

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 25-1193
(Consolidated with Nos. 25-1194, 25-1287, 25-1288)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ILLINOIS OFFICE OF ATTORNEY GENERAL, et al.,
Petitioners,
v.
U.S. DEPARTMENT OF ENERGY, et al.,
Respondents.

ON PETITION FOR REVIEW OF FINAL ORDER OF THE
DEPARTMENT OF ENERGY

**INITIAL JOINT OPENING BRIEF OF
PUBLIC INTEREST ORGANIZATION PETITIONERS AND
CONSUMER ADVOCATES**

Dated May 8, 2026

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties

Petitioners:

25-1193, 25-1287: Illinois Office of Attorney General, Maryland Office of People’s Counsel, and New Jersey Division of Rate Counsel (“Consumer Advocates”).

25-1194, 25-1288: Natural Resources Defense Council, Citizens for Pennsylvania’s Future, Environmental Defense Fund, and Sierra Club (“PIO Petitioners”).

Respondents:

25-1193, 25-1287, 25-1288, 25-1194: U.S. Department of Energy and Chris Wright in his official capacity as Secretary of the U.S. Department of Energy.

B. Rulings under review

All Petitioners filed timely challenges to the May 30, 2025, order, its denial by operation of law, and response to requests for rehearing (Case Nos. 25-1193 and 25-1194), specifically seeking review of these orders from the U.S. Department of Energy and Secretary Chris Wright:

1. *PJM Interconnection and Constellation Energy*, Order No. 202-25-4, dated May 30, 2025;

2. Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *PJM Interconnection and Constellation Energy Regarding the Eddystone Generating Station*, Order No. 202-25-4A, dated August 1, 2025; and

3. Order Addressing Arguments Raised on Rehearing, *PJM Interconnection and Constellation Energy Regarding the Eddystone Generating Station*, Order No. 202-25-4B, dated January 10, 2026.

Respondents then renewed Order 202-24-4 in an order dated August 27, 2025. Petitioners also challenge that order, its denial by operation of law, and response to requests for rehearing, specifically seeking review of these orders from the U.S. Department of Energy and Secretary Chris Wright:

1. *PJM Interconnection and Constellation Energy*, Order No. 202-25-8, dated August 27, 2025;

2. Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *PJM Interconnection and Constellation Energy Regarding the Eddystone Generating Station*, Order No. 202-25-8A, dated October 28, 2025; and

3. Order Addressing Arguments Raised on Rehearing, *PJM Interconnection and Constellation Energy Regarding the Eddystone Generating Station*, Order No. 202-25-8B, dated March 5, 2026.¹

C. Related cases

PIO Petitioners have also challenged the subsequent renewed order issued by Respondents to continue the Eddystone Units' operation, *PJM Interconnection and Constellation Energy*, Order No. 202-25-10, dated November 25, 2025. That petition for review is in abeyance. Case No. 26-1026, Dkt. No. 2163603 (D.C. Circuit). On March 23, 2026, PIO Petitioners additionally sought rehearing of the fourth order, *PJM Interconnection and Constellation Energy*, Order No. 202-26-17, dated February 23, 2026. The Department issued a notice of denial of rehearing by operation of law of that order on April 23, 2026, Order No. 202-26-17A. PIO Petitioners intend to seek review of that order in this Court and to then move for abeyance pending the resolution of this case.

Additionally, the following cases are related to cases challenging the Federal Energy Regulatory Commission's orders allocating costs resulting from the May 30, 2025, emergency order:

¹ The Department originally issued this order with an incorrect date, but issued the same order with the same title with the corrected date later that day.

1. 26-1041 (D.C. Circuit): Natural Resources Defense Council, Environmental Defense Fund, and Sierra Club v. Federal Energy Regulatory Commission, challenging PJM Interconnection, LLC, *Order Accepting Tariff Revisions*, Dkt. No. ER25-2653-000. 192 FERC ¶ 61,159 (Aug. 15, 2025) and PJM Interconnection, LLC, *Order Addressing Arguments Raised on Rehearing*, Dkt. No. ER25-2653-001. 193 FERC ¶ 61,229 (Dec. 22, 2025);
2. 26-3106 (6th Cir.) East Kentucky Power Cooperative, Inc. v. Federal Energy Regulatory Commission, challenging PJM Interconnection, L.L.C., *Order Accepting Tariff Revisions*, Dkt. No. ER26-39-000, 193 FERC ¶ 61,192 (Dec. 5, 2025); and Notice of Denial of Rehearing, PJM Interconnection, L.L.C., 194 FERC ¶ 62,049 (Jan. 29, 2026).

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GLOSSARY

Constellation	Constellation Energy Corporation
Consumer Advocates	Petitioners in Case Nos. 25-1193 and 25-1287: the Illinois Office of Attorney General, the Maryland Office of People’s Counsel, and the New Jersey Division of Rate Counsel
The Department	U.S. Department of Energy
Eddystone	The Eddystone Generating Station
Eddystone Units	Eddystone Units 3 and 4
FERC	Federal Energy Regulatory Commission
FPA or the Act	Federal Power Act
Grid EO	Executive Order 14,262, <i>Strengthening the Reliability and Security of the United States Electric Grid</i>
NERC	North American Electric Reliability Corporation
Order or Initial Order	Order No. 202-25-4 (May 30, 2025)
PJM	PJM Interconnection, LLC
PIO Petitioners	Petitioners in Case Nos. 25-1194 and 25-1288: Natural Resources Defense Council, Citizens for Pennsylvania’s Future, Environmental Defense Fund, and Sierra Club
Rehearing Orders	Order No. 202-25-4B (Jan. 10, 2026) (“First Rehearing Order”) and Order No. 202-25-8B (Mar. 3, 2026) (“Second Rehearing Order”)
Renewed Order	Order No. 202-25-8 (Aug. 27, 2025)
Section 202(c)	Section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c)

INTRODUCTION

Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’n, Inc.*, 531 U.S. 457, 468 (2001). The Department of Energy (“Department”) orders challenged here—which improperly exploit a statutory safety valve reserved for extraordinary circumstances—flout that fundamental principle. The Federal Power Act (“FPA” or “the Act”) reserves authority over electricity generation facilities to states, 16 U.S.C. § 824(b)(1), and assigns responsibility for planning and management to ensure an adequate electricity supply (resource adequacy) to states and grid operators overseen by the Federal Energy Regulatory Commission (“FERC”). *Id.*, §§ 824a(a) and (b), 824o. Yet the Department now contends that a limited exception to that reserved authority—*id.* § 824a(c) (“Section 202(c)”), which authorizes the Department to compel electricity generation only during wartime or similar emergencies—allows it “unfettered” discretion to override Congress’s carefully designed system for ensuring resource adequacy. The Department’s expansive reading would thus turn Section 202(c) into the proverbial exception that swallows the rule.

The Department first issued the Section 202(c) orders challenged here one day before the long-planned and approved retirement of two obsolete and uneconomic oil and gas-fired units at the Eddystone Generating Station

(“Eddystone”) in Pennsylvania. These “emergency” orders assert that the Department can overrule retirement decisions—which the FPA places within the province of other parties—and compel Eddystone to continue operating indefinitely, based on the agency’s projection of greater electricity demand five years or more in the future. But the FPA does not provide such authority. The Department’s narrow role under Section 202(c) allows it to direct facility operations only in response to a genuine emergency, i.e., sudden, unexpected conditions requiring an immediate response. Here, there was no actual or imminent energy emergency to justify a Section 202(c) order for Eddystone, even in the short term when such an order might conceivably have been legitimate, much less to provide a springboard for the Department to commandeer authority for long term grid planning and management. Had Congress intended to vest such broad power in Section 202(c), it would have stated so clearly. But it did not.

The Department’s attempt to usurp authority for resource adequacy planning is not just an abstract legal transgression. Forcing the continued operation of these inefficient, uneconomic, fifty-plus-year-old units imposes unnecessary costs on already-overburdened ratepayers while increasing pollution in Pennsylvania and neighboring states. The Court should reject the Department’s misreading of Section 202(c) and vacate the challenged orders.

JURISDICTIONAL STATEMENT

These consolidated petitions challenge two orders issued pursuant to Section 202(c) of the FPA, 16 U.S.C. § 824a(c), “and any amendment, modification, or renewal” of the orders. ECF No. 2137498; *see* Order No. 202-25-4 (May 30, 2025) (“Order” or “Initial Order”), JA ___[AR1_DOE0001]; Order No. 202-25-8 (Aug. 27, 2025) (“Renewed Order”), JA ___[AR2_DOE0001] (collectively, “Orders”).

The Court has jurisdiction over these Orders. *See* 16 U.S.C. §§ 824a(c)(5), 825l(b); 42 U.S.C. § 7192(a). Petitioners² were parties to the agency proceedings, are aggrieved by these Orders, and timely sought rehearing of the Initial Order on June 27, 2025, and rehearing of the Renewed Order on September 26, 2025.

JA ___[AR1_DOE0008], JA ___[AR1_DOE0010], JA ___[AR2_DOE0019], JA ___[AR2_DOE0020]. Petitioners’ requests for rehearing of the Initial Order were denied by operation of law on August 1, 2025, and over five months later, the Department issued an order addressing arguments raised on rehearing.

JA ___[AR1_DOE0011], JA ___[AR1_DOE0012]. Petitioners’ requests for rehearing of the Renewed Order were denied by operation of law on October 28,

² Petitioners in 25-1193 and 25-1287 include the Illinois Office of Attorney General, the Maryland Office of People’s Counsel, and the New Jersey Division of Rate Counsel (“Consumer Advocates”). Petitioners in 25-1194 and 25-1288 include Natural Resources Defense Council, Citizens for Pennsylvania’s Future, Environmental Defense Fund, and Sierra Club (“Public Interest Organizations”).

2025, and the Department issued an order on rehearing on March 5, 2026.

JA ___[AR2_DOE0023], JA ___[AR2_DOE0024]. Petitioners timely petitioned for review of both Orders in this Court.

This Case is Not Moot

These petitions are not moot for at least three reasons. First, the Orders have not expired because they have been extended by the Department's renewals.

Although the challenged Orders have 90-day durations, Section 202(c) treats extension orders as renewals of prior orders, 16 U.S.C. § 824a(c)(4)(A), (B), and the Department has repeatedly issued renewals, including the currently operative Order 202-26-17. The renewals have resulted in an unbroken string of the Department using Section 202(c) authority to block retirement of the Eddystone Units, starting with issuance of the Initial Order on May 30, 2025, and continuing to date.

Second, insofar as the Initial Order and renewals are considered legally distinct actions, the “capable of repetition yet evading review” exception to mootness applies. The Orders’ 90-day durations are “too short to be fully litigated before” they expire, and the “legal questions [they present] for decision” will likely be “the basis of a continuing controversy” from the Department’s continued renewal of the orders. *Pierre-Noel v. Bridges Pub. Charter Sch.*, 113 F.4th 970, 977-78 (D.C. Cir. 2024) (citations omitted); *see also Trump v. Mazars USA, LLP*,

39 F.4th 774, 786 (D.C. Cir. 2022) (a dispute is “capable of repetition yet evading review” when the “challenged action was in its duration too short to be fully litigated prior to its cessation or expiration” and “there was a reasonable expectation that the same complaining party would be subjected to the same action again.”) (internal citations omitted). Accordingly, this Court can resolve issues presented both by an order and “renewals in a series.” *See Humane Soc’y v. EPA*, 790 F.2d 106, 114 (D.C. Cir. 1986).

Finally, these petitions are also not moot because (1) Petitioners challenge not only the Orders but also “the policy that underlies th[ose] action[s],” *Safari Club Int’l v. Jewell*, 842 F.3d 1280, 1287 (D.C. Cir. 2016) (citations omitted), and (2) because resolution of these petitions “may affect” the resolution of the FERC proceedings relating to recovery of Constellation’s compliance costs. *Nat. Res. Def. Council et al. v. FERC*, Case No. 26-1041 (D.C. Cir.); *Crowley Gov’t Servs. v. GSA*, 143 F.4th 518, 526 (D.C. Cir. 2025).

ISSUES PRESENTED

1. Whether the Orders are reviewable because they continue to have legally cognizable consequences, they are part of an ongoing succession of short-duration

orders capable of repetition yet evading review, and/or because Petitioners challenge both the orders themselves and the underlying policy they effectuate.³

2. Whether the Orders violated Section 202(c) of the FPA because they failed to identify an “emergency” within the meaning of the Act.

3. Whether the Orders violated the FPA and Administrative Procedure Act (“APA”) because they failed to support the emergency determination and remedy with substantial evidence and reasoned decisionmaking.

4. Whether the Orders violated Section 202(c) because, even if there were an emergency, the ordered operational directives failed to comport with statutory requirements.

STATUTES AND REGULATIONS

The addendum (“ADD”) contains relevant statutes and regulations.

STATEMENT OF THE CASE

A. The Federal Power Act assigns responsibility for resource adequacy to states and other entities and allows only a narrow role for the Department.

The FPA (16 U.S.C. §§ 791a *et seq.*) is the primary federal statute governing the wholesale transmission and sale of electric power in the United States. Before the Act, “state and local agencies oversaw nearly all generation, transmission, and

³ This issue is addressed only in the Jurisdictional Statement above.

distribution of electricity.” *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 265-66 (2016). The Act filled a regulatory gap when electricity was sold across state lines, while “maintain[ing] a zone of exclusive state jurisdiction” over generating facilities. *Id.* at 266; *see New York v. FERC*, 535 U.S. 1, 6 (2002). The Act reserves to states authority over “facilities used for the generation of electric energy,” 16 U.S.C. § 824(b), and extends federal authority “only to those matters which are not subject to regulation by the States.” *Id.* § 824(a). The result is a dual structure for addressing the creation, management, and reliability of the electric grid, with the states taking the lead and the federal government playing a circumscribed role on issues the states lack authority to address.

This fundamental division of labor applies to regulating “resource adequacy,” which is “the availability of an adequate supply of generation [or other resources] to support safe and reliable operation of the transmission grid.”

Sacramento Mun. Util. Dist. v. FERC, 616 F.3d 520, 526 (D.C. Cir. 2010).

Because resource adequacy is primarily a function of the “generation of electric energy,” 16 U.S.C. § 824(b), responsibility for ensuring resource adequacy resides primarily with states, exercised in partnership with grid operators and utilities.

