usurping the traditional role that states play in generation planning and resource adequacy.

¹⁷ University of Illinois–Institute of Government & Public Affairs, Preparing for Climate Change in Illinois: An Overview of Anticipated Impacts (2015), https://indigo.uic.edu/articles/report/Preparing_for_Climate_Change_in_Illinois_An_Overview_of_Anticipated_Impacts/15078939/1 (last visited May 23, 2025). *See also* U.S. Dept. of Agriculture Climate Hubs and Great Lakes Research Integrated Science Assessment, Climate Change Impacts on Illinois Agriculture (2022), https://www.climatehubs.usda.gov/sites/default/files/2022_ClimateChangeImpactsOnIllinoisAgriculture.pdf (last visited May 23, 2025).

¹⁸ Tony Briscoe, Lake Michigan Water Levels Rising at Near Record Rate, CHICAGO TRIBUNE (July 12, 2015), <https://www.chicagotribune.com/2015/07/12/lake-michigan-water-levels-rising-at-near-record-rate/> (last visited May 23, 2025).

¹⁹ National Weather Service, July 15, 2024, Derecho Produces Widespread Wind Damage and Numerous Tornadoes, available at https://www.weather.gov/lot/2024_07_15_Derecho#:~:text=With%2032%20tornadoes%2C%20the%20July,March%2031%2C%202023%20tornado%20outbreaks. (last visited May 25, 2025). *See also* David Struett, Tornado Record Broken with 27 Chicago Area Twisters July 15—Spawned by ‘Ring of Fire’, WBEZ CHICAGO, available at <https://www.wbez.org/weather/2024/07/24/chicago-weather-tornado-record-derecho-july-15> (last accessed May 23, 2025).

PETITION FOR REHEARING

I. Overview and Concise Statement of Error

The challenged Renewed Order compounds the error of the Original Order in that it declares an emergency based on a shortage of electric energy generation when there is no emergency. Even if there is an emergency, the Renewed Order imposes several requirements that are inconsistent with and exceed DOE's legal authority. And even if DOE has the authority to impose the requirements, they are not directed to actions that will actually meet the purported emergency.

The challenged Renewed Order is premised on an incomplete recitation of MISO's planned capacity and reserves for the summer of 2025.

It first relies on the Original Order, which was fundamentally flawed and misstated the purported "evidence" on which it relied for all of the reasons set forth in the States' Petition for Rehearing, filed June 23, 2025. Ex. D.

The Renewed Order continues to misconstrue the source material on which it relies and still concludes only that there is a possibility of shortfalls. But it does not cite or rely on any evidence that there is any likelihood or probability that they will occur during the relevant timeframe of the Renewed Order.

The Renewed Order concludes that the evidence collected (and discussed below) supports the issuance of Order No. 202-25-3. It contends that the purported emergency will continue in the near term and is likely to continue in subsequent years. It declares—without any evidence identifying an emergency in the August 20 to November 19 timeframe—that the alleged emergency "could lead to the potential loss of power to homes and local businesses in the areas that may be affected by curtailments or outages, presenting a risk to public health and safety." Ex.

A at 7 (emphasis added). It then orders that MISO and Consumers Energy shall take “all measures necessary to ensure that the Campbell Plant is available to operate.” And MISO must “take every step to employ economic dispatch of the Campbell Plant to minimize cost to ratepayers.” Further, it orders that the Campbell Plant operate according to times as determined by MISO. Importantly, the Renewed Order prohibits the Campbell Plant from being considered a capacity resource.

The Renewed Order was issued in error. The DOE did not have substantial evidence or engage in reasoned decision-making in declaring the existence of an emergency in general, be it far into the future or even in the August 20 to November 19, 2025, timeframe.

It starts from the proposition that there is only a “potential” for insufficient capacity that “could” result in a need for mitigation, which does not present an actual existing or imminent emergency. Section 202(c)’s plain terms limit DOE to actual emergencies—not the potential that emergencies might arise. Section 202(c) is also limited in the type of conduct it allows DOE to order, such as directing the generation, delivery, or transmission of electric energy. This Renewed Order, however, requires the Campbell Plant to be “available to operate.” Nothing in section 202(c) grants DOE authority to order a plant be available to operate without any demonstrated need identified by the states with primary resource planning authority, the utility operating the resource, or grid operator responsible for forecasting and coordinating adequate and reliable supply.

Even if an emergency did exist and DOE had the legal authority to issue the Renewed Order, directing the Campbell Plant to participate in the bidding market using economic dispatch would not rationally “best” meet the purported need (because there is no evidence the Campbell Plant can reasonably address any given future emergency need. This is because emergency responses do not require economic evaluation, and because the Campbell Plant takes so long to ramp up). The Renewed Order should be rescinded.

II. Legal Background

Under section 202(c) of the Federal Power Act, the Commission²⁰ has authority to issue an order:

[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. . . .

16 U.S.C. § 824(c)(1). The same subsection states that the Commission may order “temporary connections of facilities” and “generation, delivery, interchange, or transmission of electric energy” that, in the Commission’s “judgment will best meet the emergency and serve the public interest.” *Id.* The next subsection, 16 U.S.C. § 824(c)(2), establishes that an emergency order must be limited to only those hours necessary to meet the emergency. It states:

With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the Commission shall ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet

²⁰ The “Commission” refers to the Federal Power Commission (FPC), whose powers were transferred in 1977 to either the Secretary of DOE or the Federal Energy Regulatory Commission (“FERC”). 16 U.S.C. § 796(14); Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565, 565-613 (1977). This transfer gave FERC the authority over “the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (*other than emergency interconnection*).” 42 U.S.C. § 7172(a)(1)(B) (emphasis added). However, this transfer also gave DOE “the function of the [FPC], or of the members, officers, or components thereof” except as provided in subchapter IV of the act. 42 U.S.C. § 7151(b). Because 42 U.S.C. § 7172(a)(1)(B) explicitly excludes emergency interconnection from FERC’s authority, the authority over emergency interconnection has historically been delegated to DOE. However, the delegation of this emergency authority to DOE has not been consistently applied. In *Richmond Power & Light v. FERC*, 574 F.2d 610 (1978), a petitioner objected to FERC’s (not DOE’s) failure to invoke emergency powers under 16 U.S.C. § 824a(c) and order utilities with excess capacity to supply the petitioner with energy. The court did not address whether FERC had the authority to declare an emergency to begin with. *Id.* Thus, whether FERC or DOE has the power to declare an emergency is inconclusive.

the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.

Id. at § 824(c)(2).

The applicable regulations define “emergency,” as

an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power. 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. Actions under this authority are envisioned *as meeting a specific inadequate power supply situation*.

10 C.F.R. § 205.371²¹ (emphasis added).

III. Statement of Issues

Issue A: Did DOE have substantial evidence for the Renewed Order’s declaration of an emergency, and did it exercise reasoned decision-making in declaring that an actual emergency exists?

No. DOE relied on evidence that did not identify any likelihood or probability that there would be a shortfall during the relevant timeframe of the Renewed Order’s requirements—August 20 to November 19, 2025. Further, DOE failed to consider substantial countervailing evidence, including the MISO States’ Integrated Resource Plans and MISO’s PRA for the summer of 2025. The Renewed Order fails to identify any reasoned basis for concluding an

²¹ DOE issued 10 C.F.R. §§ 205.370-379 pursuant to the Department of Energy Organization Act’s transfer of emergency responsibilities to the Secretary of Energy.

actual emergency exists or is imminent, much less one that will occur between August 20 and November 19.

Issue B: Section 202(c)(1) allows DOE to issue temporary emergency orders in times of actual or impending emergencies such as war, sudden demand for electric energy, shortage of fuel or water, or other similar conditions creating a specific inadequate power supply situation. Did DOE exceed this authority where its Renewed Order is based on the nonspecific possibility that such a situation might occur over a period of several months—or in the 2027-2030 timeframe, well outside of the Renewed Order’s applicability?

Yes. An actual “emergency” is a sudden occurrence requiring immediate response action or a concrete need for energy to be produced; conversely, it is not the mere potential that an emergency might occur. 16 U.S.C. § 824a(c); 10 C.F.R. § 205.371. Emergency orders must respond to “a specific inadequate power supply situation.” 10 C.F.R. § 205.371. The Renewed Order does not address any sudden occurrence needing imminent response, nor does it identify any actual and specific insufficient supply situation. Instead, the Renewed Order focuses on vague non-summer needs and the potential for shortfalls several years away. Because the Renewed Order is not directed to any emergency at all, much less one occurring in the August 20 to November 19 timeframe, DOE lacks authority, and the Renewed Order is contrary to law.

Issue C. Section 202(c)(1) allows DOE to issue emergency orders requiring the “generation, delivery, interchange, or transmission of electric energy.” Did DOE exceed this authority where its Order requires the Campbell Plant to take steps to be “available” to generate electricity and requires MISO to employ economic dispatch?

Yes. DOE’s emergency powers allow it to order the generation, delivery, interchange, or transmission of electric energy. Section 202(c)(1) does not give the DOE the authority to order that a plant be available (absent a showing of why that is needed), nor does it give the DOE authority to order MISO to engage in potential economic dispatch. 42 U.S.C. §16432(b). Because the Order does not adhere to the types of actions allowed under section 202(c)(1), DOE lacks authority, and the Renewed Order is contrary to law.

Issue D. If DOE issues an order pursuant to 202(c)(1), then 202(c)(2) requires it to set limits on hours of operation and ensure that environmental impact is minimized. Did DOE exceed its authority by invoking section 202(c) to issue a Renewed Order that sets no specific hours of operation, places no limits on hours of operation, and adopts no specific requirements to minimize environmental impact?

Yes. The statutory language requires an emergency order be limited to only those hours necessary to meet the emergency and minimize adverse environmental impacts. 16 U.S.C. § 824a(c)(2). The Renewed Order does not establish any limited hours for operation, instead deferring to MISO. The Renewed Order also does not meaningfully take steps to minimize adverse environmental impacts. Because the Renewed Order does not set any specific hours the Campbell Plant must run, and does not meaningfully minimize adverse environmental impacts, the Renewed Order violates the requirements of section 202(c)(2). The DOE is without authority, and the Renewed Order is contrary to law.

Issue E: The Federal Power Act reserves resource adequacy planning to the individual states. Did DOE exceed its authority where its Order directly compels a plant slated for retirement to take steps to be available to operate?

Yes. Section 201(a) of the Federal Power Act explicitly provides that federal regulation over generation and transmission is related to matters of interstate commerce and extends “only to those matters which are not subject to regulation by the States.” 16 U. S. C. § 824(a). States retain jurisdiction “over facilities used for the generation of electric energy.” 16 U.S.C. § 824(b)(1). DOE’s Order exceeds its authority by contradicting Michigan’s resource plans. It also exceeds DOE’s authority by purporting to engage in long-term resource planning for the years 2027-2030, which is a role reserved to the states. For both reasons, the Renewed Order is contrary to law.

