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Michigan v. DOE: D.C. Circuit Rejects DOE's Use of Federal Power Act Emergency Powers to Block Plant Retirements

During times of war or emergency, section 202(c) of the Federal Power Act ("FPA") authorizes the Department of Energy ("DOE") to order the generation, delivery, interchange, or transmission of electric energy to address the emergency and serve the public interest.¹ Between 1977 and 2024, DOE issued 21 section 202(c) orders, each responding to a short-term crisis such as extreme heat or cold, flooding, or a hurricane.² In the last two years alone, DOE has issued 61.³ Relying on its current interpretation of section 202(c), DOE has ordered seven generation facilities to remain available past their planned retirement dates to address what it deems an ongoing resource adequacy emergency. The U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") recently rejected DOE's interpretation of "emergency" and vacated an order that kept a Michigan coal-fired plant running past its scheduled retirement.⁴

THE DEVELOPMENT OF DOE'S SECTION 202(C) PROGRAM

President Donald Trump declared a national energy emergency through Executive Order ("EO") 14156 on January 20, 2025.⁵ On April 8, 2025, the President issued EO 14262, *Strengthening the Reliability and Security of the United States Electric Grid*.⁶ That EO declared it the government's policy that, to address the national energy emergency, ensure adequate and reliable generation, and meet growing demand, "our electric grid must utilize all available power generation resources, particularly those secure, redundant fuel supplies that are capable of extended operations."⁷ It also directed DOE to "streamline, systemize, and expedite" its section 202(c) process when grid operators forecast a temporary interruption of electric supply, in order to prevent a complete grid failure.⁸ Finally,

1. 16 U.S.C. § 824a(c)(1).
 2. See U.S. Dep't of Energy, *DOE's Use of Federal Power Act Emergency Authority*, available at <https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority> (last visited Oct. 2, 2026).
 3. *Id.* This figure reflects emergency orders issued from January 1, 2025, through October 1, 2026.

4. *Michigan v. U.S. Dep't of Energy*, No. 25-1159, 2026 WL 2671756 (D.C. Cir. Sept. 11, 2026).
 5. 90 Fed. Reg. 8,433 (Jan. 29, 2025); 91 Fed. Reg. 1,667 (Jan. 14, 2026) (continuing the energy emergency for an additional year).
 6. 90 Fed. Reg. 15,521 (Apr. 14, 2025).
 7. *Id.* § 2.
 8. *Id.* § 3.

the EO instructed the Secretary of Energy to establish protocols, under section 202(c) and other applicable laws, to keep online any generation resource deemed “critical within an at-risk region,” and to prevent any resource with a nameplate capacity above 50 megawatts (“MW”) from leaving the bulk-power system or converting its fuel source if the conversion would reduce net capacity.⁹

While DOE has historically used section 202(c) sparingly, the statute grants DOE significant powers. DOE has the discretion to determine 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.”¹⁰ DOE can act on its own or upon complaint, with or without notice, hearing, or report.¹¹ The statute directs DOE to ensure that any emergency order is consistent with environmental laws and regulations to the extent practicable.¹² However, if complying with a section 202(c) order requires an entity to violate an environmental law, the statute shields that entity from civil or criminal liability for the violation.¹³ The statute limits the duration of a section 202(c) emergency order to 90 days if the order conflicts with environmental laws.¹⁴ But DOE can renew the order for an unlimited number of subsequent 90-day periods as it deems necessary.¹⁵ Finally, while an emergency order is in effect, section 202(c) shields any action or omission taken by a party to comply with the order, even if a court later stays, modifies, or sets aside the order.¹⁶

DOE put its section 202(c) program into practice following the President’s 2025 EOs. On May 23, 2025, one week before the scheduled retirement of the J.H. Campbell Power Plant—a 1,560 MW coal-fired plant in West Olive, Michigan—DOE issued a section 202(c) order requiring the Midcontinent Independent System Operator (“MISO”) and Consumers Energy (the utility that owns and operates the plant) to “take all measures necessary to ensure that

the Campbell Plant is available to operate” for 90 days.¹⁷ Several parties sought rehearing of the order, including environmental groups, the Michigan Attorney General, the States of Minnesota and Illinois, and the Organization of MISO States.¹⁸ When DOE did not act on the rehearing requests within the statutory deadline, they were deemed denied by operation of law, and Michigan petitioned the D.C. Circuit for review.