This backdrop is reflected in the two sections of the Act that directly address the federal government’s limited involvement over grid reliability: Section 202 encourages the creation and coordination of grid resources while allowing the

federal government to step in when there is an emergency, and Section 215 establishes nationwide standards for reliability.⁴

Section 202 establishes a three-tiered framework for federal involvement over grid coordination. Under the first tier, Section 202(a) allows the federal government to pursue “an abundant supply of electric energy” but only by facilitating “*voluntary* interconnection of facilities for the generation, transmission, and sale of electric energy.” 16 U.S.C § 824a(a) (emphasis added). This provision has given rise to regional transmission organizations, such as the PJM Interconnection, and the use of market-based mechanisms for ensuring sufficient supply has become the norm. *See Elec. Power Supply Ass’n*, 577 U.S. at 268.

When this voluntary mechanism fails, the second tier, Section 202(b), allows the federal government to *require* utilities to sell or exchange energy with other facilities, but only upon application of a “State commission or any person engaged in [those activities].” 16 U.S.C. § 824a(b). Still, the government has “no authority to compel the enlargement of generating facilities for such purposes.” *Id.*

The final tier, Section 202(c), is a backstop mechanism that allows the federal government to address emergencies. Enacted in 1935 in response to a

⁴ FERC and the Department share responsibility for administering the Act. FERC has responsibility for most aspects of Sections 202 and 215, while the Department has authority under Section 202(c). 42 U.S.C. § 7151(b).

“serious power shortage” during World War I, Section 202(c) is “appropriately limited” to addressing wartime shocks and “similar crises,” like “[d]rought and other natural emergencies.” S. Rep. No. 74-621, at 19, 49 (1935). Section 202(c) thus provides that the government may compel, among other things, generation of electricity, but only “[d]uring the continuance of any war in which the United States is engaged,” and, outside of wartime, only when the agency determines that a like “emergency exists by reason of [1] a sudden increase in the demand for electric energy, or [2] a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or [3] other causes.” 16 U.S.C. § 824a(c)(1).

Because compelling generation is a drastic remedy, Congress expressly limited federal authority even when an emergency does exist. It can order only the generation that “in its judgment will best meet the emergency and serve the public interest.” 16 U.S.C. § 824a(c)(1). When Congress revisited Section 202(c) in 2015, it further restricted the Department’s authority when an order “may result in a conflict with ... environmental law or regulation.” *Id.* § 824a(c)(2). In those circumstances, generation can occur (1) “only during hours necessary to meet the emergency and serve the public interest”; (2) for up to 90 days; and (3) while “minimiz[ing] any adverse environmental impacts.” *Id.* § 824a(c)(2), (3), (4).

When these extraordinary circumstances arise, Section 202(c) permits the Department to respond largely unconstrained by the procedural safeguards and substantive limitations that undergird the rest of the FPA. For instance, while the rest of the FPA authorizes action only after opportunity for hearing,⁵ Section 202(c) allows the Department to act without notice. And in profound contrast to the rest of the FPA and general utility law principles, Section 202(c) empowers the Department to require utilities to incur costs—through a command to provide generation or transmission service—without fully weighing the impact on ratepayers or whether the resulting rates will be just and reasonable.

When the Department promulgated regulations implementing Section 202(c) over four decades ago, it recognized that while the statute allows the Department to provide “assistance [to a utility] during a period of unexpected inadequate supply of electricity,” it does not empower it to “solve long-term problems.” 46 Fed. Reg. 39,984, 39,985-86 (Aug. 6, 1981). The 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,

⁵ See, e.g., 16 U.S.C. §§ 824a(b), 824a(e), 824a-1(a), 824a-3(f), 824a-4, 824b(a)(4), 824c(b), 824d, 824e, 824f, 824i(b), 824j, 824j-1, 824k, 824m, 824o, & 824p(b).

acts of God, or unforeseen occurrences not reasonably” preventable. 10 C.F.R. § 205.371. Emergencies can also “result from a sudden increase in customer demand.” *Id.* And while the regulations suggest that “inadequate planning or the failure to construct necessary facilities *can result* in an emergency,” they recognize that the Department may not utilize a “continuing emergency order” to mandate long-term system planning. *Id.* (emphasis added); *see also id.* (recognizing that “where a shortage of electricity is projected due solely to the failure of parties to agree to terms, conditions, or other economic factors” there is no emergency “unless the inability to supply electric service is *imminent*” (emphasis added)).

During the twentieth century, Section 202(c) was used “sparingly” outside of wartime shortages.⁶ More recently, Section 202(c) orders have addressed imminent shortages lasting a few days, primarily during natural disasters such as winter storms and hurricanes, and upon request by a grid operator or utilities.⁷ Notably, these orders have addressed emergency conditions that are imminent or have

⁶ Ben Rolsma, *The New Reliability Override*, 57 Conn. L. Rev. 789, 803 (2025).

⁷ *See* Order No. 202-22-4 (winter storms); Order No. 202-24-1 (Hurricane Milton); Rolsma, 57 Conn. L. Rev. tbl. 1 (collecting orders); Alexandra Klass and Dave Owen, *The President and the Power Grid*, app’x, Mich. L. Rev. Online (forthcoming 2026), *available* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6509640 (listing previous Section 202(c) orders).

already materialized, not potential shortages years in the future that are addressed through resource adequacy planning processes.

Section 215, added in 2005, modestly expands the limited federal authority, setting out a carefully calibrated framework by which the federal government may directly intervene to ensure long-term grid reliability. Energy Policy Act, Pub. L. No. 109-58 § 1211, 119 Stat. 594 (2005) (codified at 16 U.S.C. § 824o). This provision supplemented a voluntary system of grid reliability standards with mandatory nationwide reliability standards that are developed and enforced by a federally certified independent entity called an Electric Reliability Organization (i.e., the North American Electric Reliability Corporation (“NERC”)). 16 U.S.C. § 824o(d), (e); *see also* S. Rep. No. 109-78, at 48 (2005). Under Section 215’s enforcement provisions, NERC may impose penalties for violations of reliability standards, 16 U.S.C. § 824o(e)(1)-(2); or FERC may order owners and operators of the bulk-power system to comply with reliability standards only after notice and opportunity for a hearing regarding potential violations of reliability standards, *id.* § 824o(e)(3). But Section 215 does not delegate authority to the Department to conduct these enforcement actions, and it specifically disallows requiring the “construction of additional generation” or “enforc[ing] compliance” with “adequacy ... of electric facilities or services.” *Id.* § 824o(i)(2).

B. States, grid operators, and utility companies coordinate to deliver a reliable supply of electricity.

Because the electric power system must reliably meet demand at all times, states, grid operators, and utilities work together to safeguard short-term and long-term resource adequacy through comprehensive planning and implementation of reliability standards. *See Devon Power*, 109 FERC ¶ 61,154, para. 47 (Nov. 8, 2004) (“Resource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there.”); *cf. Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 205 (1983) (“Need for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States.”). That work includes balancing the impacts of generation on host communities and ratepayers. Resource adequacy planning involves technical, environmental, and economic considerations for determining which resources are added to the grid, which resources qualify as “capacity resources,” and which resources should retire and when.⁸

Some states have retained exclusive authority over resource adequacy. Others have directed or permitted their utilities to join regional transmission

⁸ *See generally* National Renewable Energy Laboratory, *Fundamentals of Resource Adequacy for Modern Power Systems* (June 26, 2025), <https://perma.cc/LT3E-JZFA>.

organizations that impose resource adequacy requirements in tariffs subject to the just-and-reasonable review by FERC under sections 205 and 206 of the FPA. 16 U.S.C. §§ 824d, 824e. *See generally Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527, 536 (2008) (describing role of regional transmission organizations). Some regional transmission organizations establish markets that allow participants to buy and sell capacity, thereby facilitating market entry and exit based on price signals. *See Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481-82 (D.C. Cir. 2009) (describing capacity markets and federal/state interplay).

In Pennsylvania, where Eddystone is located, regulation of resource adequacy has both a state and federal aspect. PJM Interconnection, LLC (“PJM”) is the FERC-regulated regional transmission organization that serves as the grid operator for a region that spans all or part of 13 states and the District of Columbia, including Pennsylvania.⁹ PJM has established rules and processes for maintaining grid reliability that meet both industry standards and the requirements set by NERC pursuant to Section 215 of the FPA. Electric utilities and other load-serving entities that have joined PJM comply with those rules and participate in those processes to maintain regional reliability. Many of the utilities in PJM own few or

⁹ *See* PJM Interconnection, About PJM, <https://perma.cc/7WT6-GZ79> (last visited May 6, 2026).

no generation assets and therefore rely substantially on PJM-run markets to procure both energy and other services that support the reliable operation of the grid. Constellation Energy Corporation (“Constellation”), Eddystone’s owner and operator, sells the energy that its generation resources produce, and the associated capacity, into PJM’s markets.

PJM’s primary tool to maintain resource adequacy throughout the region, including the state of Pennsylvania, is its Reliability Pricing Model, commonly known as its “capacity market,” which is designed to ensure there is enough energy supply on the system to meet demand, especially during high-risk periods.¹⁰ The capacity market does not pay for energy itself but pays resources for the promise to make a given quantity of energy available for sale at any time over the course of one year (the contracted “delivery year”) upon demand of the grid operator.¹¹

Demand response resources—electricity consumers who are willing to curtail their

¹⁰ High risk periods are generally winter storms and hot summer days. *See Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 659-61 (D.C. Cir. 2017); *see also* PJM, PJM Capacity Market: Promoting Future Reliability, <https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/fact-sheets/pjm-capacity-market-promoting-future-reliability-fact-sheet.pdf> (Jan. 25, 2025).

¹¹ *See* PJM, Capacity Market (RPM) <https://learn.pjm.com/three-priorities/buying-and-selling-energy/capacity-markets.aspx> (last visited June 26, 2025); FERC, An Introductory Guide to Electricity Markets Regulated by the Federal Energy Regulatory Commission, <https://perma.cc/246T-2XVM> (last visited May 5, 2026).

usage—can also participate in this market by agreeing not to use a certain amount of energy when PJM calls upon them. *Elec. Pow. Supply Ass’n*, 577 U.S. at 270. For each “delivery year,” which begins June 1, PJM determines the region’s “Reliability Requirement” and sub-regional reliability requirements for any “locational deliverability areas” that are transmission-constrained.¹² PJM determines the Reliability Requirement based on a granular risk model of the system that reflects variability in consumer demand as well as the performance of all the supply resources on its system.

PJM is also responsible for operational reliability of the system on a minute-to-minute basis by economically dispatching generators, demand response, and energy storage resources to meet demand, while respecting transmission system constraints.¹³ In addition to paying for the actual production of electricity in response to PJM’s dispatch instructions, PJM also pays generators and storage

¹² PJM, Manual 18: PJM Capacity Market, Revision 57, at 26 (July 26, 2023), <https://www.pjm.com/-/media/DotCom/documents/manuals/archive/m18/m18v57-capacity-market-07-26-2023.pdf>.

¹³ PJM, Manual 11: Energy & Ancillary Services Market Operations, Revision 120, at 53-54 (2022), <https://www.pjm.com/-/media/DotCom/documents/manuals/archive/m11/m11v120-energy-and-ancillary-services-market-operations-05-25-2022.pdf>. See PJM, *Understanding the Differences Among PJM’s Markets* (2025), <https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/fact-sheets/understanding-the-difference-among-pjms-markets.pdf>.

providers for ancillary services. These services include operating reserves that remain available on short notice to respond to disturbances on the system, such as other generators unexpectedly dropping offline.

Another tool that PJM has to maintain reliability and reduce energy costs for consumers is interregional transmission with its neighboring grid regions. As PJM's then-President recently explained: “[o]ur strong interconnected ties with our neighbors have allowed us to facilitate exports to our neighbors in MISO [Midcontinent Independent System Operator], TVA [Tennessee Valley Authority], Duke Energy-Carolinas and the Southwest Power Pool (SPP) during tight conditions” and “also enables us to import energy from our neighbors when our system is stressed.”¹⁴ PJM incorporates some benefits from these interregional ties into its resource adequacy planning, which reduces the amount of capacity it must procure internally and thus lowers costs for consumers.¹⁵

States within the PJM region retain authority that strongly influences resource adequacy, including authority to approve and site new generation and

¹⁴ Testimony of Manu Asthana, President and CEO, PJM Interconnection, Before the Subcomm. on Energy of the H. Comm. on Energy & Com. 3 (Mar. 25, 2025), JA ___ [AR1_DOE0004_3], <https://docs.house.gov/meetings/IF/IF03/20250325/118040/HHRG-119-IF03-Wstate-AsthanaM-20250325.pdf>.

¹⁵ Adria Brooks, et al., Resource Adequacy Value of Interregional Transmission at 49-50 (June 2025), <https://perma.cc/S7WZ-VR5N>.

energy storage projects, and to incentivize the development and utilization of particular types of resources. *See* 16 U.S.C. § 824(b)(1) (the federal government generally “shall not have jurisdiction” over generation facilities); *see also Devon Power LLC et al.*, 109 FERC ¶ 61,154 para. 47 (2004) (“Resource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there. States have traditionally designated the entities that are responsible for procuring adequate capacity to serve loads within their respective jurisdictions.”). While some PJM states have retained traditional vertically-integrated utilities that own both transmission and generation, others—such as Pennsylvania—have restructured their energy sectors to rely on competitive markets where transmission utilities may no longer own generation facilities and have introduced programs allowing end use consumers to purchase power from a load-serving entity other than their utility.¹⁶ Pennsylvania state utility regulators expressly rely on PJM’s markets to ensure resource adequacy.¹⁷ Through a combination of market signals

¹⁶ Electricity Generation Customer Choice and Competition Act, 66 Pa. Stat. and Cons. Stat. Ann. §§ 2801 et seq.; *see also, Metro. Edison Co. v. Pennsylvania Pub. Util. Comm’n*, 767 F.3d 335, 343 (3d Cir. 2014) (describing The Electric Competition Act; <https://www.electricchoice.com/electricity-prices-by-state/pennsylvania/>).