Issue F: Even if DOE were correct that an emergency exists and that it had the authority to issue the Order, will the Order’s requirements rationally meet the emergency?

No. Section 202(c) contemplates emergency orders that are precisely tailored to “best” meet the specific emergency. 16 U.S.C. § 824a(c). The Order’s specific requirement for MISO to

take steps to effectuate “economic dispatch” of the Campbell Plant is not rationally related to the emergency it purports to address. Even during the peak days in June of 2025, MISO had adequate resources to generate power without the Campbell Plant’s output—with capacity to spare. The Renewed Order does not explain how keeping the Campbell Plant available to run will meet any particular need when MISO has adequate resources at its disposal without the Campbell Plant. The Renewed Order, therefore, is without substantial evidence and lacks reasoned decision-making.

Issue G: Federal law prohibits agencies from prejudging the outcome of an action. Did the Secretary of Energy and the federal administration improperly prejudge the need for the Renewed Order?

Yes. As evidenced by public statements, the purported emergency is pretext for an improperly-prejudged outcome to preserve coal as a fuel for electrical generation.

IV. MISO’s Robust Capacity and Planning Projections are Adequate to Ensure Reliability.

MISO is a regional transmission organization (RTO), an independent, non-profit, membership-based organization responsible for optimizing generation and transmission of electricity and ensuring the reliability of the electric power system within its region, consisting of nearly 3,000 generating units.²² 18 C.F.R. § 35.34(a), (j)(1). MISO administers bulk or wholesale power markets that centrally commit and dispatch power to facilitate least-cost and reliable power production and delivery throughout the region. The wholesale markets within MISO signal and value power needs and identify the most economically efficient way—the least-cost approach where demand for energy equals the cost supplied—to meet them across the system.²³ MISO also

²² MISO, *Fact Sheet* (July 2024), available at <https://www.misoenergy.org/meetmiso/media-center/2024/corporate-fact-sheet>.

²³ MISO, *Electric Grid 101*, available at <https://www.misoenergy.org/meet-miso/grid-operations-basics>.

works to coordinate generation and transmission of electricity with other RTOs, exporting power at times and at others allowing electricity to be imported to MISO.²⁴ MISO uses advanced modeling and thorough research to coordinate short and long-term planning for the benefit of generating units and consumers.²⁵

MISO planned for adequate capacity during the summer of 2025: “As recognized by the Renewed Order, MISO’s Planning Resource Auction [“PRA”] for the 2025-2026 Planning Year demonstrated sufficient capacity for all zones within the MISO Region.” Ex. F at 2. It reports: “it is important to recognize existing processes have *cleared sufficient electric generating capacity across MISO for the periods of time covered by the Order.*” *Id.* (emphasis added). And it goes on to describe its confidence that it has already ensured “sufficient capacity to meet anticipated demand across the MISO Region for the 2025-2026 Planning Year.” *Id.*

The long-planned retirement of the Campbell Plant is not an impediment to summer reliability in the MISO region. Since 2010, MISO has experienced the retirement of 30.8 gigawatts (GW) of generation capacity, a large proportion of which (21.9 GW) was coal-fired generating

²⁴ MISO, *Interregional Coordination*, available at <https://www.misoenergy.org/planning/interregional-coodination/>; see also MISO, Historical Net Scheduled Interchange (NSI), at <https://www.misoenergy.org/markets-and-operations/real-time--marketdata/market-reports/> (data found under “Summary” Market Reports).

²⁵ MISO, *Transmission and Generation Planning 101*, available at https://www.misoenergy.org/meet-miso/grid_planning_basics.

units.²⁶ That trend is shown below in the bar graph (from MISO’s 2023 Transmission Expansion Plan Report,²⁷ Ex. G at 35), which displays the retired capacity by generation type over time:

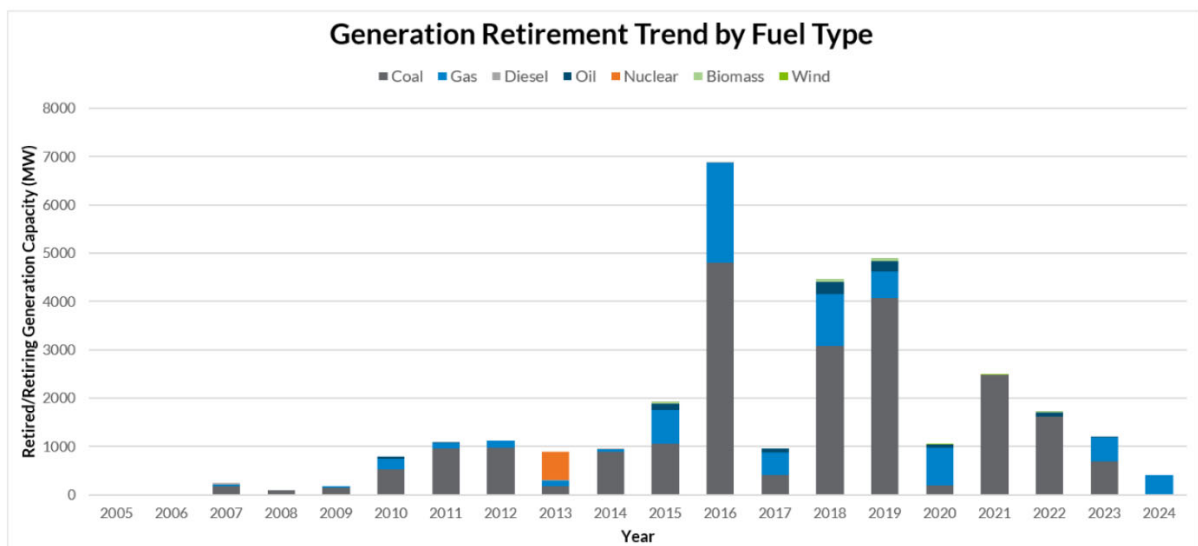


Figure 2.2-1: MW Generation Retirement by Fuel Type

Through use of generation capacity and transmission infrastructure planning, the addition of new capacity—in particular renewables, and the implementation of the other measures discussed above, MISO has been able to absorb these retirements and maintain overall system reliability. *Id.* at 34–35.

²⁶ See also MISO, *Approved Generator Retirements (Public) as of June 28, 2024* (“Approved Retirements 2024”), [https://www.oasis.oati.com/woa/docs/MISO/MISODOCS/OASIS_Posting_of_Approved_Generator_Retirements_\(Public\)_2024-06-28.pdf](https://www.oasis.oati.com/woa/docs/MISO/MISODOCS/OASIS_Posting_of_Approved_Generator_Retirements_(Public)_2024-06-28.pdf).

²⁷ MISO, *2023 Transmission Expansion Plan*, available at <https://cdn.misoenergy.org/MTEP23%20Executive%20Summary630586.pdf>.

V. Argument

A. The Renewed Order is not supported by substantial evidence demonstrating the existence of an actual emergency and does not demonstrate reasoned decision-making.

The DOE failed to provide substantial evidence that an unexpected emergency presently exists, as required by 16 U.S.C. § 824a(c)(5). The relevant standard is whether the DOE's determination is supported by substantial evidence. 16 U.S.C. § 824a(c)(5) refers to the possibility of judicial review under 16 U.S.C. § 825l. After an objection has been brought before DOE, the Court may consider it with the understanding that “[t]he finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive.” 16 U.S.C. § 825l. Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Duke Energy Corp. v. FERC*, 892 F.3d 416, 420 (2018). This standard implies deference to an agency's factual determinations. *See, e.g., id.*

DOE failed to point to substantial evidence of a current and unexpected emergency in the August 20 to November 19, 2025, timeframe during which the Renewed Order is in effect. The evidence DOE provided does, however, prove that there is currently no energy emergency and that there will not be an “unexpected emergency” that warrants this Renewed Order. MISO is well situated to deliver reliable power throughout its area in the fall of 2025.

In declaring the contrary, DOE relied on a NERC assessment that identified an elevated risk for potential capacity exceedance if an extreme weather event were to occur. But the Renewed Order makes too much out of too little—the “elevated” category is hardly a call for immediate and unnecessary emergency action. As the NERC assessment points out, MISO expects to have an existing certain capacity of 142,783 MW during the summer—which already factored in the assumption that the Campbell Plant would be retired and unavailable for the summer of 2025. That

projection also exceeds both expected demand and the reserve margin.²⁸ While retirements and fewer suppliers meant that MISO would have fewer firm resources and dispatchable generation, that was no cause for alarm. To the contrary, NERC concluded that all areas were projected to have “adequate anticipated resources for normal summer peak load conditions.” *Id.* And nothing in the NERC assessment determined that MISO’s interconnection with other RTOs would be insufficient to cover any needs that could arise.

The “elevated risk” category is not tantamount to an emergency. Even though NERC used the term “elevated risk” for the possibility that there could be an operating reserve shortfall, NERC did not apply the “high risk” category to MISO and did not call for any retired plants to be brought back online. Ex. H. at 5. Moreover, the “elevated risk” designation means the probabilistic indices are low but not negligible. *Id.* at 10, Table 1. And further, the MISO-specific “dashboard” concludes that MISO’s expected resources meet operating reserve requirements under normal peak-demand scenarios. At worst, operating mitigations “could” be necessary for above-normal summer peak load and extreme generator outage conditions. *Id.* at 16.

Perhaps most simply, the “elevated risk” designation is far from unusual; it has never required an emergency order before, and the grid has remained stable. MISO has been designated an “elevated” risk in every NERC Summer Reliability Assessment since NERC initiated the practice of designating regions as “high,” elevated,” or “normal” risk in 2021.²⁹ NERC has also designated MISO as “elevated” risk in every Winter Reliability Assessment since 2021. *Id.* Yet no

²⁸ MISO PRA, Results for Planning Year 2025-26 at 18 (Corrected May 29, 2025).

²⁹ See NERC, *Reliability Assessments*, <https://www.nerc.com/pa/RAPA/ra/Pages/default.aspx> (last visited June 23, 2025).

energy shortage has occurred, and DOE has never imposed an emergency declaration until now (see *infra* regarding prejudice and pretext).

In fact, the evidence before DOE cuts against the Renewed Order. This includes MISO's PRA for the summer of 2025, which found sufficient capacity throughout the region for the summer 2025 season. The PRA provides a strong conclusion that supply will be adequate. Ex. F. The press release announcing the PRA, (Ex. I), confirms "adequate resources are available to maintain reliability during the upcoming planning year (June 2025 – May 2026)." Ex. I. And while "the 2025 auction prices reflect a tightening supply-demand balance during the summer months, there is sufficient capacity throughout the MISO footprint." *Id.* The PRA was based on NERC's standard BAL-502-RF-03 (Ex. J), requiring assessment of "one day in ten year" loss of load expectation principles. In short, the NERC standard that MISO applied to conduct the PRA demonstrated that MISO will have sufficient capacity through the summer of 2025. Exs. F, I, J. MISO's PRA results show that there will be enough capacity in the summer planning year, and MISO notes that the summer auction price provides a signal to the market to add more capacity for future auction years. DOE appears to have cherry-picked certain phrases from the PRA but does not give it full consideration.