DEFINING AN EMERGENCY UNDER FPA SECTION 202(C)

In *Michigan v. DOE*, the D.C. Circuit relied on the FPA’s text and structure to define what constitutes an “emergency” under section 202(c).

The Court began by explaining the FPA’s division of regulatory authority between the states and the federal government. The FPA extends federal authority “only to those matters which are not subject to regulation by the States.”¹⁹ Regulatory bodies such as DOE, the Federal Energy Regulatory Commission (“FERC”), and the North American Electric Reliability Corporation (“NERC”) play distinct and limited roles in overseeing the country’s generation supply. FERC regulates the interstate transmission of electricity and wholesale electricity sales. NERC establishes reliability standards to ensure the bulk-power system remains online. DOE’s only direct authority over electricity generation is its emergency power under section 202(c).²⁰

The FPA expressly withholds federal authority “over facilities used for the generation of electric energy.”²¹ The states, informed by assessments from FERC, NERC, regional transmission organizations (“RTOs”) and independent system operators (“ISOs”), and load-serving entities (*i.e.*, utilities with obligations to serve customers), are responsible for resource adequacy and decide which generation resources must be built, expanded, reduced, or shut down. DOE, by contrast, plays no role in resource adequacy planning.

9. *Id.* § 4.

10. 16 U.S.C. § 824a(c)(1).

11. *Id.*

12. 16 U.S.C. § 824a(c)(2).

13. 16 U.S.C. § 824a(c)(3).

14. 16 U.S.C. § 824a(c)(4)(A).

15. 16 U.S.C. § 824a(c)(4)(B).

16. 16 U.S.C. § 824a(c)(5).

17. DOE Order No. 202-25-3 (May 23, 2025).

18. U.S. Dep’t of Energy, *Federal Power Act Section 202(c): MISO*, available at <https://www.energy.gov/ceser/federal-power-act-section-202c-midcontinent-independent-system-operator-miso>.

19. 16 U.S.C. § 824(a).

20. 16 U.S.C. § 824a(c).

21. 16 U.S.C. § 824(b)(1).

The Court explained that while states have primary jurisdiction over electricity generation, section 202 of the FPA authorizes three tiers of federal action to ensure resource adequacy.²² First, section 202(a) promotes voluntary regional coordination through RTOs and ISOs, which in turn are overseen by FERC.²³ Second, section 202(b) allows FERC to order a generator to connect to and sell or exchange energy with other facilities, but only at the request of a state commission or utility and after opportunity for hearing.²⁴ Third, as discussed above, section 202(c) permits DOE to require temporary connections of generation facilities on an emergency basis.²⁵ Given section 202(c)'s placement after the state- and regional-driven mechanisms in sections 202(a) and 202(b), the Court reasoned that section 202(c) was intended as “essentially the last alternative among the three” and described it as “a narrow, last-resort backstop.”²⁶ Allowing DOE to compel generation where ordinary resource adequacy planning or a section 202(b) request could resolve the problem, the Court warned, “would render meaningless the constraints on federal power that Congress imposed throughout the Act.”²⁷

Turning to the text of section 202(c), the Court held that a section 202(c) “emergency” is “a grid-reliability risk that calls for an immediate response by DOE in particular,” rather than by the states.²⁸ Relying on dictionary definitions, the Court concluded that an emergency is a situation demanding immediate action. Before DOE may invoke section 202(c), however, the Court stated that DOE must find that the state responsible for resource adequacy “has not and will not timely take steps ... immediately to avert unacceptable risk to reliability.”²⁹

Under the D.C. Circuit’s interpretation of the statute, a section 202(c) emergency requires both an “urgent need” for “immediate, essentially last-resort action” and “circumstances showing that a federal response is called for.”³⁰ An emergency may exist even when the underlying crisis is foreseeable or will not occur until later, so long as immediate action is needed to avert it. A deteriorating

nuclear plant that risks a serious outage in three years absent immediate action, for example, could qualify as a section 202(c) emergency if DOE has reason to believe the state cannot or will not act in time.³¹