¹⁷ *See, e.g.*, Letter from Pennsylvania PUC to PJM Board of Managers 1, (July 7, 2021), <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/20210706-pa-puc-letter-regarding-minimum-offer-price-rule.pdf> (“Pennsylvania was one of the first restructured states in PJM that

and state policies, Pennsylvania has added nearly 3,500 megawatts of unforced capacity, net of retirements, since 2015—the most of any state in PJM.¹⁸

C. PJM approves the scheduled retirement of the Eddystone Units.

The Eddystone Generating Station is owned and operated by Constellation. It is a six-unit, 820-megawatt power plant located along the banks of the Delaware River in Eddystone, Pennsylvania, just south of Philadelphia.¹⁹ Units 3 and 4, the subjects of this case, are both 380-megawatt-capacity steam boiler-turbine generator units that can run on either natural gas or distillate fuel oil. These two units are over 50 years old; they were installed between 1967 and 1970 and began operations in 1974 and 1976, respectively, and are effectively at the end of their useful lives.²⁰ These units are “peakers,” i.e., units that run only during periods of

embraced the promise of competition in the wholesale generation market and then spent considerable time and effort developing a burgeoning retail electricity market built on the expectations and benefits of a properly functioning wholesale market.”); *see also* Comments of the Pennsylvania Public Utility Commission, Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators 10-12, AD13-7-000 (Jan. 8, 2014), https://www.puc.pa.gov/General/pdf/FERC/DN_AD13-7-000.pdf.

¹⁸ Prefiled Statement of Manu Asthana on Behalf of PJM Interconnection, L.L.C., at 9, Table 2, FERC Dkt. No. AD25-7, <https://www.pjm.com/-/media/DotCom/documents/ferc/filings/2025/20250516-ad25-7-000-manu.pdf>.

¹⁹ Constellation, Eddystone Generating Station, <https://perma.cc/Q63K-CTKT> (last visited May 5, 2026).

²⁰ The plant also includes two smaller pairs of oil-fueled peaking units not addressed by the Section 202(c) Order: Units 10, 20, 30, and 40, which have a total combined capacity of 60 megawatts and are also over 50 years old. *Id.*

high demand; they each operated less than one percent of the time during the four years preceding the Orders.²¹

The Eddystone Units are adjacent to Chester, Pennsylvania, a low-income community that is overburdened with a cluster of industrial polluting facilities.²² Whenever it is operating, Eddystone contributes to the pollution impacting this community. On a yearly basis, Eddystone emits thousands of tons of criteria air pollutants and large amounts of water pollutants.²³ And when Eddystone operates on oil rather than natural gas, it emits higher levels of both criteria pollutants and hazardous air pollutants.²⁴ These air pollutants are linked to respiratory conditions like asthma, cancer, reproductive difficulties, and other health problems.²⁵

²¹ See PIO Petitioners' First Rehearing Request at 14-15, 15 tbl. 1, JA ___[AR1_DOE0008].

²² See *id.* at 15, JA ___[AR1_DOE0008]; Univ. of Pa. Perelman Sch. of Med., Ctr. of Excellence in Env'tl. Toxicology, *Chester*, <https://ceet.upenn.edu/community/target-communities/chester/> (last visited May 5, 2026).

²³ PIO Petitioners' First Rehearing Request at 15-16, 16 tbl. 2, JA ___[AR1_DOE0008].

²⁴ *Id.* at 15. In its most recent renewal order, the Department indicated that the Eddystone Units have been running on oil rather than gas. See Order No. 202-26-17 at 3 n.11 (Feb. 23, 2026), ADD50 (referring to the units as "oil-fired").

²⁵ PIO Petitioners' First Rehearing Request at 15-16, JA ___[AR1_DOE0008].

On December 1, 2023, Constellation notified PJM of its intent to deactivate Eddystone Units 3 and 4 effective May 31, 2025.²⁶ In that letter, Constellation explained that it was “retiring Eddystone Units 3 and 4 because continued operation of these units is expected to be uneconomic.”²⁷ Such a notice triggers PJM’s process under Section 113.2 of its Open Access Transmission Tariff to study whether the deactivation will cause any reliability violations. In February 2024, PJM sent a letter to Constellation indicating that it had completed its study and no reliability violations had been identified; PJM granted permission to deactivate “on May 31, 2025, or sooner if desired.”²⁸ And while other operators

²⁶ Letter from Bryan Hanson, Constellation, to Michael Bryson, PJM (Dec. 1, 2023), <https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/eddytone-deactivation-letter.pdf>.

²⁷ *Id.* Constellation has recently sought to transfer Eddystone’s capacity injection rights to another planned generation facility that it would own and operate, the Crane Clean Energy Center. Constellation Energy Generation, LLC’s Request for Prospective, Limited Waiver (Mar. 31, 2026) at 2-4, FERC Dkt. No. ER26-2028, *available at* https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260331-5562&optimized=false&sid=317e1ed3-621e-4ba8-aa6e-4418a38613e0. Constellation’s filing notes that the Eddystone units “lack the operational flexibility” of modern facilities and acknowledges their planned deactivation. *Id.* at 6.

²⁸ Letter from Paul McGlynn, PJM, to Bryan Hanson, Constellation (Feb. 27, 2024), <https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/pjm-response-letter-eddytone.pdf>.

that had planned to retire generation resources around this time altered course and chose to remain operational due to changing economics, Constellation did not.²⁹

In July 2024, PJM announced that it had completed an annual capacity auction for the procurement of generating capacity for a delivery year running from June 1, 2025 to May 31, 2026.³⁰ Consistent with its planned deactivation, the Eddystone plant did not participate in that auction and was assumed to be retired, yet the auction procured sufficient capacity to meet applicable reliability requirements for the full PJM service area for the delivery year.³¹

²⁹ See, e.g., Letter from Eric Watts, GenOn Energy Mgmt., to David Schweizer, PJM (Mar. 17, 2025), <https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/morgantown-units-3-4-deactivation-withdraw-letter-2.pdf> (rescinding deactivation notice for two Morgantown units); Letter from Brant Yung, Heritage Power, LLC, to PJM (July 11, 2025), <https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/sayreville-reactivation.pdf> (reactivation notice for Sayreville units); Letter from Craig Herlihy, Milepost Power, to PJM (July 22, 2025), <https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/forked-river-unit-2-update.pdf> (rescinding deactivation notice for Forked River Unit 2).

³⁰ PJM, *PJM Capacity Auction Procures Sufficient Resources to Meet RTO Reliability Requirement 2* (July 30, 2024), <https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/2024-releases/20240730-pjm-capacity-auction-procures-sufficient-resources-to-meet-rto-reliability-requirement.ashx>.

³¹ See *id.*; see also PIO Petitioners' First Rehearing Request at 57, JA ___[AR1_DOE0008].

D. The White House directs the Department to use Section 202(c) to assert authority over long-term resource adequacy.

Following up on his January 20, 2025, proclamation of a national energy emergency, Executive Order 14,156, Declaring a National Energy Emergency, 90 Fed. Reg. 8,433 (Jan. 20, 2025), JA___[AR1_DOE0014], on April 8, 2025, the President announced four executive orders to exert control over the mix of the Nation’s electricity resources. Among them was Executive Order 14,262, Strengthening the Reliability and Security of the United States Electric Grid (“Grid EO”), which directed the Department to develop and publish within 90 days a methodology that would (1) second-guess the reserve margins³² used by states and regional transmission organizations based on the Department’s own “acceptable thresholds,” and (2) “accredit” capacity for different generator types (i.e., decide how much coal, gas, solar, etc. are each worth in capacity terms), presumably without regard for the capacity accreditation rules applied by states and regional transmission organizations. *See* 90 Fed. Reg. 15,521, 15,521-22 (Apr. 8, 2025), JA___[AR2_DOE0013].

The Grid EO also directed the Department to establish a “protocol” to effectuate the methodology by identifying “which generation resources within a

³² Reserve margin is the amount of unused available capability of an electric power system (at peak load) as a percentage of total capability.

region are critical to system reliability” and to incorporate the Department’s Section 202(c) emergency authority into that protocol to block retirements of generation resources across the country that the Department deems “critical.” *Id.* at 15,522, JA___[AR2_DOE0013]. The Grid EO nowhere mentioned that the FPA preserves states’ authority over generation matters and otherwise entrusts FERC to oversee regional transmission organizations’ review of the reliability impacts of those retirements—decisions the Department was presumably expected to disregard.

In July 2025, during the pendency of the Initial Order, the Department published a document called “Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid” (hereafter “Resource Adequacy Report”). JA___[AR2_DOE0009]. The Department stated that the document constituted the agency’s response to the Grid EO’s directive to develop a methodology to analyze reserve margins across all grid regions, but the Department frankly acknowledged the limited utility of its end product:

[The Department] acknowledges that the resource adequacy analysis that was performed in support of this study could benefit greatly from the in-depth engineering assessments which occur at the regional and utility level. The [Department] study team built the methodology and analysis upon the best data that was available. However, entities responsible for the maintenance and operation of the grid have access to a range of data and insights that could further enhance the robustness of reliability decisions, including resource adequacy, operational reliability, and resilience.

Id. at i, JA ___[AR2_DOE0009].³³ The Report’s “Current System Analysis” also acknowledged that the PJM region met the Department’s resource reliability metrics for the current period. *Id.* at 7, JA ___[AR2_DOE0009].

E. The Department issues the Order, the Rehearing Order, and renewals.

On May 30, 2025, about a year and half after PJM approved Eddystone’s retirement but just one day before its retirement date, the Department issued its first Section 202(c) order on Eddystone. The Department premised the order on an “emergency” in the PJM region because of “resource adequacy concerns,” including a PJM estimate of demand through 2030. Initial Order at 1, JA ___[AR1_DOE0001]. The Department ordered Constellation Energy and PJM to “take all measures necessary to ensure that [the] Eddystone units are available to operate” for 90 days. *Id.* at 3, JA ___[AR1_DOE0001]. The Department did not mention any alternatives to running the Eddystone units to address the supposed “emergency.” The Department also ordered PJM to “employ economic dispatch” with respect to the Eddystone units to “minimize cost to ratepayers.” *Id.* In other words, the Department ordered the Eddystone units to run not just when other plants were unavailable, but when the Eddystone units were “economic,” meaning

³³ The Department never published any response to the Grid EO’s directive to develop a protocol to effectuate the methodology, nor is there any evidence that the agency ever complied with that directive in the Grid EO.

that their offered price on the market was the lowest available, even if other plants were still available to operate.

The evidence that the Department cited in the Initial Order, consisting primarily of selective cites to PJM statements, did not substantiate that there was an actual or imminent emergency in May 2025 or the upcoming summer months. Initial Order at 1, JA___[AR1_DOE0001]. For example, the Department pointed to a PJM statement about the possibility of a capacity shortfall in an extreme planning scenario, *id.*, but the full document explained that PJM had sufficient resources for summer 2025 under typical summer demand and also had contingency plans to address the extreme planning scenario.³⁴ Nor did PJM's actual operations during the 2025 summer months provide post hoc substantiation. PJM issued alerts such as Maximum Generation Alerts and Hot Weather Alerts on June and July 2025 days with peak temperatures, which are part of PJM's routine system for ensuring grid reliability in advance of potential tight grid conditions; they are not indicators that something is awry with PJM's system or that it has inadequate resources. As explained *infra* pp. 72-74, PJM kept net load below its summer seasonal peak load on high heat days by using only some, not all, of its otherwise available resources.

³⁴ See PJM Summer Outlook 2025: *Adequate Resources Available for Summer Amid Growing Risk*, JA___[AR1_DOE0005] (emphasis added), <https://insidelines.pjm.com/pjm-summer-outlook-2025-adequate-resources-available-for-summer-amid-growing-risk/>.

Just before the end of the 90-day period of the Initial Order, in August 2025, the Department issued a renewal order, determining that the “emergency conditions ... continue, both in the near and long term.” Renewed Order at 2, JA ___[AR2_DOE0001]. The Renewed Order claims that the “production of electricity” from Eddystone “will continue to be critical to maintaining reliability in PJM this summer” and for long-term resource adequacy. *Id.* at 2-3, JA ___[AR2_DOE0001]. As with the Initial Order, the Department did not analyze alternatives and ordered “economic dispatch.” *Id.* at 6, JA ___[AR2_DOE0001]. The Renewed Order also failed to identify evidence of emergency conditions to justify extending the Initial Order. Beyond restating the same evidence cited to support the Initial Order, the Renewed Order presented a distorted depiction of the summer 2025 heat events and assumed that summer conditions would continue throughout the upcoming fall months, but otherwise focused on “potential longer term” concerns. *Id.* at 2-3, JA ___[AR2_DOE0001]. The Department renewed its Eddystone emergency order again on November 25, 2025, and again on February 23, 2026. Public Interest Organizations and Consumer Advocates requested rehearing of the first two emergency orders, and Public Interest Organizations also requested rehearing of the third and fourth emergency orders.³⁵

³⁵ *See supra* iv (statement of related cases).

On January 10, 2026, the Department responded to the requests for rehearing on the Initial Order. The Department argued that its power “to exercise [its] [S]ection 202(c) authority” is “unfettered,” Order No. 202-25-4B ¶ 23 JA ___[AR1_DOE0012], and that “no court has questioned” the Department’s “judgment” as to what constitutes an emergency, *id.* ¶ 14, JA ___[AR1_DOE0012].³⁶ Instead of reconciling its exercise of authority with its implementing regulations, the Department declared that the regulatory definition of “emergency” does not constrain its judgment. *Id.* ¶ 10, JA ___[AR1_DOE0012]. The Department further claimed that the FPA does not require an “emergency” to be “imminent,” but that the Department can issue an emergency order to address a future “shortage” of electricity, even when that shortage is caused by resource adequacy issues that “can take months, even years” to address. *Id.* ¶ 10, JA ___[AR1_DOE0012].

About two months after the Department’s first response on rehearing, on March 5, 2026, the Department issued its second response on rehearing to the

³⁶ The Department seems to suggest that its judgment as to what constitutes an emergency should not be subject to judicial review. *Id.* ¶ 13, JA ___[AR1_DOE0012] (analogizing Section 202(c) to section 8a(9) of the Commodity Exchange Act (7 U.S.C. § 12a(9))).

requests regarding the second emergency order.³⁷ Order No. 202-25-08B, JA ___[AR2_DOE0024]. Issued three months after the second emergency order expired, this second response largely repeats the same arguments in almost the same language as the first response.