Indeed, in MISO's Answer to the cost-recovery docket dated June 19, 2025, MISO highlights the PRA when it describes, with certainty, that it has planned for adequate capacity: In the FERC rate recovery proceeding, MISO wrote in its answer that it had sufficient capacity: "As recognized by the Order, MISO's PRA demonstrated sufficient capacity for all zones within the MISO Region." Ex. K at 2. MISO's Answer further writes, "it is important to recognize existing processes have cleared sufficient electric generating capacity across MISO for the periods of time covered by the Order." *Id.* (emphasis added). And it goes on to describe its confidence that it has

already ensured “sufficient capacity to meet anticipated demand across the MISO Region for the 2025-2026 Planning Year.” *Id.* This recent submission undermines DOE’s conclusions in the order that MISO faces insufficient capacity.

And beyond the lack of supporting evidence, DOE also acted arbitrarily and capriciously by ignoring well-known and readily-accessible contrary information. For example, DOE failed to consider recent comments by MISO’s Independent Market Monitor to the Markets Committee of the MISO Board of Directors dispelling NERC’s purported concerns—these comments were cited in the States Petition for Rehearing of the Original Campbell Order. Ex. L. The Independent Market Monitor is charged with ensuring adequate supply markets for the MISO region. He criticized a separate NERC long-term reliability assessment (which has since been revised³⁰) that included capacity shortfalls in 2025, noting that NERC’s assessment compared the wrong numbers. In doing so, the Independent Market Monitor declared MISO capacity to be “more than adequate,” and that he had “no material concerns” over MISO’s resource adequacy for the upcoming summer.

DOE also failed to consider MISO’s history of strong performance through several extreme weather events including Winter Storms Elliot and Uri and did not credit MISO’s proven track record of engaging in a variety of mechanisms to ensure grid reliability.

DOE further failed to acknowledge that no part of MISO is currently afflicted by any unexpected outage or extreme weather event, and the entire system is running as planned with no outages, unexpected demand, lack of fuel or water, or other such emergencies in place at the time of the Renewed Order.

³⁰ NERC, *Statement of NERC’s Long-term Reliability Assessment*, (June 17, 2025), available at https://www.nerc.com/news/Pages/Statement-on-NERC%E2%80%99s-2024-Long-Term-Reliability-Assessment.aspx?utm_source=substack&utm_medium=email.

1. The materials cited in the Original Order do not support the existence of an emergency.

The evidence supporting the Original Campbell Order does not support the Renewed Order. The Renewed Order continues to rely on some of the same evidence that DOE cited in the Original Campbell Order, including the North American Electric Reliability Corporation’s (“NERC”) 2025 Summer Reliability Assessment. Ex. H. That report does not identify any war, fuel shortage, or natural disaster. *Id.* Rather, it evaluates generation resource and transmission system adequacy as well as energy sufficiency to meet projected summer peak demands and operating reserves. Ex. H at 5. Here are NERC’s main conclusions regarding MISO:

Midcontinent Independent System Operator (MISO): MISO is expecting to have an existing certain capacity of 142,793 MW in the 2025 SRA, which is a slight reduction from the 143,866 MW submitted for the 2024 SRA. The retirement of 1,575 MW of natural gas and coal-fired generation since last summer, combined with a reduction in net firm capacity transfers due to some capacity outside the MISO market opting out of the MISO planning resource auction, is contributing to less dispatchable generation in MISO. With higher demand and less firm resources, MISO is at elevated risk of operating reserve shortfalls during periods of high demand or low resource output. MISO’s most recent energy assessment reveals that the period of highest energy shortfall risk has shifted from July to August. This shift is driven by the decline in dispatchable generation and the increasing share that solar and wind resources have in meeting demand. The risk of supply shortfalls increases in late summer as solar output diminishes earlier in the day, leaving variable wind and a more limited amount of dispatchable resources to meet demand.

Id. at 5. NERC concluded that all areas were projected to have “adequate anticipated resources for normal summer peak load conditions.” *Id.* Indeed, the “elevated risk” designation means the probabilistic indices are low but not negligible. *Id.* at 10, Table 1. And further, the MISO-specific “dashboard” concludes that MISO’s expected resources meet operating reserve requirements under normal peak-demand scenarios. At worst, operating mitigations “could” be necessary for above-normal summer peak load and extreme generator outage conditions:

Risk Scenario Summary

Expected resources meet operating reserve requirements under normal peak-demand scenarios. Above-normal summer peak load and extreme generator outage conditions could result in the need to employ operating mitigations (e.g., load-modifying resources and energy transfers from neighboring systems) and EEAs. Emergency declarations that can only be called upon when available generation is at maximum capability are necessary to access load-modifying resources (demand response) when operating reserve shortfalls are projected.

Id. at 16.

Second, the Renewed Order describes a sequence of resource retirements without acknowledging the replacement capacity that came online (or that is/was planned to come online) to offset those retirements. Ex. A at 2. In any event, NERC’s 2025 Summer Reliability Assessment analysis already factored in an assumption that included those retirements including the Campbell Plant’s slated retirement for the summer of 2025. Ex. H at 5, 16.

Third, the Renewed Order cites NERC’s “elevated risk” determination. But the Campbell Plant’s retirement was well known to MISO operators who accounted for the retirement in their robust resource planning processes (described in further detail herein). Indeed, the Renewed Order acknowledges that the retirement was already factored into MISO’s own supply forecasts. *Id.* at 2. MISO’s PRA (Ex. F), cited in the Original Campbell Order, confirms adequate margin. *Id.* In fact, for the fall 2025 timeframe, the auction results exceeded MISO’s Reserve Margin Requirement by 2.6%. That means MISO entered the fall with more resources than necessary to ensure grid reliability. Ex. F at 19.

And as the States’ Petition for Rehearing on the Original Campbell Order explains, the “elevated risk” designation that DOE cites is relatively common and has never presented an emergency before. Ex. D at 19-20. In fact, NERC concluded that all areas were projected to have “adequate anticipated resources for normal summer peak load conditions.” Ex. H at 5. And nothing in the NERC assessment determined that MISO’s interconnection with other RTOs would be insufficient for additional capacity if needed. Nonetheless, the Renewed Order relies on the NERC

Summer Assessment, and that “additional dispatch of the Campbell Plant is necessary,” Ex. A at 2, even though the Campbell Plant was not included in any of the MISO forecasts finding sufficient capacity.

Fourth, the Renewed Order cites the PRA by cherry-picking reference to capacity offset while simultaneously acknowledging its conclusion that the results “demonstrated sufficient capacity.” Ex. A at 2. Sufficient capacity, by definition, is not an emergency.

All this evidence was improperly credited when DOE issued the Original Campbell Order, and the Renewed Order compounds that error by reasserting the same flaws and mischaracterizations. This is even more troubling since the petitions challenging the Original Order placed DOE squarely on notice of the fundamental flaws in these sources. Rather than identifying and responding to an emergency, both orders together demonstrate that DOE instead started with a desired result (keeping a coal-fired plant online) and worked backwards to justify that outcome.

2. The additional evidence cited in the Renewed Order does not demonstrate a continuing emergency.

A continuing emergency condition does not exist, especially during the Renewed Order’s applicable timeframe. After recounting the same purported evidence supplied in the Original Campbell Order, the Renewed Order then enters into a section entitled “Continuing Emergency Conditions” which presents several additional flaws, cherry-picked and out-of-context citations, and unsupported or illogical conclusions:

It declares that the “summer season has not yet ended” (Ex. A. at 2), but this fails to acknowledge multiple critical points. These include that peak demand is historically in June and July, not late August, that the Renewed Order was issued just days before the start of the meteorological fall, and that the Renewed Order remains in place through late November.

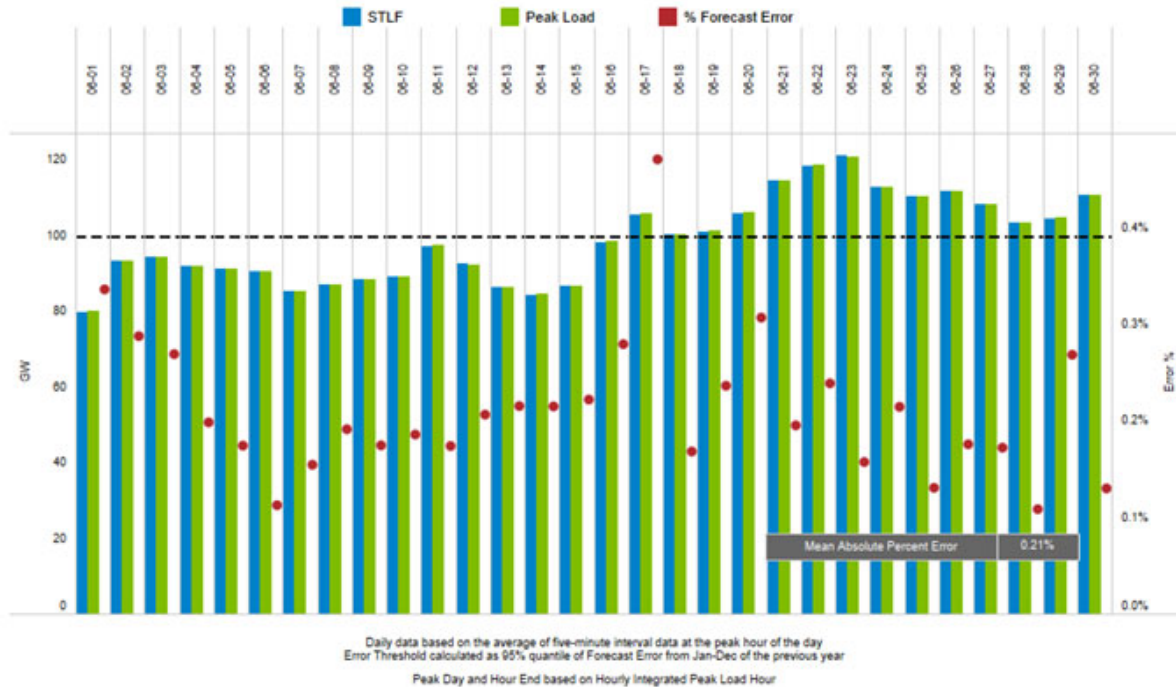
The Renewed Order describes how MISO called on the Campbell Plant to run in June 2025 (Ex. A at 3) without acknowledging: (1) that the Campbell Plant was only available because of the Original Order in the first place, or (2) that other resources could have supplied the capacity that the Campbell plant provided, or (3) that there was sufficient capacity within MISO even without the Campbell Plant operating, or (4) that there is no reason for DOE to conclude that the Campbell Plant's operation in June indicated any need to respond to a heat wave in September, October, or November of 2025 while the Renewed Order remains in effect.