Applying that standard, the Court concluded that neither of DOE’s justifications for the Campbell order described an emergency.³² DOE’s initial rationale, the “potential for electricity supply shortfalls” in summer 2025, relied on excerpts of a NERC reliability assessment and a MISO auction presentation. Yet the same NERC report found that MISO had “adequate anticipated resources” for peak load conditions, and DOE itself acknowledged that MISO had procured sufficient summer capacity.³³ “[T]he mere possibility of an electricity supply shortfall,” with “no specifics about its potential severity, timing, location, or likelihood,” the Court held, does not warrant an emergency federal response, particularly where MISO, the State of Michigan, and FERC each had tools to address any shortfall.³⁴ DOE’s alternative rationale on rehearing, that most regions “will face unacceptable reliability risks within five years,” fell “even farther outside the meaning of ‘emergency’” because long-term resource adequacy risks are routinely resolved through ordinary state and regional planning.³⁵

The Court also emphasized the potential market consequences of DOE’s expansive reading of section 202(c). By keeping a generator approved for retirement in operation while “walling it off from planning and market frameworks,” an emergency section 202(c) order “distorts price signals that otherwise prompt appropriate capacity investments” and may discourage new resource development by artificially depressing capacity prices.³⁶

Having concluded that DOE exceeded its statutory authority, the Court did not reach the petitioners’ remaining challenges and vacated the Campbell order, reasoning that remand could not cure the defect and that vacatur would not be disruptive because the order had already expired.³⁷

22. *Michigan v. U.S. Dep’t of Energy*, No. 25-1159, 2026 WL 2671756, at *7 (D.C. Cir. Sept. 11, 2026).

23. 16 U.S.C. § 824a(a).

24. 16 U.S.C. § 824a(b).

25. 16 U.S.C. § 824a(c)(1).

26. *Michigan v. DOE*, 2026 WL 2671756, at *2, *14.

27. *Id.* at *13.

28. *Id.* at *12.

29. *Id.*

30. *Id.* at *12-13.

31. *Id.* at *12.

32. *Id.* at *16-17.

33. *Id.* at *10.

34. *Id.*

35. *Id.* at *17.

36. *Id.* at *14.

37. *Id.* at *17.

PRACTICAL IMPACTS OF DOE'S SECTION 202(C) PROGRAM

DOE has continued to issue section 202(c) emergency orders since the D.C. Circuit's decision. As the table below

shows, the Campbell Plant is one of seven generation facilities subject to a unilateral section 202(c) order. To date, DOE has renewed each order for successive 90-day periods, asserting that emergency conditions continue "both in the near and long term."³⁸

GENERATION FACILITIES IMPACTED BY DOE SECTION 202(C) EMERGENCY ORDERS ³⁹				
Facility	Location	DOE Order Nos.	Cumulative Capacity & Description	Planned Retirement Date
J.H. Campbell Power Plant	West Olive, Michigan	202-25-3 (May 23, 2025) 202-25-7 (Aug. 20, 2025) 202-25-9 (Nov. 18, 2025) 202-26-16 (Feb. 17, 2026) 202-26-22 (May 18, 2026) 202-26-39 (Aug. 14, 2026)	1,560 MW coal-fired unit	May 31, 2025
Eddystone Generation Station (Units 3 and 4)	Eddystone, Pennsylvania	202-25-4 (May 30, 2025) 202-25-8 (Aug. 28, 2025) 202-25-10 (Nov. 25, 2025) 202-26-17 (Feb. 23, 2026) 202-26-24 (May 21, 2026) 202-26-40 (Aug. 21, 2026)	760 MW dual-fuel units	May 31, 2025
Centralia Generating Station (Unit 2)	Centralia, Washington	202-25-11 (Dec. 16, 2025) 202-26-18 (Mar. 16, 2026) 202-26-28 (June 12, 2026) 202-26-44 (Sept. 11, 2026)	729.9 MW coal-fired unit	December 2025
R.M. Schahfer Generating Station (Units 17 and 18)	Wheatfield, Indiana	202-25-12 (Dec. 23, 2025) 202-26-19 (Mar. 23, 2026) 202-26-29 (June 18, 2026) 202-26-46 (Sept. 18, 2026)	847 MW coal-fired units	December 2025
F.B. Culley Generating Station (Unit 2)	Warrick County, Indiana	202-25-13 (Dec. 23, 2025) 202-26-20 (Mar. 23, 2026) 202-26-30 (June 18, 2026) 202-26-47 (Sept. 18, 2026)	103.7 MW coal-fired unit	December 2025
Craig Station (Unit 1)	Craig, Colorado	202-25-14 (Dec. 30, 2025) 202-26-21 (Mar. 30, 2026) 202-26-31 (June 26, 2026) 202-26-49 (Sept. 25, 2026)	446.4 MW coal-fired unit	December 2025
Stanton Energy Center (Unit 1)	Orlando, Florida	202-26-26 (June 4, 2026) 202-26-42 (Sept. 1, 2026)	464.5 MW coal-fired unit	December 2025 ⁴⁰