F. FERC holds proceedings on cost allocation.

On June 26, 2025, in response to a directive to the first emergency order, PJM filed with FERC changes to its tariff concerning allocation of Constellation's costs of operating Eddystone pursuant to the order. PJM noted that its current tariff did not provide a way for it to recover the costs it would pay Constellation to comply with the first emergency order and sought approval to allocate these costs to PJM utilities (who in turn would pass them on to ratepayers). FERC accepted PJM's proposal. Some petitioners have challenged FERC's cost allocation order in this court on the grounds that FERC's cost allocation is premised on the Department's illegal emergency order, and that case is in abeyance pending the outcome of this case. *Pet. for Review, Nat. Res. Def. Council et al. v. FERC*, No. 26-1041 (D.C. Cir. Feb. 20, 2026). PJM later filed a second proposal at FERC concerning allocation of costs for subsequent orders directing Eddystone to

³⁷ The Department initially dated its order responding to the second set of requests on rehearing incorrectly, DOE Order No. 202-25-08, and issued a corrected order later that same day, DOE Order No. 202-25-08B.

continue operating; FERC’s order accepting that proposal is currently under review in the 6th Circuit Court of Appeals. Pet. for Review, *East Ky. Power Coop., Inc. v. FERC*, No. 26-3106 (6th Cir. Feb. 9, 2026).

SUMMARY OF THE ARGUMENT

I. The Orders exceed the Department’s authority because there was no emergency within the meaning of Section 202(c), only generalized concern for the potential inability to meet future demand increases that will not arise for years, if ever.

The Department may not rely on long-term reliability concerns to justify the Orders because Section 202(c) limits the Department’s authority to “emergency” contexts, meaning “sudden,” imminent shortages. 16 U.S.C. § 824a(c)(1). That interpretation is evident from Section 202(c)’s plain text. Courts have accordingly interpreted Section 202(c) to apply only in limited circumstances requiring immediate interconnection in temporary emergencies. *See Otter Tail Power Co. v. Fed. Power Comm’n*, 429 F.2d 232, 234 (8th Cir. 1970); *Richmond Power & Light v. FERC*, 574 F.2d 610, 615 (D.C. Cir. 1978).

The Department’s own implementing regulations for Section 202(c) confirm the agency’s previous understanding that it lacks authority to solve long-term problems through emergency orders. These provisions showcase that an emergency is an “unexpected” shortage resulting from “unforeseen occurrences”

and “specific inadequate power supply situations” produced by events such as severe weather conditions, rather than speculative future concerns. 10 C.F.R. § 205.371. Unsurprisingly, the Department’s longstanding practice under Section 202(c), until now, has been consistent with this interpretation.

The FPA’s structure similarly confirms the limited scope of the Department’s Section 202(c) powers. Sections 202 and 215 delegate authority over long-term grid reliability to FERC and the states, leaving no room for the Department to do the same under Section 202(c). The Department’s capacious claim of discretionary authority here lacks meaningful boundaries. Accepting an expansive reading of Section 202(c) would upend the carefully delineated and narrow roles for federal involvement over grid coordination that Congress established in the FPA.

II. The Department failed to support its determination of an “emergency” with substantial evidence, in violation of both the APA and FPA. The Department failed to identify any evidence of an impending emergency justifying invocation of Section 202(c)’s extraordinary authority. Instead, the Department relied on stale information and identified facts demonstrating only a typical summer risk in the short term, while raising a hypothetical concern about future generation capacity in the long term. The Department also failed to consider relevant information

demonstrating that PJM had sufficient capacity resources for 2025, nor did it provide any explanation to counter that information.

III. Even if there were an “emergency,” the Department’s failure to consider whether Eddystone “best meet[s]” the emergency and serves the public interest and failure to limit generation to only the “hours necessary” both constitute violations of the FPA. 16 U.S.C. § 824a(c)(1)-(2). The Department’s failure to consider reasonable alternatives to the Eddystone Orders to address the perceived emergency similarly violates the APA. *See, e.g., Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1511 (D.C. Cir. 1984).

STANDING

Public Interest Organizations

PIO Petitioners have standing because Eddystone’s continued operation harms their organizations and their members, the “interests at stake are germane to” Public Interest Organizations’ organizational purposes, and “neither the claim[s] asserted nor the relief requested requires the participation of individual members.” *Sierra Club v. EPA*, 926 F.3d 844, 848 (D.C. Cir. 2019). Public Interest Organizations’ members also have standing in their own right, because they “suffer[] injur[ies]-in-fact fairly traceable” to the orders which are likely to be redressed by a favorable decision. *Ctr. for Biological Diversity v. EPA*, 56 F.4th 55, 67 (D.C. Cir. 2022).

PIO Petitioners³⁸ and their members³⁹ are ratepayers in the PJM region. The total cost allocated to ratepayers within the PJM region of operating Eddystone from June 1, 2025, through February 28, 2026, was approximately \$8.6 million. Declaration of Dana Ammann ¶ 15, ADD64. There is a substantial probability that Public Interest Organizations and their members will bear this cost, along with additional costs for future renewal orders including costs for continued operation and maintenance. FERC anticipated as much, allocating the costs of operating the Eddystone Units during the time covered by the 202(c) Orders to “all Load Serving Entities in the PJM Region” including utilities that serve Public Interest Organizations and their members. *See* 192 FERC ¶ 61,159 para. 35 (Aug. 15, 2025) (*aff’d on reh’g*, 193 FERC ¶ 61,229 (Dec. 22, 2025)). A favorable ruling for Public Interest Organizations would reduce the risk they will pay these costs, because it would remove the likelihood that the Eddystone Units’ continued operations will generate more costs. *See Env’t Action v. FERC*, 996 F.2d 401, 406 (D.C. Cir. 1993).

³⁸ *See* Declaration of Jacqueline Woo ¶¶ 3-5, ADD59 (NRDC), Declaration of Jude Yardsley ¶¶ 16-21, ADD108-09 (PennFuture).

³⁹ *See* Declaration of Jennifer Clark ¶¶ 4, 34, ADD97, 104; Declaration of Jim Keenan ¶¶ 1-2, 7, ADD80; Declaration of Linda Robinson ¶¶ 1-2, 8, ADD84-85; Declaration of Marya Bradley ¶¶ 1-2, 10, ADD88, 90; Declaration of Suzanne Swann ¶¶ 1-2, 8, ADD92-93; Declaration of Emily Petrucci ¶¶ 1, 21, ADD113, 116; Declaration of Charles Sharpless ¶¶ 1, 3, 4, 6, ADD124-25; Declaration of Dori Jaffe ¶¶ 1, 4, 6, ADD121-22.

Beyond ratepayer harms, the Eddystone Units create air and water pollution that harm Public Interest Organizations' members. Members that live within 20 miles of the plant feel the effects of that air pollution, which exacerbate respiratory conditions such as asthma and allergies, trigger persistent coughing, and cause other discomfort.⁴⁰ *See Clean Wis. v. EPA*, 964 F.3d 1145, 1156 (D.C. Cir. 2000). The pollution ruins members' enjoyment of recreational areas around the plant, with some members avoiding or reducing the amount of time they spend walking, running, gardening, or otherwise being outside.⁴¹ *See Am. Rivers v. FERC*, 895 F.3d 32, 41 (D.C. Cir. 2018); *Earthworks v. Dep't of Interior*, 105 F.4th 449, 455 (D.C. Cir. 2024). Some members are affected by the pollution even within their own living spaces, being forced to close windows to avoid breathing in potentially tainted air, and incurring costs of air filters, purifiers, and medication to treat health symptoms caused by poor air quality that may be reduced once the Eddystone Units cease operations.⁴² *In re U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 59 (D.C. Cir. 2019) (costs incurred to mitigate harm qualify as injury-

⁴⁰ *See* Robinson Decl. ¶¶ 3, 7, ADD84; Swann Decl. ¶¶ 3, 5, ADD92; Petrucci Decl. ¶¶ 5, 9-11, 15-18, 29, 31-33, ADD113-18; Clark Decl. ¶¶ 3, 19-23, ADD97, 100-01; Sharpless Decl. ¶ 8-9, ADD125.

⁴¹ *See* Bradley Decl. ¶¶ 3, 9, ADD89-90; Petrucci Decl. ¶¶ 11, 15-16, 33, ADD113-15, 118; Clark Decl. ¶¶ 20-22, 39, ADD100, 105; Sharpless Decl. ¶ 8, ADD125.

⁴² *See* Robinson Decl. ¶ 7, ADD84; Swann Decl. ¶ 6, ADD92; Clark Decl. ¶ 22, ADD100.

in-fact). All of these harms are traceable to the Orders and would be redressed by setting the Orders aside and declaring subsequent renewals unlawful.

Consumer Advocates

Illinois law provides that the Office of the Illinois Attorney General

“shall have the power and duty on behalf of the people of the State to intervene in, initiate, enforce, and defend all legal proceedings on matters relating to the provision, marketing, and sale of electric ... service whenever the Attorney General determines that such action is necessary to promote or protect the rights and interests of all Illinois citizens, classes of customers, and users of electric ... services.”

15 Ill. Comp. Stat. 205/6.5(c). In addition to this investigative and enforcement authority, the Illinois Attorney General “shall be a party as a matter of right to all proceedings, investigations, and related matters involving the provision of electric ... services before the Illinois Commerce Commission, the courts, and other public bodies.” *Id.* at 205/6.5(d). The Illinois Attorney General’s office represents Illinois ratepayers in PJM’s ComEd Zone.⁴³

The Maryland Office of People’s Counsel is the statutory representative of residential ratepayers of utility services in Maryland. The Office of People’s Counsel “may appear before any federal or State unit as to protect the interests of residential and noncommercial users” of gas, electricity or other regulated services.

⁴³ See PJM Open Access Transmission Tariff, Attach. J, PJM Transmission Zones, <https://agreements.pjm.com/oatt/4443>.

Md. Code Ann., Pub. Util. § 2-205(b). The Maryland Office of People’s Counsel has participated in numerous regulatory proceedings—including the DOE proceeding at issue here—at the federal and state levels and in state and federal civil court appeals of those proceedings.

The New Jersey Division of Rate Counsel is the administrative agency charged under New Jersey Law with the general protection of the interests of utility ratepayers. N.J. Stat. Ann. § 52:27EE-46, -49. NJ Rate Counsel is explicitly empowered to represent the public interest in federal proceedings. N.J. Stat. Ann. § 52:27EE-55.

The Illinois Attorney General, the Maryland Office of People’s Counsel, and the New Jersey Division of Rate Counsel (collectively, “Consumer Advocates”) have standing as statutory representatives of utility ratepayers served by the facilities and markets administered by PJM.⁴⁴ The Department’s orders to continue operating the Eddystone plant beyond its planned retirement date inflict “concrete and particularized” harm on the ratepayers that Consumer Advocates represent by imposing unnecessary costs on Maryland, New Jersey, and certain Illinois customers. *See, e.g., Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 111 (2025) (“Monetary costs are of course an injury”) (quoting *United States v. Texas*, 599

⁴⁴ All of Maryland and New Jersey and parts of Illinois are located within the PJM region.

U.S. 670, 676 (2023)); *Transunion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (“monetary injury” constitutes “concrete injury in fact under Article III.”). Under the FERC-approved revisions to PJM’s tariff, the costs of continuing to operate Eddystone will be spread across “all Load Serving Entities in the PJM Region,” 192 FERC ¶ 61,159 para. 35 (Aug. 15, 2025) (*aff’d on reh’g*, 193 FERC ¶ 61,229 (Dec. 22, 2025)), including utilities in Maryland, New Jersey, and parts of Illinois. Because load serving entities generally recover costs from their customer base, these costs—and any resulting from subsequent orders—will likely flow through to retail customers of electricity in Maryland, New Jersey, and parts of Illinois, barring any intervention from the courts.⁴⁵ Moreover, the ratepayers that Consumer Advocates represent have a direct interest in PJM’s administration of its tariff to provide resource adequacy and reliable service.

These injuries are traceable to the Department’s orders—which directed the continued operation of an uneconomic plant and failed to consider whether retaining a plant such as Eddystone would result in potential rate increases, much less how those rate increases support the public interest—and could be redressed

⁴⁵ As noted above, a challenge to FERC’s initial cost allocation order is in abeyance pending the outcome of this case. *Nat. Res. Def. Council et al. v. Federal Energy Regulatory Commission*, Case No. 26-1041 (D.C. Cir.); and FERC’s order accepting PJM’s proposed allocation for costs of subsequent orders is currently under review in the 6th Circuit Court of Appeals. *East Ky. Power Coop., Inc. v. FERC*, Case No. 26-3106 (6th Cir.).

by a decision of this Court vacating the orders at issue and declaring the invalidity of the Department’s interpretation of Section 202(c).

STANDARD OF REVIEW

The APA applies to review of agency actions under the FPA. *Kimball Wind, LLC v. FERC*, 140 F.4th 496, 499 (D.C. Cir. 2025). This Court will set aside any “agency action, findings, and conclusions” that are “in excess of statutory jurisdiction, authority, or limitations” or “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A), (C); *see Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Pac. Gas & Elec. Co. v. FERC*, 113 F.4th 943, 947-48 (D.C. Cir. 2024).

ARGUMENT

I. The Orders exceed the Department’s authority.

The Court should reject the Department’s erroneous reading of Section 202(c), which seeks to transform a limited emergency authority into an “unfettered” power over the nation’s entire electrical grid. First Rehearing Order ¶ 23, JA ___ [AR1_DOE0012]. *See Comm’r of Internal Revenue v. Clark*, 489 U.S. 726, 739 (1989) (“In construing [statutory provisions] in which a general statement of policy is qualified by an exception, we usually read the exception narrowly in order to preserve the primary operation of the provision”); *Cuomo v. Clearing*

House Ass’n, LLC, 557 U.S. 519, 530 (2009) (avoiding interpreting an exception in a manner that “would swallow the rule”).

The Department acknowledges both that “FPA section 201(b)(1) specifically reserves authority over ‘facilities used for the generation of electric energy’ for the states,” and that Section 202(c) is an “exception” to that general rule. Second Rehearing Order ¶ 27, JA___[AR2_DOE0024]. Nonetheless, in the Orders challenged here, the agency contends it may employ Section 202(c) authority “to address long-term structural problems, not simply imminent and unexpected events.” *Id.* ¶ 28, JA___[AR2_DOE0024]. Thus, simply ignoring the FPA’s other provisions, the Department invoked Section 202(c) to override and indefinitely block the Eddystone Units’ planned and approved retirement.