The Renewed Order attempts to justify its emergency finding by observing that MISO issued various alerts over the course of the summer (Ex. A at 3) without acknowledging: (1) that such alerts are common mechanisms for managing peak load demand every summer, and have been used for decades without any need for Section 202(c) emergency orders by DOE to keep a resource that had been slated for retirement online, or (2) that the alerts responded to summer conditions that will not be present in September, October, or November of 2025 while the Renewed Order remains in effect. Moreover, even in the peak-demand timeframe of June (Ex. M) and July (Ex. N.), when actual demand reached 120 GW on June 23, MISO had more than enough offered capacity:

Short-Term Load Forecast*

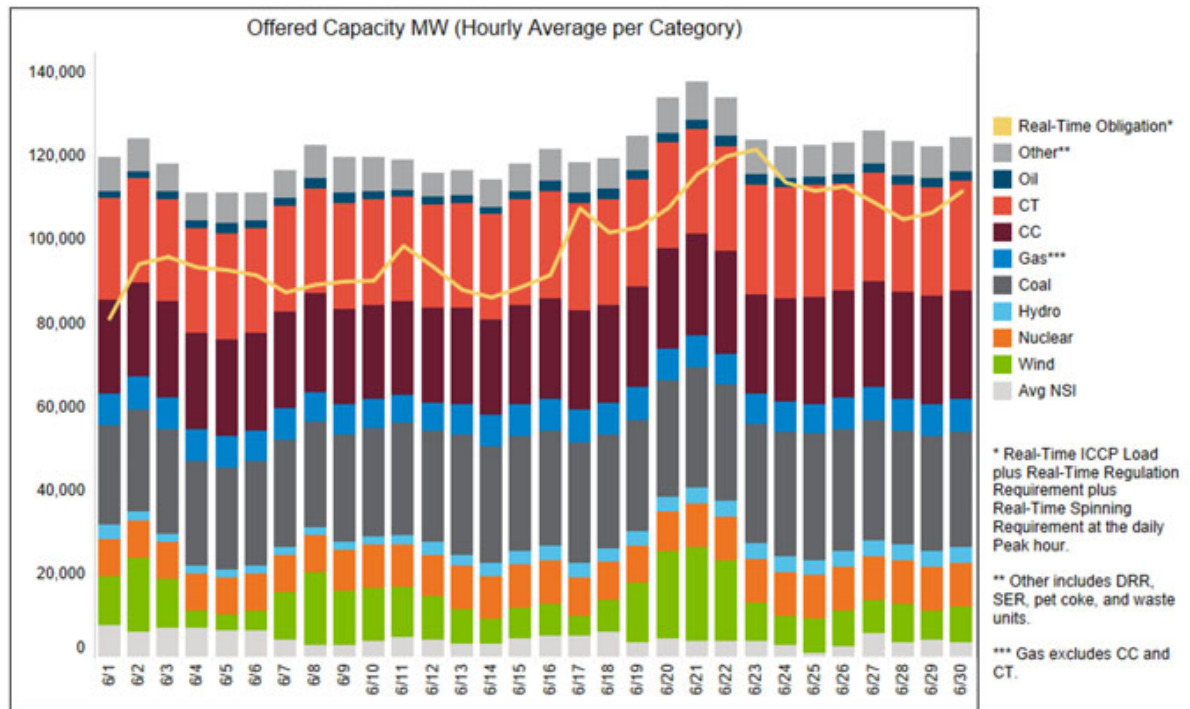
G

June 2025 Short-Term Forecasted Daily Peak Load vs Actual



Ex. M at 25.

Offered Capacity and Real-Time Peak Load Obligation



33

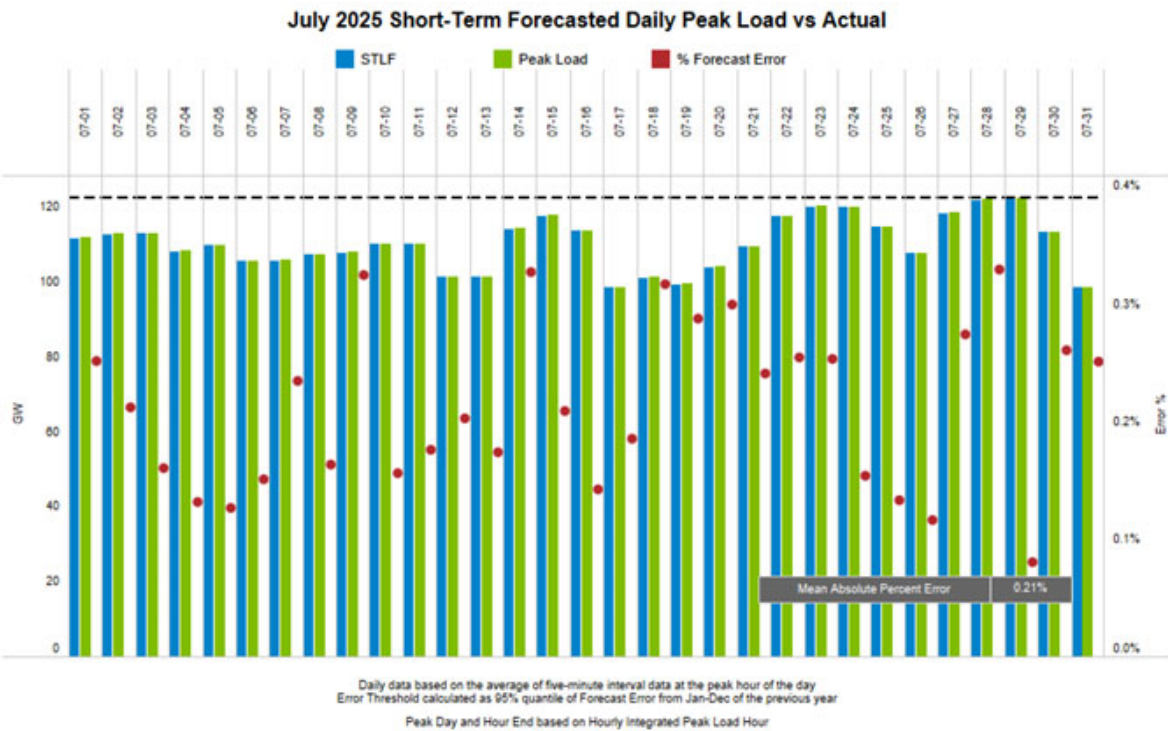
Source: MISO Market and Operations Analytics Department



Ex. M at 33.

Short-Term Load Forecast*

G

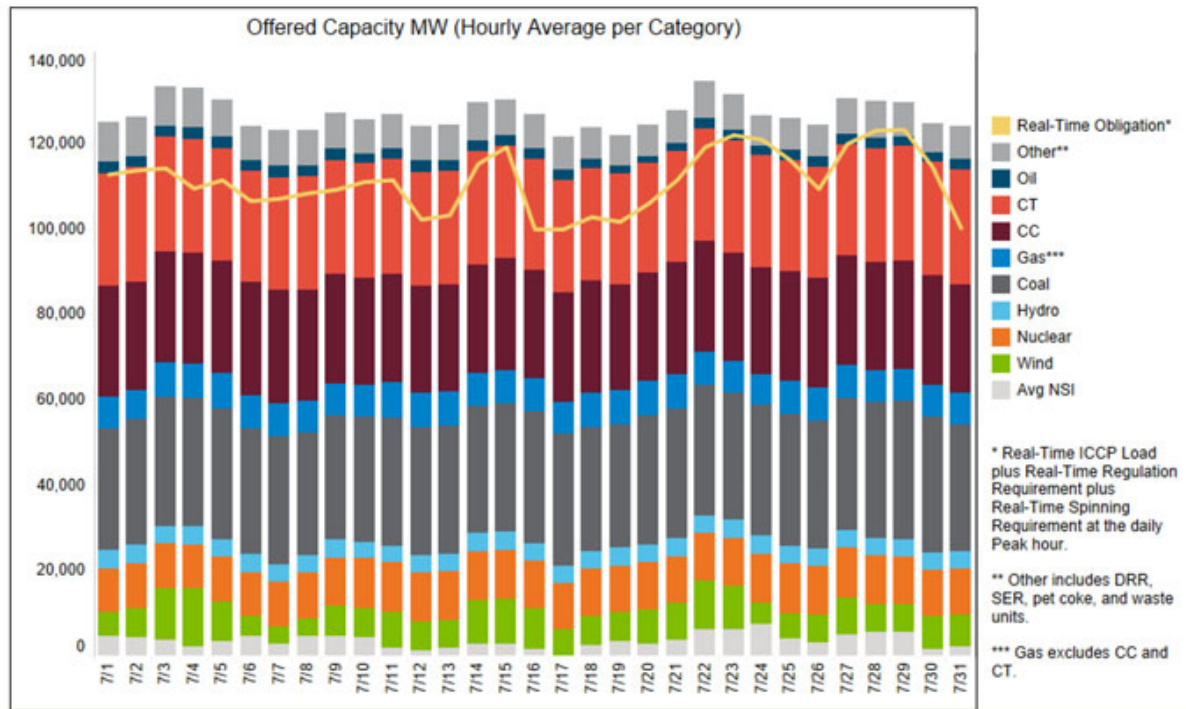


Source: MISO Operations Risk Management



Ex. N at 24.

Offered Capacity and Real-Time Peak Load Obligation



Source: MISO Market and Operations Analytics Department



Ex. N at 32. These charts do not include more than 7000MW in headroom available to MISO beyond the offered capacity shown.³¹

The Renewed Order then cites MISO’s three-year-old 2022 application to revise its resource adequacy construct to argue that the alleged “emergency” that the Renewed Order purports to address in the fall of 2025 is a year-round phenomenon. Ex. A at 3. But DOE’s reliance on the application fails to acknowledge that MISO has been operating through 2025 without any

³¹ See Public Interest Organization’s Petition for Rehearing submitted to DOE on September 8, 2025, Exhibit 70 at ¶¶ 16-19.