38. See, e.g., DOE Order No. 202-26-49 at 4 (Sept. 25, 2026).

39. See U.S. Dep't of Energy, *DOE's Use of Federal Power Act Emergency Authority*, available at <https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority> (last visited Oct. 2, 2026).

40. Though initially approved for retirement by the end of 2025, during extreme cold weather in early 2026, the operator of the Stanton Energy Center sought a section 202(c) emergency order from DOE, requesting in part authorization to continue operating Stanton Unit 1 on a temporary emergency basis. DOE granted the request and issued an order in effect from January 31, 2026, to February 6, 2026, directing the operator to dispatch units, including Stanton Unit 1, as needed to maintain reliability. See DOE Order No. 202-26-11 (Jan. 31, 2026).

The D.C. Circuit’s decision may be subject to further review, and its practical reach remains to be seen. Challenges to DOE’s extensions of the Campbell order remain in abeyance, separate proceedings over the recovery and allocation of the order’s costs are pending before FERC, and DOE has continued to renew section 202(c) orders for other facilities. Additional states or utilities may therefore seek to challenge DOE’s use of section 202(c), particularly as questions about prolonged extensions and cost recovery persist.

Cost recovery is already a live issue. For example, on October 1, 2026,⁴¹ FERC rejected without prejudice tariff revisions filed by TransAlta Centralia Generation LLC (“TransAlta”) to recover costs associated with its compliance with two DOE section 202(c) orders.⁴² FERC rejected TransAlta’s proposal to allocate its compliance costs solely to the balancing authorities and reliability coordinators named in the DOE emergency orders. FERC instead held that the costs should be allocated to load-serving entities across the entire Northwest region of the Western Electricity Coordinating Council.⁴³ FERC also rejected arguments raised by those allocated the charges that the recovery of TransAlta’s costs was barred by the filed rate doctrine. FERC held that rate recovery pursuant to FPA section 202(c) need not be filed in advance because the statute allows the Commission to issue “supplemental” orders regarding “compensation or reimbursement” after an emergency section 202(c) order goes into effect.⁴⁴ Further, FERC held that TransAlta could potentially recover its costs of standing ready to provide service, even if its unit did not run during the DOE-ordered emergency period.⁴⁵

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41. *TransAlta Centralia Generation LLC*, 197 FERC ¶ 61,005 (2026). FERC noted in its order that it was aware that the D.C. Circuit had vacated a separate DOE section 202(c) order in *Michigan v. U.S. Dep’t of Energy*, No. 25-1159, 2026 WL 2671756 (D.C. Cir. Sept. 11, 2026). FERC noted that the orders at issue in the TransAlta proceeding were pending before the Ninth Circuit and have not yet been vacated.

42. DOE Order No. 202-25-11 (Dec. 16, 2025), *amended by*, DOE Order No. 202-25-11B (Mar. 13, 2026).

43. *TransAlta*, 197 FERC ¶ 61,005 at PP 51-53.

44. *Id.* at P 54.

45. *Id.* at P 55.