The Eddystone Orders are outside the scope of the Department’s Section 202(c) authority both because the Department failed to demonstrate that there was any actual or imminent emergency necessitating Eddystone’s continued operation in the 90-day periods covered by the Orders, and because the resource adequacy concerns the Department did describe are long-term concerns beyond the scope of Section 202(c). The Department’s reading of Section 202(c) is contrary to the statute’s plain language and structure, the Department’s regulations and historical use of Section 202(c), and case law interpreting Section 202(c). All of those sources confirm that an “emergency” under Section 202(c) must be sudden,

unexpected, imminent, and specific—none of which are present as to Eddystone. “In light of the breadth, history, and constitutional context of that asserted authority,” we would expect the Department to “identify clear congressional authorization” for its assertion that it may unilaterally seize control of long-term grid management and planning, yet it has not. *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 646 (2026).

A. Section 202(c)’s plain language authorizes the Department to address emergencies, not to regulate the long-term resource adequacy of the electric power sector.

Section 202(c) authorizes the Department to act only during wartime or when the Secretary “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. § 824a(c)(1). When those circumstances arise, the Secretary may “require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest.” *Id.*

As the Department would have it, this language provides it with “unfettered” discretion: “the Secretary has the authority to determine the existence of a statutory emergency ... [, and b]eyond providing exemplar categories of where an

‘emergency exists,’ the statute is silent on any additional requirements that must be satisfied.” First Rehearing Order ¶¶ 23, 9, JA ___[AR1_DOE0012]. This attempted arrogation overlooks that it is for courts, not the Department, to “fix[] the boundaries of [the] delegated authority.” *Loper Bright Enters. v Raimondo*, 603 U.S. 369, 395 (2024) (quoting H. Monaghan, *Marbury and the Administrative State*, 83 Colum. L. Rev. 1, 27 (1983)). And while it is true that the statute affords the Department some discretion, e.g., the latitude to reasonably determine what “other causes” may give rise to an emergency beyond those enumerated, the requirement for an emergency provides the provision’s limiting principle. Thus, it is not enough for the Department to merely assert that there is or may be a “shortage of electric energy” as a basis for invoking Section 202(c); the shortage must be one that constitutes an “emergency,” i.e., an acute event that demands immediate response.

The text’s use of the present tense underscores the statute’s focus on imminent and certain shortfalls: it empowers the Department to act only where “an emergency *exists*.” 16 U.S.C. § 824a(c)(1) (emphasis added); *see, e.g., United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). Thus, contrary to the Department’s assertion, the absence of the word “imminent” from the text of Section 202(c) does not justify its effort to usurp responsibility for longer-term resource adequacy

planning. See Second Rehearing Order ¶ 17, JA ___[AR2_DOE0024]. The statute’s focus on current or imminent conditions precludes use of Section 202(c) to pursue long-term policy goals, such as a preference for a particular fuel source. *Richmond Power & Light v. FERC*, 574 F.2d at 615 (Section 202(c) “is aimed at situations in which demand for electricity exceeds supply and not those in which supply is adequate but a means of fueling its production is in disfavor.”).

Though the FPA does not define “emergency,” the commonly understood meaning when Congress adopted the FPA in 1935 was a “sudden or unexpected appearance or occurrence” or “[a]n unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency.”⁴⁶ Current dictionaries likewise define “emergency” as a circumstance “unexpectedly arising, and urgently demanding immediate attention.”⁴⁷ The Department’s so-called emergency here—a “growing resource adequacy concern” over a five-year horizon, Initial Order at 1, JA ___[AR1_DOE0001]—falls far short of meeting these definitions.⁴⁸

⁴⁶ Webster’s New International Dictionary of the English Language 716 (1923), ADD128; see also Black’s Law Dictionary 654 (3d ed. 1933), ADD131.

⁴⁷ See Benjamin Rolsma, *The New Reliability Override*, 57 Conn. L. Rev. 789, 812 n.147 (2025) (quoting current *Oxford English Dictionary* definition, listing 1889 and 1913 definitions of “emergency,” and noting that dictionaries have given the term “emergency” the “same meaning for many years”).

⁴⁸ See *infra* Section II.A.

The Department attempts to sidestep the point by arguing that dictionary definitions “are not persuasive” and “cannot limit the discretion Congress expressly delegated” in Section 202(c). *See* Second Rehearing Order ¶ 19, JA ___[AR2_DOE0024]. But courts rely on dictionaries to elucidate the meaning of terms when statutes are silent,⁴⁹ and the Department points to no alternative definition other than its own, which boils down to an ‘emergency is whatever the Secretary says it is.’⁵⁰ To the extent Section 202(c) creates discretion, courts then “police the outer statutory boundaries” to “ensure that agencies exercise their discretion” lawfully. *Loper Bright Enters.*, 603 U.S. at 404. Whatever discretion Section 202(c) affords “is not a roving license to ignore the statutory text,” but rather “a direction to exercise discretion within defined statutory limits.” *See*

⁴⁹ *See Acuity Ins. Co. v. McDonald’s Towing & Rescue, Inc.*, 747 F. App’x 377, 380-81 (6th Cir. 2018) (addressing a statute that leaves “emergency” undefined and quoting dictionaries to supply a definition); *see also New Castle County v. Hartford Acc. and Indem. Co.*, 933 F.2d 1162, 1194 (3rd Cir. 1991) (“[T]he district court simply began its analysis by doing that which any reasonable person would do: it looked the word up in the dictionary.”)

⁵⁰ Insofar as the Department may now seek post-hoc support from a secondary definition of emergency in Black’s Law Dictionary—“a relatively permanent condition of insufficiency of service or of facilities resulting in social disturbance or distress”—that language does not support a reading of “emergency” as a circumstance that does *not* require immediate action. Moreover, that same dictionary’s primary definition dispels the Department’s insistence that imminence can be read out of the definition: “emergency” is a “sudden unexpected happening; an unforeseen occurrence or condition; . . . a sudden or unexpected occasion for action; exigency; pressing necessity.” Black’s Law Dictionary 654 (3d ed. 1933), ADD131.

Massachusetts v. EPA, 549 U.S. 497, 533 (2007). The term “emergency” sets that limit in Section 202(c). The Eddystone Orders cannot be squared with any reasonable definition of that term; nor can DOE’s distorted, self-serving definition be squared with the plain language of Section 202(c).

And while the Department touts that Section 202(c)(1) authorizes the Secretary to act “with or without notice, hearing, or report,” First Rehearing Order ¶ 9, JA ___[AR1_DOE0012], the absence of such procedural safeguards highlights only that Section 202(c) is intended exclusively for imminent crises. While the need for expedition may justify dispensing with standard administrative processes, that rationale is absent when it comes to longer-term concerns. Indeed, the provision Congress designed to address longer-term concerns—Section 215—explicitly includes the types of procedural mechanisms missing from Section 202(c). 16 U.S.C. § 824*o*.

Finally, the Court should disregard the Department’s position that the electricity sector context justifies reading imminence out of the plain meaning of emergency, i.e., that the extended lead times required for development of resources necessitates using Section 202(c) for projected shortages years away. *See* First Rehearing Order ¶¶ 10, 20, JA ___[AR1_DOE0012]. That context simply reaffirms that long-term grid planning is not something Congress intended to address through an emergency authority. Moreover, the FPA assigned responsibility for

long-term grid planning and management to states, utilities, and FERC, not the Department: “[t]he question here is not whether something should be done; it is who has the authority to do it.” *See Biden v. Nebraska*, 600 U.S. 477, 501 (2023).

B. The Department’s regulatory definition of “emergency” confirms the limits of Section 202(c) authority.

The Department’s attempted rejection of dictionary definitions is all the more unconvincing in light of the Department’s own definition in its implementing regulations for Section 202(c), which emphasize that the authority is triggered only when sudden, unexpected circumstances arise:

“Emergency,” as used herein, is defined as an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power.

10 C.F.R. § 205.371. When it adopted that definition decades ago, the Department explained that it did not want to “replace prudent utility planning and system expansion.”⁵¹ Rather, the Department acknowledged that Section 202(c) allows it to provide “assistance [to a utility] during a period of unexpected inadequate supply of electricity,” but does not empower it to “solve long-term problems.” *See id.* Neither the challenged Orders nor the Department’s follow-up Orders on

⁵¹ *Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power*, 46 Fed. Reg. 39,984, 39,985 (Aug. 6, 1981).

Rehearing acknowledge the Agency’s change in position, let alone offer a reasoned explanation for the departure. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

As the regulation states, emergencies “may result” from a number of events 10 C.F.R. § 205.371. (explaining that emergencies “may result from the unexpected outage,” “may be the result of weather conditions,” and “can result from a sudden increase in customer demand”). The use of the verb “result,” defined as “to proceed or arise as a consequence, effect, or conclusion,”⁵² signifies that events triggering the emergency have already happened, not that there is speculation that they could occur. Moreover, the events are characterized by “weather conditions, acts of God, or *unforeseen* occurrences not reasonably within the power of the affected ‘entity’ to prevent,” *id.* (emphasis added), not a risk of future events that can be planned for. Where the culprit is increased demand, it must be “a *sudden* increase in customer demand” producing a “*specific* inadequate power supply situation,” *id.* (emphasis added), rather than long-term demand projections producing general nationwide reliability concerns.

The need for both specificity and certainty is repeated in the Department’s regulations defining an inadequate energy supply: “A system may be considered to

⁵² *Result*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/result> (last visited May 5, 2026).

have” inadequate supply when “the projected energy deficiency ... *will* cause the applicant [for a 202(c) Order] to be unable to meet its normal peak load requirements based upon use of all of its otherwise available resources so that it *is* unable to supply adequate electric service to its ultimate customers.” *Id.* § 205.375 (emphasis added).

And while the regulations suggest that “inadequate planning or the failure to construct necessary facilities *can result* in an emergency,” they recognize that the Department may not utilize a “continuing emergency order” to mandate long-term system planning. *Id.* § 205.371 (also recognizing that “where a shortage of electric energy is projected due solely to the failure of parties to agree to terms, conditions or other economic factors” there is no emergency “unless the inability to supply electric service is *imminent*” (emphasis added)). An emergency may exist where past planning failures produce an immediate, present-tense shortfall (that is, where a shortfall *has already materialized* from insufficient planning); the Department has no authority to commandeer long-term planning merely because it deems current plans inadequate to meet far-distant needs. *See id.* § 205.375 (providing criteria to determine that a system currently “has inadequate fuel or energy supply capability”).

The Order on Rehearing attempts to slough off the Department’s own definition, arguing that the regulatory definition “does not supersede” the

Secretary’s discretion to determine “that an emergency exists.” First Rehearing Order ¶ 10, JA ___[AR1_DOE0024]. But the point is not that the regulation supersedes statutory authority, it simply informs the interpretation of the statutory language. Moreover, “[i]t is axiomatic ... that an agency is bound by its own regulations.” *Nat’l Env’t Dev. Ass’n’s Clean Air Project v. EPA*, 752 F.3d 999, 1009 (D.C. Cir. 2014) (quotations omitted).

C. Case law and DOE’s past practice contradict DOE’s new, expansive reading of Section 202(c).

The few courts that have opined on the meaning of “emergency” in Section 202(c) have also emphasized that the provision applies in very limited circumstances, and not as a tool to address longer-term concerns.

In *Otter Tail Power Co. v. Federal Power Commission*, 429 F.2d 232 (8th Cir. 1970), a utility insisted that the only way for the Federal Power Commission (“the Commission”) to properly order the utility to connect to a municipal power provider was to issue a Section 202(c) order. Demand for electricity in Elbow Lake, Minnesota, had increased, and the peak load of the city’s municipal power provider was getting to be so high that both of its two generators would likely need to be used simultaneously in the near future, “causing a possible loss of service should one malfunction during a peak period.” *Id.* at 233-34. To avoid this possible loss of service, the Commission issued a Section 202(b) order, requiring the utility

to connect to the municipal power provider. *Id.* at 234. The utility argued that the Commission used the wrong section and should have used Section 202(c) instead. *Id.*

The court explained that Section 202(c) “enables the Commission to react to a war or national disaster” by ordering “immediate” interconnection during an “emergency.” *Id.* (citing 16 U.S.C. § 824a(c)). For non-emergency situations, “[o]n the other hand, § 202(b) applies,” including when there is a “crisis which is likely to develop in the foreseeable future but which does not necessitate immediate action on the part of the Commission.” *Id.* The court upheld the Commission’s use of Section 202(b) instead of Section 202(c) because there was no immediate emergency.

This Court’s *Richmond Power and Light* decision, which arose out of the 1973 oil embargo, reached a similar conclusion. In that case, the Commission needed to decide how to respond to oil shortages and decided to call for the voluntary transfer of electricity from non-oil power plants to areas of the country that relied heavily on oil, such as New England. 574 F.2d at 613. The New England Power Pool was not convinced that the voluntary program would work and petitioned the Commission for a 202(c) order. *Id.* The Commission instead facilitated an agreement between state commissions and supplying utilities, which satisfied the New England Power Pool, which then withdrew its petition. *Id.* A

dissatisfied utility sought judicial review of the Commission’s decision to allow the withdrawal of the Section 202(c) petition. *Id.* at 614.

The court easily upheld the Commission’s decision not to invoke Section 202(c). *Id.* Though the oil embargo had ended, the utility argued that the “high cost and uncertain supply of imported oil” justified an emergency order. *Id.* The Commission countered that the voluntary program had worked, the New England Power Pool never interrupted service, and there was no need for a Section 202(c) order. *Id.* at 615. The court agreed with the Commission. *Id.*

Trying another tactic, the utility argued that “dependence on imported oil leaves this country with a *continuing* emergency.” *Id.* (emphasis added). The court observed that Section 202(c) “speaks of ‘temporary’ emergencies, epitomized by wartime disturbances.” *Id.* Interpreting this statutory language, the court upheld the Commission’s view that Section 202(c) cannot be used when “supply is adequate but a means of fueling its production is in disfavor.” *Id.* ⁵³

Nor, contrary to its Orders on Rehearing, does the Department’s position find any support from *Board of Trade of Chicago v. Commodity Futures Trading*

⁵³ See also *Fed. Power Comm’n v. Fla. Power & Light Co.*, 404 U.S. 453, n.1 (1972) (Douglas, J., dissenting) (relating Section 202(c) to “the exigencies of ‘war’”); *Duke Power Co. v. Fed. Power Comm’n*, 401 F.2d 930, 944 (D.C. Cir. 1968) (Section 202(c) “relate[s] exclusively to temporary interconnections during national emergencies.”).