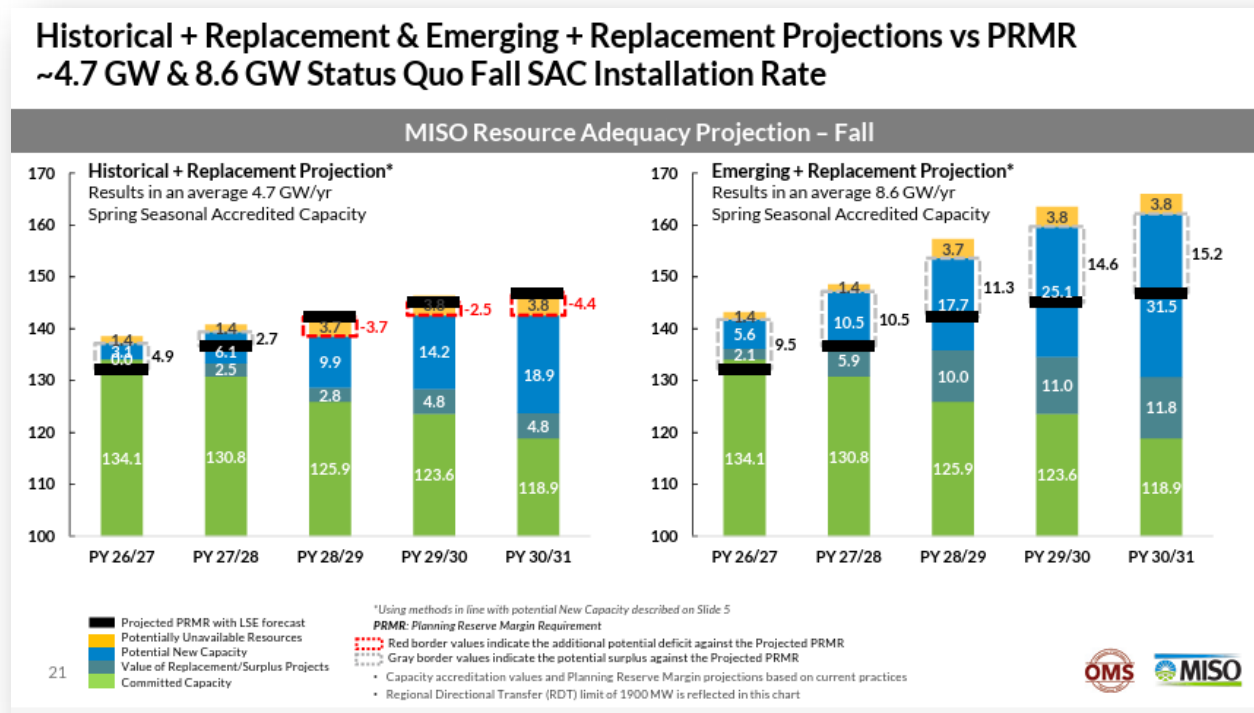
need for a Section 202(c) emergency order (other than 202-25-3) by engaging in its robust planning process that ensures adequacy and reliability.

The Renewed Order also cites MISO’s 2023 Attributes Roadmap for the proposition that by the summer of 2027, there will be an equal loss of load risk in both the summer and fall seasons. The Renewed Order does not explain how a Section 202(c) order directed to the August to November 2025 timeframe will address that eventuality several years away.

The Renewed Order also cites MISO’s Response to the Reliability Imperative, concluding that MISO purportedly has “resource reliability concerns” and quotes a passage acknowledging “risks in non-summer months” that were not historically of concern. Ex. A at 4. But the Renewed Order fails to identify how generalized discussion of non-summer “concerns” and potential “risks” demonstrate any particular emergency, much less a specific one that is posed for the August to November 2025 timeframe. To the contrary, the MISO Response to the Reliability Imperative describes the risks posed by non-summer operations in the context of explaining the steps it is taking to address these risks to ensure adequate capacity and overall system reliability. Ex. O at 11. It specifically describes four pillars of approaches that MISO intends to deploy, (Ex. O at 12–24), and concludes with a “Roadmap” for how it will deploy its strategy. Ex. O at Appendix A-1. Nothing in the Renewed Order contends that these measures are inadequate or that there is an emergency despite MISO’s robust efforts. *Contra* Ex. A.

The Renewed Order also cites (again) the 2025-2026 PRA results, which included a statement that “new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources.” Ex. A at 4; Ex. F at 13. Again, the actual document, in its full context, confirms adequate margin for reliability.

The Renewed Order further cites the Organization of MISO states and MISO’s joint publication of a survey dated June 6, 2025. Ex. A at 4–5. But as the Renewed Order confirms, the survey confirms a surplus through the summer of 2026, well beyond the scope of the Renewed Order’s timeframe. In fact, the survey shows a fall 2026 surplus using seasonally-accredited capacity against the planning reserve margin requirement:



Ex. P at 21. The Renewed Order then relies on the survey results to identify potential forecast deficits (which are not emergencies) in the 2027-2030 timeframe—but that is well outside the fall 2025 timeframe in which the Renewed Order will be in effect, and fails to account for the “Emerging + Replacement Projection” metrics throughout the document showing surpluses against the projected Planning Reserve Margin Requirement. *Id.* at 7, 9, 19–26.

The Renewed Order further cites the development of the AI industry in general, including citing the existence of 21 AI companies in Michigan. Ex. A at 6.³² But a company’s business address is not necessarily the same as where its data centers might be located, and the Renewed Order does not identify whether any of the listed companies have or intend to build data centers that would be served by the Campbell Plant’s output. To the contrary, the cited article confirms that many of them have a predominance of foreign employment.³³

The Renewed Order further cites the DOE’s 2025 July 2025 Resource Adequacy Report. Ex. A at 6; Ex. Q. But that Report uses the wrong data for MISO, as the Renewal Order explicitly acknowledges. Ex. Q at 20, fn25 (“Following the initial data collection for this report, MISO issued its 2025 Summer Reliability Assessment. Based on that report, NERC revised evaluations from its 2024 LTRA and reclassified the MISO footprint from being an ‘elevated risk’ to ‘high risk’ in the 2028–2031 timeframe, depending on new resource additions/retirements. While DOE’s analysis is based on the previously reported figures, DOE is committed to assessing the implications of updated data on overall resource adequacy and providing technical updates on findings, as appropriate.” (emphasis added).). The Renewed Order fails to explain how data that the Report has yet to even consider can support a finding that an emergency exists in the fall of 2025.

The DOE Report also defines a shortfall, even where there is a 3%-6% operating surplus. Ex. Q at 12. And the report completely fails to apply a “perfect capacity” estimate for MISO. Ex.

³² Ekku Jokinen, *Top 21 Artificial Intelligence Companies in Michigan*, (last accessed Sep. 15, 2025), <https://www.inven.ai/company-lists/top-21-artificial-intelligence-companies-in-michigan>.

³³ These include: Soothsayer Analytics: 65% of employees in India; Netlink Software Group America Inc: 65% of employees in India; Suneratech: 82% of employees in India; Ventuit: 51% of employees in India; Verdai: 100% of employees in Italy; Communication Valley Reply: 100% of employees in Italy; Altair RapidMiner: 44% in Hungary, 29% in Germany; and LENS Corporation: 100% of employees in India

Q at 20. Instead, the Report confirms that its work was done by hand with a limited number of iterations, acknowledging an incomplete analysis that explicitly should not be relied upon. *Id.* at 19 (“As the work was done by hand with a limited number of iterations (15), this should not be considered the minimum possible capacity to accomplish these targets.” (emphasis added)). Yet the Renewed Order relies upon it.

The Renewed Order further cites testimony by MISO’s Senior Vice President of Planning and Operations, Jennifer Curran. Ex. A at 6. But the Renewed Order (apparently intentionally) omits a critical sentence from the passage it cites, which provides important context: “A growing reliability risk is that the rapid retirement of existing coal and gas power plants threatens to outpace the ability of new resources with the necessary operational characteristics to replace them. This can be addressed by letting local reliability requirements determine the pace of retirement of existing power plants.” Ex. R at 7 (emphasis added). Further testimony undermines the very proposition for which the Renewed Order purports to rely on Ms. Curran’s testimony. She also repeatedly confirmed that resource planning is the purview of individual states and utilities in the MISO region, which can be used to mitigate the risk:

- “More work remains to be done... Let reliability needs help inform the pace of retirement of existing electric generating resources, ensuring they aren’t retired before adequate new electric generation is available.” Ex. R. at 2.
- “The MISO region predominantly consists of vertically integrated utilities with responsibility for providing adequate electric generation to meet needed load for their area and states having jurisdiction over electric resource adequacy decisions.” Ex. R at 4.

- “Two of our most important tools are the Futures Planning Scenarios, which are MISO projections capturing a range of potential system conditions over a 20-year horizon, and the annual Organization of MISO States and MISO survey, a voluntary survey of generation owners to assess available resource capacity to serve the projected load over the next five years. These regularly updated studies provide the basis for long-term transmission planning efforts and help inform the electric resource planning decisions, which are the purview of the states and utilities in the MISO region.” Ex. R at 6.

In total, none of this evidence demonstrates that there is any emergency, much less one that might occur in the August 20 to November 19 timeframe. To be sure, there are normal capacity considerations including some that pose some degree of potential risk, but not one of the sources cited in the Renewed Order evidences any lack of adequate planning to address those risks, much less any likelihood of a shortfall between August 20 and November 19, 2025.

Instead, the robust and comprehensive planning processes undertaken by the prime authorities—the individual states, the utilities, and MISO—have comprehensively planned for resource adequacy and system reliability during the fall 2025 and beyond.

Given all these countervailing considerations, and the full context of the sources that DOE purports to cite, DOE did not have substantial evidence supporting its emergency determination. It did not exercise reasoned decision-making in declaring that an emergency exists. Its Renewed Order is arbitrary and capricious.

B. The Renewed Order exceeds DOE’s authority because it is not limited to a specific inadequate power supply situation as required by Section 202(c) and 10 C.F.R. § 205.371.

DOE exceeds its authority because the Renewed Order does not address any actual emergency or sudden occurrence needing imminent response, and because it has not identified any

actual and specific insufficient supply situation, for the August 20 to November 19 timeframe. Thus the Renewed Order is without authority and contrary to law.

As the statutes make clear, an actual “emergency” is a sudden occurrence requiring immediate responsive action; conversely, it is not the mere potential that an emergency might occur. 16 U.S.C. § 824a(c). And Department regulations define “emergency” to mean 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.” 10 C.F.R. § 205.371. Further, emergency orders must meet “a specific inadequate power supply situation,” and although emergencies with extended periods of insufficient supply could qualify, the impacted entity is supposed to firm up commitments for supply “so that a continuing emergency order is not needed.”

Id

These requirements have been demonstrated by DOE’s historic use of 202(c) authority to address natural disasters and specific capacity crises. The most common reason to invoke Section 202(c) authority has been to address natural disasters like hurricanes, cold weather events, and extreme heat. *See* DOE Order Nos. 202-05-1 & -2 (Sept. 28, 2005) (Hurricane Rita); DOE Order No. 20208-1 (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); DOE Order No. 202-21-1 (Feb. 14, 2021) (Winter Storm Uri); DOE Order No. 202-22-3 (Dec. 23, 2022) (Winter Storm Elliot – Texas ERCOT); DOE Order No. 202-22-4 (Dec. 24, 2022) (Winter Storm Elliot – PJM); DOE Order No. 202-20-2 (Sept. 6, 2020) (extreme heat in California); DOE Order No. 202-21-2 (responding to extreme heat, wildfires and drought in California); DOE Order Nos. 20222-1

& 2 and amendments (same). Indeed, during Winter Storm Elliot, MISO exported power to neighboring regions.³⁴

Past practice further confirms the impropriety of the Renewed Order. While DOE’s emergency powers have occasionally been used to address retirements like the Campbell Plant, it has done so only when requested by the operator or local government and there was a specific need demonstrated for the units to operate due to an unexpected emergency. DOE Order No. 202-05-3 (Dec. 20, 2005) (Mirant to supply Washington D.C. when transmission lines were out of service); DOE Order No. 202-17-1 at 2 (Grand River Energy to operate Unit 1 due to lighting strike to Unit 2 and delay in construction for Unit 3); DOE Order No. 202-17-2 (need to operate Yorktown to avoid imminent risk of load-shedding).

A memorandum by the Congressional Research Service, Ex. S, confirms that DOE’s use of Section 202(c) to order a plant to be generally available is novel. Ex. S at 3 (Department engaging in “seemingly new interpretations of the emergency authority”).

Indeed, the statutory structure of the Federal Power Act confirms the short-term nature of emergency approaches. That is because long-term planning authority appears in an entirely different Section of the Federal Power Act – Section 215—which indicates that the emergency authority of Section 202(c) is a different authority altogether. 16 U.S.C. § 824o. Given all the procedures attendant to resource planning, this statutory structure confirms that emergency orders are not the proper mechanism to engage in resource planning five years into the future. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 142, 149 (2000); *see also Cal.*

³⁴ MISO, *Overview of Winter Storm Elliott December 23, Maximum Generation Event* (Jan. 17, 2023) (“*Winter Storm Elliott Overview*”) at 7, available at <https://cdn.misoenergy.org/20230117%20RSC%20Item%2005%20Winter%20Storm%20Elliott%20Preliminary%20Report627535.pdf>.

Indep. Sys. Operator Corp. v. FERC, 372 F.3d 395, 401–02 (D.C. Cir. 2004) (DOE’s authority in one Section of the Federal Power Act “is strong evidence” that a separate Section does not confer the same authority on the agency).

Courts have also recognized Section 202(c)’s limitation to actual or imminent crises. For example, in *Richmond Power and Light v. FERC*, the D.C. Circuit noted that the statute “speaks of ‘temporary’ emergencies, epitomized by wartime disturbances, and is aimed at situations in which demand for electricity exceeds supply.” 574 F.2d 610, 615 (D.C. Cir. 1978). And in *Otter Tail Power Co. v. Fed. Power Comm’n.*, the Eighth Circuit noted that 202(c) provides authority to “react to a war or national disaster and order immediate interconnection. . . to maintain electrical service during such emergency.” 429 F.2d 232, 234 (8th Cir. 1970). In *Otter Tail*, the Eighth Circuit distinguished between an emergency that is likely to occur and one that is actually occurring, concluding that a separate provision, section 202(b)³⁵ applies to the former, while section 202(c) applies to the latter:

On its face, § 202(c) enables the Commission to react to a war or national disaster and order immediate interconnection of the facilities to maintain electrical service during such emergency. . . On the other hand, § 202(b) applies to a crisis which is likely to develop in the foreseeable future but which does not necessitate immediate action on the part of the Commission.

³⁵ Section 202(b) refers to 16 U.S.C. § 824a(b), which states “[w]hensoever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility” if the utility would not face an undue burden. The DOE’s authority is much more limited in these situations. Further, 42 U.S.C. § 7172(a)(1)(B) vests this power in FERC, not the Secretary.

Id. at 234. In that case, a power company challenged the FPC’s order issued under § 202(b) of a temporary connection between the power company and a small municipally owned power producer that was “dangerously close to eroding its firm power supply” due to the proximity between the generator load capacities and the peak load demand. *Id.* It claimed that because the ordered connection was temporary, the order could only be issued under section 202(c), and only in emergency conditions. *Id.* The court disagreed that section 202(c) only applies to temporary orders but agreed that a potential crisis in the foreseeable future was not an emergency, making it “just the type of situation to fit into a § 202(b) hearing rather than § 202(c).” *Id.* The caselaw is therefore clear: for DOE to have any authority under section 202(c) the emergency must be actual and not merely a broadly asserted projected risk.

Statutory text and structure, past practice, and caselaw are therefore all clear: for DOE to have any authority under section 202(c), the emergency must be actual and not merely a broadly asserted projected risk. With no such actual or even imminent emergency, the Renewed Order is unlawful.

C. The Renewed Order exceeds DOE’s authority because it requires actions not listed in Section 202(c)(1).

The Renewed Order also is unlawful because it purports to require actions not within DOE’s statutory authority.

DOE’s authority is limited to issuing orders that require connections or the generation, delivery, interchange, or transmission of electric energy. 16 U.S.C. § 824a(c). This authority does not cover mandating general plant availability untethered to meeting any specific need, nor does it allow for potential economic dispatch (which is not an apt solution for an actual emergency anyway—more on this in Section G below). Section 202(c)(1) does not allow for preemptive measures just in case an emergency might occur and specifically does not allow for the Department

to order availability without a specific need to be available.³⁶ Plus, “economic dispatch” is not equivalent to the generation of electric energy. Economic dispatch is constrained by statute to mean only the lowest-cost option under the Energy Policy Act of 2005 Section 1234(c). 42 U.S.C. §16432(b). MISO’s determination of lowest-cost sources may not result in the Campbell Plant producing *any* generation whatsoever during the fall of 2025. (Or if it does, it could be as a result of the Original Campbell Order or the Renewed Order being in place rather than an external need.) Thus, the DOE is without authority, and the Renewed Order is contrary to law.

D. The Renewed Order exceeds DOE’s authority because it does not set hours of operation, limit hours of operation, or minimize environmental impact as required by Section 202(c)(3).

The order must be limited to only those hours necessary to meet the emergency. 16 U.S.C. § 824a(c)(2).

The Renewed Order addresses only the potential for an emergency, but it does not identify a need for the Campbell Plant to generate electricity to meet it. By the same token, the Renewed Order does not establish any limited hours or other parameters for the Campbell Plant to follow to ensure it meets the purported emergency, only that it always be available. Thus, the DOE is without authority, and the Renewed Order is contrary to law, because it allows the Campbell Plant to generate electricity during times there are not even “elevated risks.” Allowing a coal plant to generate electricity and pollute beyond the purported emergency needs would increase the

³⁶ Before the Original Campbell Order, of the 19 times the DOE has issued a 202(c)(1) Order, only once, for Mirant in 2005, did it require a plant to supply as-needed additional capacity—but even then, it was based on a specific application demonstrating a concrete and specific need. DOE Order No. 202-05-3 (Dec. 20, 2005). That is not the case here.

environmental impacts that, by law, the Renewed Order must strive to minimize. 16 U.S.C. § 824a(c)(2). Thus, the DOE is without authority, and THE Renewed Order is contrary to law.

E. The Renewed Order exceeds DOE’s authority because Section 201(b)(1) reserves decisions about plant retirements to the states.

Section 201(a) of the Federal Power Act explicitly provides that federal regulation over generation and transmission is related to matters of interstate commerce and extends “only to those matters which are not subject to regulation by the States.” 16 U. S. C. § 824(a). Decisions over what plants should be constructed or retired are traditionally subject to state regulation. States retain jurisdiction “over facilities used for the generation of electric energy.” 16 U.S.C. § 824(b)(1). “The states are thus authorized to regulate energy production . . . and facilities used for the generation of electric energy” *Coal. for Competitive Elec., Dynergy Inc. v. Zibelman*, 906 F.3d 41, 50 (2d Cir. 2018). What facilities to build, whether they remain feasible, and utility rates are areas governed by the states. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation and Dev. Comm’n*, 461 U.S. 190, 205 (1983).

The energy market is governed by longstanding principles of cooperative federalism encouraged in Section 209(b) of the Federal Power Act—which explicitly declares that FERC may consult with states “regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission.” 16 U.S.C. § 824h(b). Indeed, FERC has embraced these cooperative federalism principles and developed long-standing consultation practices with the states, including through creation of a Joint Federal-State Task Force. Ex. T. And more recently, a Federal-State Current Issues Collaborative. Ex. U.

Section 103 of the Department of Energy Organization Act, also applicable, mandates due consideration to state retirement plans and requires, where practicable, consultation with relevant state officials. 42 U.S.C. § 7113.

States are responsible for developing and approving power generation plans, typically through public commissions like the Minnesota Public Utilities Commission³⁷ and the Wisconsin Public Service Commission.³⁸ These bodies oversee the development of Integrated Resource Plans (“IRPs”), or Strategic Energy Assessments, which are the blueprints for how a utility plans to generate sufficient electric power to meet its expected demand. *E.g.*, Minn. Stat. § 216B.2422 (Minnesota’s IRP statute). An IRP can consider and adopt plans with myriad inputs and considerations and impact overall electricity rates, the specific communities or areas where power plants are located, determinations of which power plants might be built or retired and the fuels that they will use, overall electric system reliability (like the likelihood of power outages and how quickly the lights come back on), and the environment.³⁹ Such processes can be rigorous and commissions will open a docket to publicly vet a proposed plan, receive comments, and make an informed decision that is in the best interest of the states and its ratepayers.⁴⁰

MISO, in turn, is one of the country’s largest RTO, which was formed to develop transmission systems, trading markets, and attendant procedures.⁴¹ MISO works collaboratively

³⁷ Minnesota Public Utilities Commission, *Utility Planning*, <https://mn.gov/puc/activities/economic-analysis/planning/> (last visited June 23, 2025).

³⁸ Wis. Stat. Ann. § 196.491 (West).

³⁹ *Id.*

⁴⁰ Minnesota Public Utilities Commission, *Electric Integrated Resource Planning (EILRP)*, <https://mn.gov/puc/activities/economic-analysis/planning/irp/> (last visited June 23, 2025).