Commission. 605 F.2d 1016 (7th Cir. 1979). *See* First Rehearing Order ¶13, JA __[AR1_DOE0012], Second Rehearing Order ¶¶ 21-22, JA ___[AR2_DOE0024]. In that case, the Seventh Circuit construed Congress’ omission of a judicial review provision in the Commodity Exchange Act to signify that the Commission’s determination of the existence of an emergency was committed to agency discretion by law. *Id.* at 1025 (citing 5 U.S.C. § 701(a)(2)). Here, Section 202(c)(5) explicitly provides for judicial review of Section 202(c) orders, rendering the case simply inapposite. If anything, the case highlights the untenability of the Department’s position here; a statutory provision—like Section 202(c)—that includes an express judicial review provision does not support a reading that the implementing agency has unfettered discretion. Nor is there any resonance to the Department’s observation that in the history of the FPA “no court has questioned” the Secretary’s judgment as to what constitutes an emergency. Second Rehearing Order ¶ 23, JA ___[AR2_DOE0024]. That speaks only to how aberrant the Department’s current use of Section 202(c) is, not to any lack of reviewability.⁵⁴

⁵⁴ *See Learning Res., Inc. v. Trump*, 146 S. Ct. at 640 (rejecting argument that a declaration of emergency the Government asserts is “unreviewable” is sufficient to unlock “extraordinary power”).

The Department’s longstanding practice likewise confirms the limited scope of its Section 202(c) powers. *See FTC v. Bunte Brothers, Inc.*, 312 U.S. 349, 352 (1941) (“[J]ust as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.”). Until recently, the Department has used Section 202(c) infrequently, and only to address specific, imminent, and unexpected shortages—mostly in response to extreme weather events and upon the request of the relevant system operator or responsible utility owner, and never to override planned retirements in the name of addressing reliability concerns that may theoretically arise years in the future.⁵⁵ The Department’s prior Section 202(c) orders have also been narrowly tailored to limit plant operations to the minimum period necessary to address the emergency (often fewer than 10 days), and to

⁵⁵ *See* Alexandra Klass and Dave Owen, *The President and the Power Grid* 16-18, & app’x, Mich. L. Rev. Online (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6509640 (evaluating historical context of the Department’s Section 202(c) implementing regulations and summarizing previous Section 202(c) orders); Benjamin Rolsma, 57 Conn. L. Rev. at 803-4 (describing “sparing[.]” use of Section 202(c) outside of wartime during the twentieth century).

mitigate violations of environmental requirements, as required by Section 202(c)(2).⁵⁶

The contrast here is stark: the Department's orders regarding Eddystone were not issued in response to any extraordinary event and were not requested by the system operator or plant owner. Although the Department recites that "[t]he Order is limited in duration to align with the anticipated emergency circumstances," Order at 2, JA ___[AR1_DOE0001], the Agency provides no evidence of an emergency in the 90-day period specified in the Order, just speculation about possible future shortages across PJM's thirteen-state and District of Columbia footprint: "[t]hrough 2030, PJM anticipates reliability risk from increasing electricity demand, generator retirement outpacing new resource construction, and characteristics of resources in PJM's interconnection queue." *Id.* at 1, JA ___ [AR1_DOE0001].

Finally, any arguments from the Department that point to past Section 202(c) orders that lasted for extended periods and/or to the renewal provision in Section 202(c)(4) also fail to support its claim that Section 202(c) can "be used to

⁵⁶ See, e.g., PIO Petitioners' First Rehearing Request Exhibit 6 at 1-3 (responding to ongoing severe winter storm and limiting order to the 3 days of peak load) and Exhibit 7 (responding to shortages produced by ongoing extreme heat and wildfires and limiting order to the 7 days of peak load).
JA ___[AR1_DOE0008]

address long-term structural problems.” Second Rehearing Order ¶ 28, JA ___[AR2_DOE0024]. First, the fact that an emergency may be long-lasting does not remove the threshold requirement for imminence, i.e., even if an “emergency” can be long-*lasting*, it still would not encompass the kind of far-off concerns identified here. *See, e.g., Grand Trunk Corp. v. TSA*, 153 F.4th 517, 524-25 (7th Cir. 2025) (while “long-lasting emergencies” can exist, “looming threats” do not rise to an emergency unless they pose an “acute and ever-present problem tantamount to an ongoing emergency”).⁵⁷

Second, the renewal authority in Section 202(c)(4) cuts against the Department’s position; that provision confirms the need for imminence because it emphasizes that the Department should be focused on the next ninety days. Moreover, when Congress amended Section 202(c) in 2015 to add the 90-day limit and renewal authority in order to ensure that the Department properly took account of conflicts with environmental laws and configured 202(c) orders to minimize adverse environmental impacts, it emphasized that it did “not intend for this

⁵⁷ *See also United States v. Southern Ry. Co.*, 380 F.2d 49, 55 n.17 (4th Cir. 1967) (dictum) (even if an emergency need not be “sudden in origin or temporary in nature,” long-brewing concerns are not an emergency unless and until they “reach a level requiring immediate and drastic action.”)

amendment to section 202(c) to allow for long-term or indefinite noncompliance with environmental requirements.”⁵⁸

D. The FPA’s statutory scheme confirms that Section 202(c) does not authorize the Department to regulate long-term resource adequacy.

“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803, 809 (1989). Where the statute at issue is one that confers authority upon an administrative agency, that inquiry must be “shaped, at least in some measure, by the nature of the question presented”—whether Congress in fact meant to confer the power the agency has asserted. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). When Section 202(c) is read in context with other subsections of Section 202 and other related FPA provisions, the Department’s expansive interpretation cannot be sustained.

First, Section 202’s overall structure underlines that Congress intended Section 202(c) to address imminent, near-term concerns. The preceding subsections, 202(a) and (b), together define and limit the tools by which the federal government may pursue “abundant” energy supplies in the normal course. 16

⁵⁸ See H.R. Rep. 113-86 at 7-8, 12 (2013), <https://www.congress.gov/committee-report/113th-congress/house-report/86/1>.

U.S.C. § 824a(a) (seeking “abundant supply of electric energy” by directing the federal government to “divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy”), § 824a(b) (allowing the federal government to order “physical connection ... to sell energy or to exchange energy” upon application, and after an opportunity for hearing). The resulting statutory “machinery for the promotion of the coordination of electric facilities” comprises the following:

- in subsection (a), an instruction to establish a general framework meant to facilitate “coordination by voluntary action”;
- in subsection (b), “limited authority to compel interstate utilities to connect their lines and sell or exchange energy,” subject to defined procedural and substantive requirements, when “interconnection cannot be secured by voluntary action”;
- in subsection (c), “much broader” but “temporary” authority “to compel the connection of facilities and the generation, delivery, or interchange of energy during times of war or other emergency.”

S. Rep. No. 74-621, at 49 (1935).

That tiered structure—relying on voluntary action for quotidian energy planning, specifying limited authority where that voluntary system fails, and allowing for “temporary” central command-and-control only in case of

“emergency”—requires that Section 202(c) remain narrowly bounded to instances of an immediate and unavoidable “break-down in electric supply,” *id.*, rather than mere want of more abundant supply in the future, *cf.* Order at 2, JA ___[AR1_DOE0001] (imposing responsibility on PJM “to ensure maximum reliability on its system”). Interpreting Section 202(c)’s “emergency” powers to encompass longer-term concerns—e.g., potential shortfalls years into the future—would unwind the careful balance of voluntary, market-driven action and federal power set out in subsections 202(a) and 202(b). Such an interpretation contravenes the FPA’s structure.

Nor does the Department’s newfound interpretation of “emergency” authority find support from the use of the phrase “emergency requiring immediate action” in the subsequent section, Section 202(d). 16 U.S.C. § 824a(d). That provision applies to temporary emergency actions by persons outside of the Department’s jurisdiction, and the broader phrasing merely substitutes for the specific examples of possible causes of emergencies that are supplied in Section 202(c) but absent from Section 202(d). The Department’s contrary reading would fail to give effect to the term “emergency” in Section 202(c), *see Bufkin v. Collins*, 604 U.S. 369, 387 (2025), or require adopting an “unusual meaning that will avoid surplusage over a more natural one,” *Stanley v. City of Sanford*, 606 U.S. 46, 56 (2025) (cleaned up).

Second, FPA Section 215, which specifically and directly delineates the scope of federal power to enforce mandatory long-term reliability requirements, 16 U.S.C. § 824o (“Section 215”), provides further confirmation that Section 202(c) cannot be used to enforce the Department’s view of long-term reliability needs. Congress added Section 215 to the FPA in 2005 precisely because the Act as it then existed—including Section 202(c)—did not provide the federal government with the power to enforce measures designed to ensure broad, long-term reliability. *See* 70 Fed. Reg. 53,117, 53,118 (Sept. 7, 2005) (“In 2001, President Bush proposed making electric Reliability Standards mandatory and enforceable,” leading to enactment of Section 215 in 2005); Report of the National Energy Policy Development Group at pp. 7-6⁵⁹ (noting that “[r]egional shortages of generating capacity and transmission constraints combine to reduce the overall reliability of electric supply in the country” and that “[o]ne factor limiting reliability is the lack of enforceable reliability standards” because “the reliability of the U.S. transmission grid has depended entirely on *voluntary* compliance,” and recommending “legislation providing for enforcement” of reliability standards (emphasis added)); S. Rep. No. 109-78, at 48 (2005) (Section 215 “changes our

⁵⁹ National Energy Policy Development Group, *Reliable, Affordable, and Environmentally Sound Energy for America’s Future* (2001), <https://perma.cc/JZ76-JQQE>.

current voluntary rules system to a mandatory rules system” for long-term reliability). *See Alcoa, Inc. v. FERC*, 564 F.3d 1342, 1344 (D.C. Cir. 2009) (noting that before the Energy Policy Act of 2005, “the reliability of the nation’s bulk-power system depended on participants’ voluntary compliance with industry standards”).

By enacting Section 215, Congress provided a comprehensive and carefully circumscribed scheme to empower the federal government to enforce long-term reliability requirements. That statutory scheme strikes a careful balance between state and federal authority, and between private, market-driven decisions and top-down control. Reliability standards are devised by NERC independent “of the users and owners and operators of the bulk-power system,” but with “fair stakeholder representation.” 16 U.S.C. § 824o(c)(2)(A)); *see also id.* § 824o(a)(3) (defining reliability standards as “a requirement ... to provide for reliable operation of the bulk-power system”). FERC may approve or remand those standards and is required to “give due weight” to NERC’s “technical expertise” while independently assessing effects on “competition.” *Id.* § 824o(d)(2)-(4). Section 215 specifies enforcement mechanisms and implementing procedures for reliability standards. *Id.* § 824o(e). And it carefully preserves state authority over “the construction of additional generation” and in-state resource adequacy, providing

for regional advisory boards to ensure appropriate state input on the administration of reliability standards. *Id.* § 824o(i)-(j).

Interpreting Section 202(c) to permit the Department to mandate generation based on its declaration that non-imminent reliability concerns create an “emergency” would effectively allow the Department to bypass Section 215’s constraints on federal authority and protection of state power. In other words, the federal government may not “order compliance with a reliability standard” without adhering to Section 215’s procedural and substantive requirements, including notice, a hearing, and limited remedies. *Id.* § 824o(e)(3), (i)(2). The Department may not circumvent these safeguards by intoning emergency, particularly given that Section 215 was added *because* Section 202 did not address long-term grid reliability. Such a bypass would impermissibly “contradict Congress’ clear intent as expressed in its more recent,” reliability-specific “legislation,” enacted “with the clear understanding” that the Department had “no authority” to address long-term reliability through Section 202(c). *See Brown & Williamson*, 529 U.S. at 143, 157-58, *superseded by statute*, Family Smoking Preventing and Tobacco Control Act of

2009, Pub. L. 111-31, Div. A, Title 1, § 101(b)(3), 123 Stat. 1786, *as stated in FDA v. Wages and White Lion Investments, LLC*, 604 U.S. 542, 550 (2025).⁶⁰

In sum, in adding Section 215 to the FPA, Congress directly established the mechanisms (and limitations) by which the federal government may compel action to ensure long-term electric-system reliability. In so doing, it confirmed that the word “emergency” in Section 202(c), does not extend to long-term reliability concerns. And because the Department also failed to identify any actual or imminent emergency in the 90-day periods following the Orders, as explained in Section II below, the Orders were outside the scope of the agency’s Section 202(c) authority and should be vacated.

II. The Orders are not supported by substantial evidence.

Under the APA and FPA, the Department must support its determinations with substantial evidence. 5 U.S.C. § 706; 16 U.S.C. § 825l(b) (factual assertions in FPA orders must be supported by substantial evidence); *see, e.g., Emera Maine v. FERC*, 854 F.3d 9, 22 (D.C. Cir. 2017) (FPA order must be “supported by substantial evidence”). The Orders fell short of this standard by failing to substantiate that an emergency exists “due to a shortage of facilities for the

⁶⁰ *See also Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 401-02 (D.C. Cir. 2004) (“Congress’s specific and limited enumeration of [agency] power” over a particular matter in one section of the FPA “is strong evidence that [a separate section] confers no such authority on [the agency].”).

generation of electric energy, resource adequacy concerns, and other causes.” Order at 1, JA ___[AR1_DOE0001]. Further, the Orders also are arbitrary and capricious because the Department ignored and/or acted counter to essential facts.

The evidence—both what the Department presented and the information it ignored—does not substantiate that emergency conditions existed to support issuance of the Orders “both in the near and long term.” Renewed Order at 2. The Department only identified a typical summer risk, *id.* at 2 n.3 (citing *PJM Summer Outlook 2025: Adequate Resources Available for Summer Amid Growing Risk*), JA ___[AR1_DOE0001], and a “growing resource adequacy *concern*” without definitive evidence regarding when or to what extent electricity demand may overwhelm supply in the PJM region. *Id.* at 1 (emphasis added), JA ___[AR1_DOE0001].