⁴¹ FERC, *Energy Primer*, https://www.ferc.gov/sites/default/files/2024-01/24_Energy-Markets-Primer_0117_DIGITAL_0.pdf

with its member states to ensure resource adequacy throughout its service area.⁴² This means that it ensures there is sufficient generation capacity to meet future electricity demands, including forecasting demand growth, assessing existing generation assets, and planning for new generation resources.⁴³ MISO works with utilities during their development of submissions to state regulators for the IRPs that the regulators ultimately approve. And MISO then accounts for the final IRPs in its planning and analyses forecasting the balance between load and capacity. MISO also operates a capacity auction where utilities and other load-serving entities can procure the necessary generation capacity to meet projected demand. This incentivizes the development and maintenance of adequate generation resources.⁴⁴ MISO works with utilities, local regulators, and other stakeholders to maintain resource adequacy, including through its annual PRA, which procures sufficient resources and allows market participants to buy and sell capacity via an auction. MISO determines the capacity requirements in its region for each season covering the June 1 to May 31 time period.⁴⁵

The Campbell Plant's planned retirement is subject to precisely such state regulation and MISO integration. The plan to retire the plant received intense scrutiny over years before being approved and worked into MISO's projections—all under the auspices of state law including Michigan's IRP processes, state regulatory proceedings, state judicial proceedings, and state participation in MISO. *See In re 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

⁴² MISO, *System Planning*, https://www.misoenergy.org/meet-miso/about-miso/industry-foundations/grid_planning_basics/ (last visited June 23, 2025).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ MISO, *Resource Adequacy*, <https://www.misoenergy.org/planning/resource-adequacy2/resource-adequacy/#t=10&p=0&s=FileName&sd=desc> (last visited June 23, 2025).

2915368, at *73 (June 23, 2022). The Michigan Public Services Commission approved Consumers Energy’s plan to replace the capacity that the Campbell Plant would have produced with the purchase of a natural gas plant and extension of two units of natural gas peaking plants. *Id.* at *33. The Michigan Court of Appeals affirmed. *Wolverine Power Supply Coop., Inc. v. Mich. Pub. Surv. Comm’n (In re Consumers Energy)*; No. 362294, 2023 WL 2620437 (Mich. Ct. App. March 23, 2023).

MISO also reviews planned plant retirements to ensure resource adequacy and grid reliability. Section 38.2.7 of MISO’s Open Access Transmission, Energy, and Operating Reserve Markets Tariff requires an operator to provide 26 weeks of advance notice of a planned retirement. MISO then performs a Reliability Study to determine whether retirement will pose any concern for grid reliability.⁴⁶

Consumers Energy submitted Attachment Y form to MISO on December 14, 2021, providing notice that it planned to suspend generation at the Campbell Plant by June 1, 2025. MISO approved the Campbell Plant’s retirement on March 11, 2022. In making its approval, MISO determined that “the suspension of Campbell Units 1, 2 & 3 would not result in violations of applicable reliability criteria.”

DOE did not adequately consult with the state, much less account for or incorporate the findings of MISO when it approved Consumer’s Energy’s Attachment Y submission. Michigan state regulators have primary jurisdiction over IRPs, siting, and cost recovery for utilities operating in their states including the Campbell Plant. *Zibelman*, 906 F.3d at 50. DOE’s failure to consult violates the principles behind FERC and DOT policies to involve the states in light of the statutory

⁴⁶ If MISO does identify a threat to grid reliability if the resource retires, the MISO tariff provides a mechanism to retain that resource until the constraint can be alleviated.

reservation of state authority in federal-state regulatory balance, 16 U.S.C. § 824(b)(1). It avoids 209(b) of the Federal Power Act regarding federal-state collaboration and upends FERC’s historic practice of seeking to develop a robust dialogue between regulators. 16 U.S. Code § 824h(b). And it flouts Section 103 of the Department of Energy Organization Act which requires consultation with relevant state officials—consultation was absolutely “practicable” here given the lack of an imminent emergency. The Renewed Order did not give any consideration (much less due consideration) to Michigan’s IRP, in violation of law. 42 U.S.C. § 7113.

In the Renewed Order’s focus on longer-term risks, including the growth of data centers and the projections out into the 2027-2030 timeframe, DOE is improperly inserting itself into long-term resource planning, usurping a role belonging to the respective states. The DOE cannot use short-term emergency orders to serve a purpose for which DOE’s emergency authority was not designed: to supplant the states’ primary authority in the long-term resource planning arena.

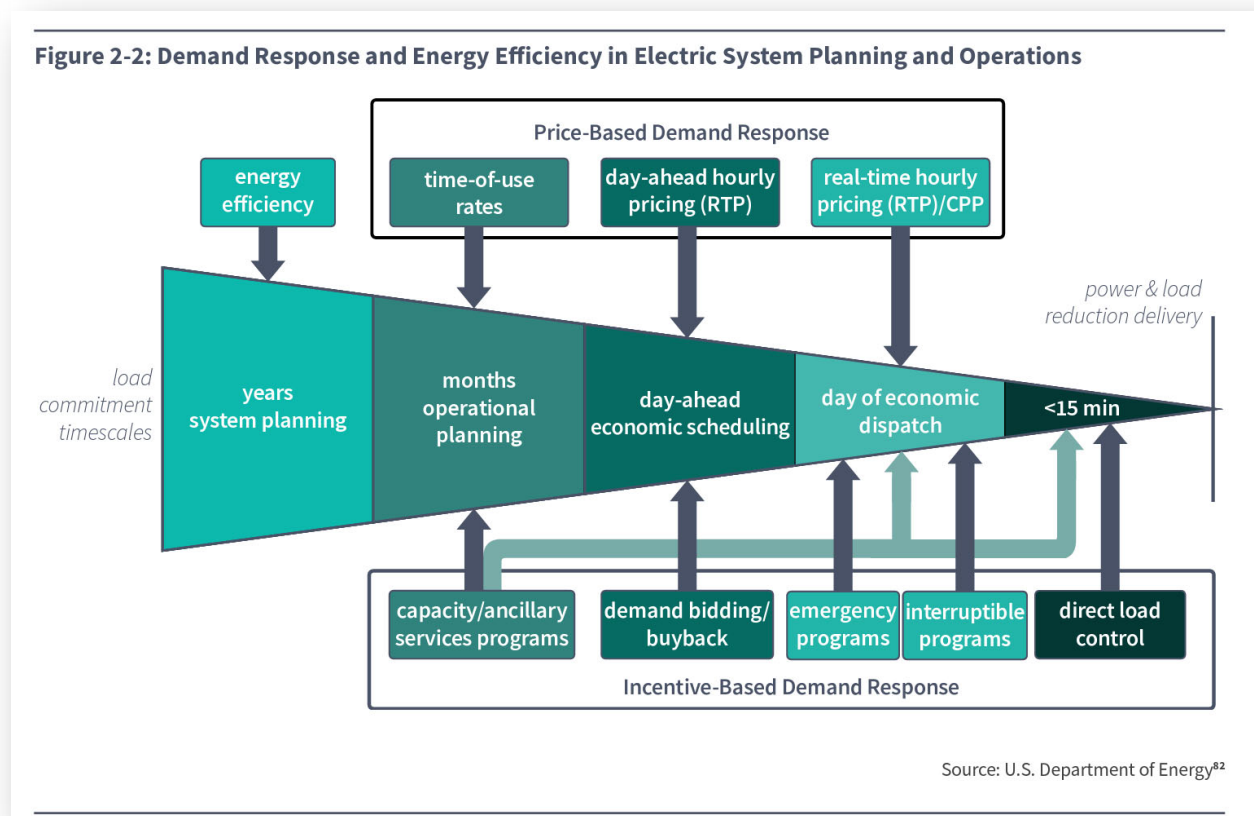
The Order usurps the State of Michigan’s primary rule in resource planning and development; it is contrary to law.

F. The Renewed Order is unreasoned, arbitrary, and capricious because its directive for “economic dispatch” is inherently contradictory with the needs to meet an actual emergency.

Section 202(c) contemplates emergency orders that are tailored to the specific emergency—they must “best meet the emergency and serve the public interest.” 16 U.S.C. § 824a(c). Even if an emergency did exist and DOE had the legal authority to issue an order, this Renewed Order is not rationally related to addressing the emergency that the order identifies.

The Order’s specific requirement for MISO to take steps to effectuate “economic dispatch” of the Campbell Plant undermines its determination that an emergency exists and cannot “best meet” the purported emergency. Economic dispatch is a term of art for the procedure by which

MISO selects generators to add electric energy to the grid. It is designed to ensure that the electricity generated matches the demand in its service area in the most cost-effective way. “Economic dispatch,” by definition, is awarded to the lowest-cost option (all else being equal). Ex. V. That is because much of the base load planning takes place years or months ahead of time and is comprised of the must-run units. Additional capacity is then called upon in the day-ahead or day-of markets for which additional generation is required:



Ex. V at 43. Most of the generation available to meet load in real time for economic dispatch is identified and scheduled the day before, based upon the day-ahead load forecast used in the security-constrained unit commitment process. Ex. W at 6–7, 13, 51. As recently as 2021, the vast

majority of peaking plants operated on natural gas and oil which can be dispatched in much shorter order; only 3.3 percent of all peakers nationwide burned coal. See Ex. X at 2.

Taken together, economic dispatch considers a variety of factors including (1) the cost of generation, (2) the standby condition of the generator, (3) ramp-up time to provide the needed capacity, and (4) whether electric energy can be transmitted to the area of need.

The Renewed Order’s proposed solution for “economic dispatch” of the Campbell Plant is thus inherently incompatible with addressing emergency operation (likely because there is no emergency in the first place). In a true emergency, even uneconomic plants receive cost-of-service payments when they are required to run to alleviate the emergency condition. The RTO does not require the emergency generator to bid into the market and *then* make a determination about whether it will be selected to run as with economic dispatch. Rather, the emergency generator becomes a “price taker” using MISO’s “must run” classification. Thus, the Order’s directive to use “economic dispatch” is irrational: actual emergencies are not addressed with economic dispatch, and economic dispatch is a necessarily ineffective method to address an actual emergency.⁴⁷

Moreover, the Renewed Order’s requirement that the Campbell Plant be “available to operate” does not accord with 202(c)(1)’s requirement that DOE select the temporary measure that will “best meet the emergency and serve the public interest.” Section 202(c)(1)’s use of the term “best” shows that the Commission cannot require temporary power generation from the Campbell Plant when better means are available to meet the alleged emergency and serve the public interest.

⁴⁷ Campbell’s situation illustrates this inefficiency. Coal is an expensive fuel type in our current energy mix. The inefficiency of running a coal plant makes it uneconomic in general, which is one of the reasons why this specific Campbell plant was slated for retirement. *See In re Application of Consumers Energy*, No. U-21090, 2022 WL 2915368, at *73.

Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208, 218 (2009) (“Best” means what is “most advantageous.” (Quoting Webster’s New International Dictionary 258 (2d ed.1953))). DOE’s decision to require the Campbell Plant to be available disregarded its obligation to consider alternatives and select the best one.

Although DOE need not consider every conceivable alternative, it must consider those that are obvious and viable. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 30 (2020); *Motor Vehicle Manufs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983); *Nat’l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013). Intervenors and the public may also introduce information that requires the Department to evaluate alternatives and reconsider its decision to impose or maintain a requirement. *See, e.g., Chamber of Com. of the U.S. v. Secs. & Exch. Comm’n*, 412 F.3d 133, 144 (D.C. Cir. 2005) (evaluating agency failure to consider alternative raised by dissenting Commissioners and introduced by commenters); *cf.* 10 C.F.R. § 205.370 (stating ability to cancel, modify, or otherwise change an order). Indeed, DOE’s regulations specify information it shall consider when deciding to issue an order under section 202(c). 10 C.F.R. § 205.373. The specified information includes “conservation or load reduction actions,” “efforts . . . to obtain additional power through voluntary means,” and “available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions.” *Id.* § 205.373(g)–(h); Ex. Y at 4 (DOE Order No. 202-22-4). DOE has not explained why ordering the Campbell Plant to remain “available” meets any of these criteria, especially considering alternatives such as power pooling and utility coordination.

DOE has not explained why its Renewed Order “best” meets the emergency, because it does not. Again, the Renewed Order alleges only that the Campbell Plant should remain available

because a need *might* arise in the future (and even then, most likely years from now, not in the August to November timeframe). Given the speculative nature of the alleged emergency, it is incorrect as a matter of fact that ordering the Campbell Plant to remain available is the best means of addressing it. DOE’s failure to consider alternatives other than the inefficient and incapable Campbell Plant does not meet section 202(c) requirement for DOE to use its judgment to choose the best temporary source of emergency energy.

First, if an emergency need occurs in the day-of or real-time markets, the Campbell Plant will not be able to spool up in time to meet that need. That is because it takes over 12 hours to reach peak load. Ex. Z.⁴⁸

Second, even if there was adequate notice for the Campbell Plant to deliver energy in an emergency, its age and unreliability make it a poor choice to rely on for emergency services.⁴⁹ The Campbell Plant’s unreliability was one of the reasons it was slated for retirement. In 2023 and 2024, Campbell experienced long, recurring outages that demonstrated it should not be relied on as an emergency power source. For example, in 2023, Unit 2 experienced four outages totaling 3,445 hours—nearly 40 percent of the year—due to a pump failure, and in 2024, Unit 3 experienced an outage totaling 1,104 hours due to a failure in one of the turbine’s gears.⁵⁰ Even during the June 23, 2025, peak load event during the heat wave, Campbell did not run two of its three units. *Id.*

⁴⁸ Adapted from U.S. Energy Information Administration submissions according to Forms EIA-860 and EIA923, in which “OVER” indicates ramp-up time exceeding 12 hours. *See* <https://www.eia.gov/electricity/data/eia860/>; <https://www.eia.gov/electricity/data/eia923/>.

⁴⁹ *See* Public Interest Organization’s Petition for Rehearing submitted to DOE on September 8, 2025, Exhibits 103-104.

⁵⁰ *Id.* Exhibit 3.

Even if there was adequate transmission and lead time, the Campbell Plant’s expensive fuel source means that its bid to provide electricity would be higher than other lower-cost dispatchable alternatives (natural gas, storage, or renewables), which would prevent it from being selected as the most economic resource to meet the need. Again, even during the peak load in June of 2025, only one of the Campbell Plant’s units was online, and it produced only 761MW of power. Ex. AA.⁵¹ That represents a small fraction of the remaining margin that MISO had available and demonstrates that the Campbell Plant is not an efficient means of meeting an emergency energy demand.

Finally, if, for example, there was a need for additional electricity in North Dakota in October of 2025, it is unlikely that there would be sufficient transmission infrastructure across the Great Lakes to deliver electricity from the Campbell Plant to meet that need.

Rather than ordering the Campbell Plant to remain available, DOE was required to consider obvious alternatives that MISO has available and uses as part of its role as a regional transmission grid operator. The Department has long recognized that power pools and utility coordination “are a basic element in resolving electric energy shortages.” *Emergency Interconnection of Elec. Facilities and the Transfer of Elec. to Alleviate an Emergency Shortage of Elec. Power*, 46 Fed. Reg. 39,984, 39,985–86 (Aug. 6, 1981). And recent history bears out the important role of transmission connectivity along with imports and exports.⁵² The fact that DOE has intruded on

⁵¹ Sourced from <https://campd.epa.gov/data/custom-data-download>.

⁵² See, e.g., Public Interest Organization’s Petition for Rehearing submitted to DOE on September 8, 2025, Exhibit 43 at § III.A.3.b (Winter Storm Elliott System Operations Inquiry) (“Despite tightening conditions on the MISO system . . . MISO maintained steadily increasing exports to TVA throughout the day.”); Exhibit 44 at 43 (PJM Elliott Report) (describing PJM exports of between 8 and 11 GW to TVA and other neighboring regions), 83–84 (describing PJM power exports to MISO and graphically depicting those exports over time); Exhibit 36 at 6 (MISO Elliott Max. Gen. Event Overview) (“MISO consistently exported power to southern

MISO's role of planning for and meeting fluctuations in demand without considering these viable and obvious alternatives shows that it did not comply with section 202(c).

Section 202(c)(2) requires the emergency measures to be tailored the actual need; yet here, the Renewed Order improperly imposes measures that are not tailored to anything. All the while, the Order imposes costs on the States to bring the Campbell Plant to operational status beyond its planned retirement, adds potentially expensive generation to the mix if it were to run in the August 20-November 19 timeframe, and generates harmful pollution at the same time. Thus, the Renewed Order requiring the Campbell Plant to remain available and for MISO to take steps to use the Campbell Plant for economic dispatch is irrational and arbitrary where the Campbell Plant is unlikely to be a good candidate to serve either economic dispatch or emergency-need functions—especially where it is unclear what need it is supposed to meet in the first place.

Therefore, the Renewed Order is not rationally related to meeting the need of the purported emergency that it identifies.

G. The purported emergency is pretext for a prejudged outcome.

The Renewed Order is not a good faith effort to carry out DOE's duties under the Federal Power Act. Rather, the materials supporting the Renewed Order demonstrate a pretextual effort to further the administration's policy support for fossil fuels, and in particular coal electricity generation.

Where the conduct of the agency shows an "unalterably closed mind on matters critical to the disposition of th[is] proceeding," it requires either disqualification of the administrator or

neighbors with a maximum value of nearly 5 GW."); *and* Exhibit 7 at 1 (DOE Order No. 202-02-1) (providing for usage of interregional transmission).

withdrawal of the proposal. *Ass’n of Nat’l Advertisers v. FTC*, 627 F.2d 1151, 1170 (D.C. Cir. 1979); *Nehemiah Corp. of Am. v. Jackson*, 546 F.Supp. 2d 830, 847 (E.D. Cal. 2008) (describing the appropriate remedies when an agency official has prejudged the outcome of a particular matter). A preexisting internal directive to reach a particular result is strong evidence that the official is not “free, both in theory and in reality, to change his mind” in the agency proceedings. *Nat’l Advertisers*, 627 F.2d at 1172; see *Int’l Snowmobile Mfrs. Ass’n v. Norton*, 340 F. Supp. 2d 1249, 1260 (D. Wyo. 2004).

The Renewed Order cites a bevy of Executive Orders declaring an energy emergency. Even if these Executive Orders are taken at face value, they are incoherent with the President’s other actions to reduce capacity of new energy generation, such as from ongoing and nearly-completed wind projects. *Temporary Withdrawal of All Areas on the Outer Continental Shelf From Offshore Wind Leasing and Review of the Federal Government’s Leasing and Permitting Practices for Wind Projects* 90 Fed. Reg. 8,363 (Jan. 20, 2025); *Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources*, 90 Fed. Reg. 30,821 (Jul. 10, 2025).

Further, the administration has declared a preference for coal energy. *Executive Order 14261: Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241*, 90 Fed. Reg. 15,517 (Apr. 8, 2025). The express mandate of Executive Order 14261 declared it to be the national policy “to support the domestic coal industry by removing Federal regulatory barriers that undermine coal production, encouraging the utilization of coal to meet growing domestic energy demands, increasing American coal exports, and ensuring that Federal policy does not discriminate against coal production or coal-fired electricity generation.”

But this was not a simple policy preference—the administration had already predetermined that it would resort to emergency authority to reopen or forestall closure of coal plants before it

ever issued the Original Campbell Order or the Renewed Order. On April 8, 2025, President Trump gave remarks during the signing ceremony for Executive Order 14261. In those remarks, he noted that the administration would take action to reopen coal plants.⁵³ Also on April 8, 2025, the Department of Energy announced several initiatives directed to increasing coal production.⁵⁴

During a Bloomberg TV interview in February 2025, Secretary Wright declared that the United States should stop the closure of coal power plants, and asserted that DOE had the authority to do so.⁵⁵

On July 7, 2025, Secretary Wright was quoted as saying, “I think our biggest impact by far is going to be — there are like 40 coal plants that are supposed to close this year — and our biggest impact is going to be to stop the closure of most of those.”⁵⁶

On July 11, 2025, the DOE posted a video Secretary Wright to the department’s social media accounts with the chyron, “BIG BEAUTIFUL CLEAN COAL. This is the largest source of global electricity and third largest source of electricity in the U.S.”⁵⁷

The DOE’s social media feeds are full of clips from Secretary Wright media appearances extolling coal plants, promising to increase the use of coal for energy production, and asserting that DOE had the authority to forestall closures.

⁵³ <https://www.presidency.ucsb.edu/documents/remarks-domestic-coal-production> (“And all those plants that have been closed are going to be opened if they're modern enough.” And “From now on, we'll ensure that our Nation's critically needed coal plants, as an example, remain online and fully operational. They're always going to be operational.”)

⁵⁴ <https://www.energy.gov/articles/energy-department-acts-unleash-american-coal-strengthening-coal-technology-and-securing>

⁵⁵ <https://www.bloomberg.com/news/articles/2025-02-11/us-should-stop-closure-of-coal-fired-power-plants-wright-says>.

⁵⁶ https://www.wvnews.com/statejournal/news/top_story/energy-secretary-chris-wright-future-of-u-s-coal-is-long-and-bright/article_4ffcdad0-9030-4e6f-8ca7-0816e1786cbc.html

⁵⁷ *E.g.*, <https://www.facebook.com/energy/videos/big-beautiful-clean-coal-this-is-the-largest-source-of-global-electricity-and-th/1468968367585884/>.

The administration, and DOE in particular, engaged in prejudgment of the Renewed Order. Knowing that it needed to effectuate the administration’s policy preference to keep coal plants open, DOE worked backwards from that preferred result and justified it using post-hoc rationalizations. Secretary Wright demonstrated an “unalterably closed mind on matters critical to the disposition” of the use of emergency authority, requiring the Renewed Order to be set aside. *Nat’l Advertisers*, 627 F.2d at 1170; *Nehemiah Corp.*, 546 F. Supp. 2d at 847.

CONCLUSION

For all of the foregoing reasons, the Department should rescind the Renewed Order.

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