To be clear, Petitioners agree that action to assure future resource adequacy in PJM may be needed; grid management is inherently dynamic. However, long-term resource adequacy concerns do not constitute an “emergency” for purposes of Section 202(c), and do not justify departing from the well-established processes that the FPA entrusts to address those future concerns. A proper understanding of the FPA’s assignment of roles shows that solutions can be implemented without the need for emergency command-and-control intervention, and indeed the “[n]ational policy for many years has been ... to foster competition in wholesale

power markets.” FERC, Electric Competition, <https://perma.cc/TX7D-5SD8>; *see also* PIO Petitioners’ First Rehearing Request at 63-65, JA ___ [AR1_DOE0008].

The Department’s apparent disagreement with routine decisions that occur in those long-term planning processes, such as the approved retirement of the Eddystone Units and the PJM capacity auction clearing adequate resources without Eddystone, does not justify the Department’s intervention in lieu of allowing those processes to perform their function.

Simply put, not everything is an emergency; a growing concern about possible future conditions does not fall within the scope of a Section 202(c) emergency. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 650 (1952) (Jackson, J., concurring) (noting that ability to exercise “emergency powers” “tend[s] to kindle emergencies” and recognizing the potential for pretextual invocation of “emergencies” to usurp congressional delegations of power). The Department’s own Resource Adequacy Report, issued during the pendency of the Initial Order and prior to the renewal, provided no evidence of emergency conditions within the duration of the Orders. While the Report predicted growing demand nationwide and in the PJM region through 2030, it did not show that demand in PJM will imminently exceed supply. *See* Resource Adequacy Report at 27, JA ___ [AR2_DOE0009]. On the contrary, the Report’s conclusions were consistent with the fact that, under established resource adequacy

planning protocols, PJM had procured sufficient resources to ensure reliability in June 2025 through February 2026 and that appropriate entities had identified and started addressing the growing strain that could potentially occur years in the future. *See infra* pp. 86-87.

The Court must also consider the credibility of the Department’s attempted justification for the Eddystone Orders in light of the agency’s simultaneous actions approving applications for the export of electricity under FPA Section 202(e), 16 U.S.C. § 824a(e). Mere days before blocking the scheduled May 31, 2025, retirement of the Eddystone Units due to “the emergency nature of resource adequacy concerns” and the “declared state of national energy emergency,” Order at 2, JA___[AR1_DOE0001], the Department was approving five-year blanket requests to export electricity to Canada and Mexico, which required the finding that such exports would not “impair the sufficiency of electric supply within the United States.”⁶¹ The Administration’s self-contradictory actions—declaring a national energy emergency while approving electricity exports and illegally

⁶¹ The Department approved applications to export electricity on May 16, 2025, May 21, 2025, and May 23, 2025, and at least nine more electricity export applications have been approved since that time, all while the Department has continued to renew the Eddystone Orders using the same rationale. *See* Department of Energy, Export Authorization Library, <https://perma.cc/3UVG-4GNH>.

blocking the development of other sources⁶²—undercuts the Department’s attempted justification for blocking retirement of the Eddystone Units and evinces an attempt to improperly harness Section 202(c) to promote a particular fuel source over others. *See Richmond Power & Light*, 574 F.2d at 615.

A. The Initial Order only describes a growing concern for the future, not a Section 202(c) emergency.

The Department’s Initial Order mandating that Eddystone remain operating past its planned retirement date claimed a growing concern of insufficient resource adequacy several years out. The four pieces of evidence the Initial Order relied upon—March 2025 testimony of former PJM president Manu Asthana, Resource Reliability Initiative data, PJM’s 2023 Energy in Transition Report, and the PJM Summer Outlook 2025 document—did not establish an emergency for the duration of the Order and did not establish more than the possibility of a future emergency under worst case scenarios that were years away.

⁶² PIO Petitioners Second Rehearing Request at 27-28, JA ___ (AR2_DOE0020) (citing Nichola Groom, Reuters, *A timeline of Trump’s moves to dismantle the US wind and solar energy industries* (Aug. 27, 2025), <https://www.reuters.com/sustainability/boards-policy-regulation/timeline-trumps-moves-dismantle-us-wind-solar-energy-industries-2025-08-26>; Diana DiGangi, UtilityDive, *Revolution Wind to resume construction after judge grants injunction* (Sept. 23, 2025), <https://www.utilitydive.com/news/revolution-wind-orsted-offshore-wind-stop-work-trump-construction/760803/>; *Revolution Wind, LLC v. Burgum*, No. 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026), 2026 WL 113568).

The Order’s only attempt to demonstrate that an emergency existed during the “limited duration” of the Order was a cherry-picked phrase that came from a PJM newsletter, the PJM Summer Outlook 2025, that—contrary to the Department’s characterization—concluded “adequate resources” would be available during summer 2025. The Order was arbitrary and capricious for failing to substantiate that an emergency exists pursuant to 202(c). And because the foundational Order mandating Eddystone remain operational was arbitrary and capricious, each subsequent order premised on the same unsubstantiated bases should similarly be treated as arbitrary and capricious.

First, the March 2025 testimony of then-President and CEO of PJM, Manu Asthana, merely provided evidence of a “growing ... concern” about resource adequacy, that PJM anticipated may emerge later in the decade. Order at 1, JA ___[AR1_DOE0001] (citing JA ___[AR1_DOE0004_4]). But a hypothetical future concern does not constitute an emergency within the duration of the Order. Further, Mr. Asthana noted that the increased demand was associated with potential load growth, especially from new large industrial and data center customers that would be “welcome because [it] represent[ed] economic development.” JA ___[AR1_DOE0004_4]. A primary focus of the testimony, therefore, was how PJM was preparing to meet that potential demand and how PJM’s actions already were having an impact. *See* PIO Petitioners’ Rehearing

Request at 46-47, JA___[AR1_DOE0008]. A full review of the testimony demonstrates the inappropriateness of Section 202(c) emergency action based on potential resource adequacy shortfalls in future years when PJM is already taking action through the standard processes. The Department ignored these planned mechanisms and offered no basis for assuming that they would not be successful in addressing the projected resource adequacy needs. The Rehearing Order responded to this by noting that the testimony says conditions are still tightening.

JA___[AR1_DOE0012_12]. But the fact that conditions may be tightening is not evidence of an emergency under Section 202(c); in fact, it suggests the opposite—that the supply conditions currently meet the demand. Mr. Asthana’s statement supports continuing to let markets work as they are designed, not that there is an emergency that requires the Department’s interference.

Second, the Reliability Resource Initiative (“Initiative”) addressed a mere “*possibility* of a resource adequacy shortfall.” Order at 1 (emphasis added), JA___[AR1_DOE0001]. In approving the Initiative, FERC found “that the proposal *reasonably addresses*” this possibility. 190 FERC ¶ 61,084, para. 14 (Feb. 11, 2025). The Department offered nothing to call FERC’s conclusion into question.

The results of the Initiative, published before the Order, also contradict the Department’s claim of resource inadequacy. At the time of the Order, PJM had

approved, pursuant to this Initiative, expedited interconnection of 9.3 gigawatts of capacity by 2031 at the latest, PIO Petitioners’ First Rehearing Request at 48-49, JA ___[AR1_DOE0009], and noted that it expects significant amounts of this additional capacity to come online before 2028, PIO Petitioners’ Second Rehearing Request at 65, JA ___[AR2_DOE0020]. The Initiative did not need to address potential shortfalls sooner because it did not project that shortfalls would happen sooner. PIO Petitioners’ Second Rehearing Request at 64, JA ___[AR2_DOE0020]. As Public Interest Organizations demonstrated, and the Department failed to address, the most recent data demonstrates that the earliest a resource adequacy shortfall might occur is June 2027 because PJM has already procured an adequate amount of capacity for the 2025-2026 and 2026-2027 delivery years. PIO Petitioners’ Rehearing Request at 48-49, JA ___[AR1_DOE0008]; PIO Petitioners’ Second Rehearing Request at 64, JA ___[AR2_DOE0020].⁶³ The Department’s reliance on an approved solution to a problem that might arise only after several years does not constitute evidence of an emergency.

⁶³ While Petitioners believe that the 2027-2028 Base Residual Auction is post hoc evidence not properly before this Court, *infra* 84, to the extent the Court considers the 27-28 Base Residual Auction, it does not demonstrate a resource adequacy shortfall before June 2027 and likely not even after that date according to PJM’s own explanation of those results. *See infra* 82.

Third, PJM’s 2023 report, Energy Transition in PJM: Resource Retirements, Replacements & Risks (“R4 Report”), again only described an “increasing risk of reliability risk,” not an imminent emergency. Order at 1, JA___[AR1_DOE0001] (citing R4 Report, JA___[AR1_DOE0016]). Moreover, this Report and its conclusion were inherently flawed. PIO Petitioners’ Rehearing Request at 50-51, JA___[AR1_DOE0008]; PIO Petitioners’ Second Rehearing Request at 60-62, JA___[AR2_DOE0020] (citing James F. Wilson, Maintaining the PJM Region’s Robust Reserve Margins, A Critique of the PJM Report: Energy Transition in PJM: Resource Retirements, Replacements and Risks 8 (May 2023), JA___[AR1_DOE0009]). The R4 Report is also stale. PIO Petitioners’ Rehearing Request at 51-52, JA___[AR1_DOE0008]. The most fundamental problem is that PJM failed to account for the operation of its own capacity market in ensuring resource adequacy, by assuming that capacity prices would remain at low levels even as reserve margins shrunk. Instead, the design of the capacity market prevents this very result—as supply becomes more scarce, prices increase dramatically, thus incentivizing more new entry and retention of existing generators. *See id.* at 50-52. The Report also overstated generator retirements that would result from state and federal environmental regulations, and assumed that no additional demand response resources would enter the market despite the increasing prices that would accompany a tightening capacity picture. *Id.* The capacity auctions conducted since

the issuance of PJM’s report have borne out the accuracy of this critique, with record prices inducing both new entry and resource retention. *See* PIO Petitioners’ Second Rehearing Request at 66-67, JA___[AR2_DOE0020].

Finally, the Department contends the “PJM Summer Outlook 2025” supports a near-term emergency—the only attempt to substantiate an emergency during the duration of the Order—but ultimately that document does no such thing. The Department cherry-picked a single phrase from that document discussing PJM’s resource adequacy readiness for summer 2025, the relevant duration of the Initial Order—in which PJM observed that “available generation capacity may fall short of required reserves in an extreme planning scenario.” Order at 1, JA___[AR1_DOE0001] (citing “PJM Summer Outlook 2025: *Adequate Resources Available for Summer Amid Growing Risk*,” JA___[AR1_DOE0005] (emphasis added)). The PJM Summer Outlook 2025 explained that, under typical summer demand, PJM has sufficient resources for summer 2025 and that, under an “extreme planning scenario,” while “available generation capacity may fall short ... PJM would call on contracted demand response programs to meet its required reserve needs.” JA___[AR1_DOE0005].

By highlighting a single phrase in the newsletter that *generation capacity* may fall short, the Department distorts the newsletter’s message and ignores the realities of the electric grid. As the Department’s regulations explicitly

acknowledge, inadequate energy is an emergency only if the grid operator is unable to meet “normal peak load requirements based upon *use of all of its otherwise available resources.*” 10 C.F.R. § 205.375 (emphasis added). Demand response is not generation capacity but is exactly the type of “otherwise available resource” that is important for “maintaining resource adequacy both currently and in the future.” PIO Petitioners’ Rehearing Request at 54-55,

JA___[AR1_DOE0008] (citing Adam Keech, Prefiled Statement on Behalf of PJM Interconnection, L.L.C. at 5, FERC Dkt. No. AD25-7, <https://www.pjm.com/-/media/DotCom/documents/ferc/filings/2025/20250516-ad25-7-000-adam.pdf>).

The Department never responded to the reading of the 2025 Summer Outlook that PIOs presented in their requests for rehearing. And, glaringly, the Department nowhere acknowledged that the PJM statements it cited were made in the context of PJM having cleared adequate capacity resources for the duration of the Orders.

In sum, the Initial Order, which formed the basis for the Renewed Order and all subsequent Eddystone renewal orders, did not provide substantial evidence that an emergency existed. At most, the evidence demonstrated a growing concern for future resource adequacy—an area reserved for other entities to address, *see supra* I.D.—but not an imminent emergency permitting the Department to invoke its Section 202(c) emergency authority.

B. The Renewed Order also failed to provide evidence of an emergency.

In addition to rehashing the less than substantial evidence cited in the Initial Order, the Renewed Order attempts to rely on post hoc evidence presenting an exaggerated depiction of summer 2025 events, which also fails to establish that an emergency was imminent for the late August through November 2025 period that the Renewed Order covered. The remainder of the evidence introduced by the Renewed Order again focused on “a potential longer term” concern beyond the scope of a Section 202(c) order. Renewed Order at 3, JA___[AR1_DOE0001].

First, the cited summer heat events do not substantiate that an emergency existed for the duration of the Renewed Order, which was issued at the end of summer on August 27, and required the Eddystone Units to be available for September, October, and most of November. The Department failed to explain how past operation of Eddystone during summer heat events (after the agency already issued one order requiring the units to be available) supported a determination that an emergency would exist for the entire duration of the Renewed Order, largely in the cooler fall months. Although the Department pointed to a 40-60 percent chance of above-average autumn temperatures to support its claim that “hot weather may continue in the near term,” Renewed Order at 2-3, JA___[AR2_DOE0001] (citing NOAA, Seasonal Temperature Outlook (issued Aug. 21, 2025), <https://perma.cc/Y9K5-Y3QM>), the fall heat index would

have to be *over fifty degrees higher* than average to approach summer peak conditions. PIO Petitioners' Second Rehearing Request at 56-57, JA ___[AR2_DOE0020]. The Department cited to no predictions anywhere near that level. The Department thus failed to substantiate that autumn temperatures would so dramatically exceed averages as to cause tight, much less emergency, grid conditions.

Nor did the June and July heat events establish that there was an emergency for the duration of the Initial Order. Contrary to the Department's characterization, these events demonstrated that PJM's forecasting had been accurate, and that its standard operating procedures worked to manage load as it approached the forecast peak. The Department's regulations define an inadequate energy supply under Section 202(c) as when "the projected energy deficiency ... will cause the [utility] to be unable to meet its normal peak load requirements based upon use of all of its otherwise available resources." 10 C.F.R. § 205.375. At no point during summer 2025 was that line crossed.

In fact, the 2025 heat events, and PJM's response thereto, demonstrated that the PJM system worked as it should to maintain grid reliability—and that it would have worked as planned even without the Eddystone Units (which have a 760 megawatt capacity). In June 2025, PJM reached a peak load of 162,401 megawatts, lower than PJM's extreme planning scenario of more than 166,000 megawatts and

lower than the 187,100 megawatts of total generation capacity and demand response that PJM had available. PIO Petitioners’ Rehearing Request at 59, JA ___[AR1_DOE0008]; PIO Petitioners’ Second Rehearing Request at 46, JA ___[AR2_DOE0020]. Likewise, the July 2025 hot weather event caused a peak load of around 155,000 megawatts—well below PJM’s normal peak load requirements, the peak load PJM capably served during the June event, its extreme summer planning scenario level, and its historic peak load that occurred in 2006. PIO Petitioners’ Second Rehearing Request at 46, 48, JA ___[AR2_DOE0020].

At no time during June or July, and specifically during the times when the Eddystone Units were operated, did PJM initiate any emergency procedures that would fit a Section 202(c) emergency. For example, PJM never declared a “performance assessment interval” during these events. A performance assessment interval is triggered by certain emergency conditions and enables PJM to enforce performance by resources that have been committed and paid to provide capacity during grid stress events.⁶⁴ In other words, PJM did not deem these events risky enough to even require performance by all of the resources it pays to provide capacity.

⁶⁴ PJM, Performance Assessment Intervals (Jan. 2025), <https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/fact-sheets/performance-assessment-intervals.pdf>.

And while the Renewed Order, JA___[AR2_DOE0001_2], refers to PJM’s Maximum Generation Alerts and Hot Weather Alerts, these alerts do not support an emergency under Section 202(c). PIO Petitioners’ Second Rehearing Request at 51-54, JA___[AR2_DOE0020]. These alerts are types of “Advanced Notice Emergency Procedures” in PJM’s operational practice that are part of PJM’s preparedness for potential tight grid conditions; they are not indicators that something is awry with PJM’s system or that it has inadequate resources. *Id.* at 52-53, JA___[AR2_DOE0020]. PJM issues these alerts before demand response resources are dispatched, before PJM ceases exports to neighboring regions, before all generators are required to ramp up to their maximum output, and before all offline generators are even required to start up. *Id.* at 54, JA___[AR2_DOE0020].

Second, the Renewed Order relied upon stale information from NERC’s 2024 Long-Term Reliability Assessment. Renewed Order at 4, JA___[AR2_DOE0001]. The Assessment explained that the risks it identified, and which the Renewed Order relied upon, would only arise if the identified trends continued. PIO Petitioners’ Second Rehearing Request at 66, JA___[AR2_DOE0020] (citing NERC, 2024 Long-Term Reliability Assessment 92 (rev. July 2025), JA___[AR2_DOE0012]). But these trends had already shifted before the Renewed Order. In February 2025, FERC approved PJM’s streamlined addition of capacity resources, known as the Reliability Resource Initiative, *see*

190 FERC ¶ 61,084 (Feb. 11, 2025); moreover, since the NERC report was published at the beginning of 2024, over 1,200 megawatts of resources had voluntarily withdrawn deactivation notices and another 1,984 megawatts had been retained under PJM’s existing mechanisms to delay retirements to support reliability. PIO Petitioners’ Second Rehearing Request at 66-67, JA___[AR2_DOE0020]. The Department thus relied on an old report about trends that no longer existed.

Third, Executive Order 14,156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8,433 (Jan. 20, 2025), JA___[AR1_DOE0014] (“Energy Emergency EO”), the Grid EO, and the Department’s 2025 Resource Adequacy Report neither exempt the Department’s Orders from the limits of the FPA or from judicial scrutiny, nor do they themselves provide evidence of an emergency.

The President’s declaration of an emergency in the Energy Emergency EO is an insufficient basis for the Department’s Orders because a Presidential declaration of an emergency is circumscribed by the statutory authority granted by Congress. *See Biden v. Nebraska*, 600 U.S. 477, 500-01 (2023) (presidential declaration of national emergency does not change the limitations on agency’s emergency authority as written into statute). President Trump issued the Energy Emergency EO pursuant to authority from the National Emergencies Act.

JA___[AR1_DOE0014_1]. Congress explained that the National Emergencies Act

“is not intended to enlarge or add to Executive power. Rather, the statute is an effort by the Congress to establish clear procedures and safeguards for the exercise by the President of emergency powers conferred on him by other statutes.” S. Rep. No. 94-1168, at 3 (1976), *reprinted in* 1976 U.S.C.C.A.N. 2288, 2289. Section 202(c) requires that “the *Commission* determine[] that an emergency exists.” 16 U.S.C. § 824a(c)(1) (emphasis added). Thus, the burden is on the Department to demonstrate that there is an emergency pursuant to Section 202(c). Simply pointing to the Energy Emergency EO without an independent reasoned and substantiated basis that an emergency exists results in an arbitrary and capricious order.

Moreover, “as numerous courts have held, the fact that an agency’s actions were undertaken to fulfill a presidential directive does not exempt them from arbitrary-and-capricious review.” *Kingdom v. Trump*, No. 25-cv-691-RCL, 2025 WL 1568238, at *10 (D.D.C. June 3, 2025) (collecting cases). If it did, “presidential administrations [could] issue agency regulations that evade APA-mandated accountability by simply issuing an executive order first.” *Nebraska v. Su*, 121 F.4th 1, 16 (9th Cir. 2024); *see also Chamber of Com. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996) (“[T]hat the Secretary’s regulations are based on the President’s Executive Order hardly seems to insulate them from judicial review under the APA...”). The Department cannot “avoid the need to justify its

decisions simply by gesturing to an Executive Order.” *Kingdom*, 2025 WL 1568238, at *10. Rather, it must still support its decisions with evidence and reasoning. *See State Farm*, 463 U.S. at 43.

To the extent that the Department attempts to rely on the executive orders to provide a reasoned basis for the Department’s Section 202(c) Orders, “the reasoning contained therein is plainly deficient.” *Kingdom*, 2025 WL 1568238, at *10. The Energy Emergency EO and Grid EO generically claim nationwide inadequate energy generation and surging electricity demand with no evidence to support these claims. *See* JA ___[AR2 _DOE0014], JA ___[AR2 _DOE0013]. These vague, unsupported assertions fall far short of the requirement that an emergency under Section 202(c) arise from “a specific inadequate power supply situation.” 10 C.F.R. § 205.371. Moreover, these assertions are belied by the data, which demonstrated that U.S. energy production and exports were at an all-time high. *See* PIO Petitioners’ Rehearing Request at 5 n.3, JA ___[AR1 _DOE0008] (citing Energy Info. Admin., U.S. primary energy production, consumption, and exports increased in 2024 (June 20, 2025), <https://perma.cc/WQ94-WX9M>). These executive orders also are contradicted by other executive orders and agency actions that constrain the country’s energy supply. PIO Petitioners’ Second Rehearing Request at 42, JA ___[AR2 _DOE0020] (citing 90 Fed. Reg. 8,363, 8,363 (Jan. 20, 2025) (temporarily withdrawing offshore areas from wind energy leasing) and

Exec. Order No. 14,315, 90 Fed. Reg. 30,821, 30,821 (July 7, 2025) (declaring no need to subsidize “energy sources like wind and solar”)); *id.* at 42-43 n.35 (gathering agency actions taken pursuant to executive orders to stop wind and solar development). And the Department has continued to approve electricity exports, *supra* 64, making repeated findings that such exports do not “impair the sufficiency of electric supply within the United States.” *Id.* These actions by the Department and the broader Administration are incompatible with the executive orders’ conclusory assertions of inadequate electricity supply.

Far short of providing a reasoned basis, the Grid EO merely directed the Department to develop a methodology to analyze grid reliability to support future Section 202(c) orders. JA___[AR2_DOE0013]. The Department’s subsequent Resource Adequacy Report purported to be a “uniform methodology to identify at-risk region(s) and guide reliability interventions” as directed by the Grid EO. Resource Adequacy Report at iv, JA___[AR2_DOE0009]. However, the Department acknowledged that the Report lacked types of data and in-depth engineering assessments that form the necessary bases for issuance of Section 202(c) orders. *Id.* at i, JA___[AR2_DOE0009]. The Department’s failure to include more granular analyses rendered the Report useless for any practical purpose. *See* NRDC et al., Request for Rehearing of Resource Adequacy Report 31-34 (Aug. 8, 2025), <https://sustainableferc.org/wp->

content/uploads/2025/08/2025-08-06_NRDC-et-al-Request-for-Rehearing-DOE-Resource-Adequacy-Report.pdf. Given the Report's fundamental flaws, the Department erred in relying on the Report to issue the Renewed Order.

Further, the Report's findings, which focused on projected conditions in 2030, say nothing about a short-term emergency in PJM, in direct conflict with the Department's attempt to use the Resource Adequacy Report to show continuing emergency conditions in the Renewed Order. *See* Renewed Order at 5, JA ___[AR2_DOE0001]. The Report provides no evidence and reaches no conclusions about *short-term* issues facing PJM. *See* Resource Adequacy Report at 27-29, JA ___[AR2_DOE0009] (providing only projections for the year 2030). Instead, it concludes that there will be broader resource adequacy issues years from now, in 2030. *Id.* at 1, 4-6, JA ___[AR2_DOE0009]. And even those conclusions were flawed and based on overstated assumptions about demand growth and likely retirements, along with understated and unsupported assumptions about likely new entry (e.g., assuming almost no new generation would be developed after 2026). *See* NRDC et al., Request for Rehearing of Resource Adequacy Report, at 34-43. These flawed assumptions build into the Report an inherent bias toward a finding of resource inadequacy, making it of questionable value even for longer-term forecasting.

C. The Rehearing Orders were arbitrary and capricious.

The Rehearing Orders did not provide substantial evidence of an emergency, relied primarily on post hoc evidence, and failed to respond to the contrary evidence provided in Petitioners' Requests for Rehearing.

Like the 202(c) Orders themselves, the Rehearing Orders did not establish an emergency within the meaning of FPA Section 202(c). The Orders primarily rehashed the evidence in the Initial and Renewed Orders but, as addressed in Petitioners' rehearing requests and discussed *supra* II.A-B, none of that evidence established an imminent emergency for the May-November 2025 period covered by the Orders. The additional materials cited in the Rehearing Orders similarly failed to establish an emergency within the meaning of FPA Section 202(c).

For example, the Department contends that the Council of Economic Advisors Report, *The Economic Benefits of Unleashing American Energy*, shows that data centers have increased energy demand nationwide. First Rehearing Order at 12, JA___[AR1_DOE0012], Second Rehearing Order at 17, JA___[AR2_DOE0024]. But this report does not establish an imminent emergency during the time period of the Order and Renewed Order; rather, it vaguely asserts "the grid needs substantial investment to handle rising power demand." *Unleashing American Energy* Report at 1, JA___[AR2_DOE0027]. While gesturing to the

possibility of future reliability concerns on a national level, the Report offers no evidence of a present or imminent energy shortage specific to the PJM region.

Similarly, the Department’s reference to the 2027-2028 Base Residual Auction results⁶⁵ failed to show that an emergency was imminent. First, PJM procured an adequate amount of capacity in the 2026-2027 Base Residual Auction, PIO Petitioners’ First Rehearing Request at 57-58, JA___[AR1_DOE0008], so the earliest a resource adequacy shortfall could occur is June 2027, well after the periods covered by the Orders. Further, PJM has itself explained that the results of the 2027-2028 Base Residual Auction “does not necessarily mean that the PJM system will be unable to serve load reliably in the delivery year,” and pointed to several mitigating factors.⁶⁶ For example, PJM stated that it expected a reduction in the forecasted peak demand compared to what was anticipated when the auction was conducted, that additional generators could delay their retirements in response to market signals, and that additional supply resources that were not reflected in the auction results would in fact be available to serve demand. PJM’s Chief

⁶⁵ First Rehearing Order at 17, JA___[AR1_DOE0012], Second Rehearing Order at 22-23, JA___[AR2_DOE0024].

⁶⁶ PJM Interconnection, LLC, *PJM Auction Procures 134,479 MW of Generation Resources*, <https://insidelines.pjm.com/pjm-auction-procures-134479-mw-of-generation-resources/> (Dec. 17, 2025).

Operating Officer stated that the combination of these factors would result in PJM being very close to its reliability standard for the 2027-28 delivery year.⁶⁷

The Second Rehearing Order also attempted to establish an emergency by describing several actions—operating under a cold weather alert, deploying conservative operations, and declaring a maximum generation emergency/load management alert—that PJM took during Winter Storm Fern, which affected the PJM region from January 24 to February 2, after the Renewed Order had expired. Second Rehearing Order at 23-24, JA ___[AR2_DOE0024]. However, these measures are many steps removed from the type of emergency contemplated by Section 202(c). As described *supra* pp. 73-74 in the context of summer heat events, PJM routinely takes multiple other steps to ensure adequate generation following issuance of hot or cold weather alerts, including dispatching demand response resources, ceasing exports to neighboring regions, and requiring generators to ramp up to their maximum output, all before offline generators are even required to start up.⁶⁸ These alerts are part of PJM’s preparedness for potential tight grid conditions, not indicators that something is awry with PJM’s system or that it has inadequate

⁶⁷ *Id.*

⁶⁸ See PIO Petitioners’ Second Rehearing Request at 54, JA ___[AR2_DOE0020] (discussing these alerts in context of summer pre-emergency events); see also NRDC et al. Request for Rehearing of Eddystone 4 Order pp. 52-59, available <https://www.energy.gov/documents/motion-intervene-and-request-rehearing-natural-resources-defense-council-citizens-2>.

resources.⁶⁹ PJM’s response to this winter event demonstrates that PJM has the tools to maintain reliable service, and that those tools are working.

Even if the additional evidence in the Rehearing Orders did justify the Orders—and it does not—the evidence amounts to post hoc rationalizations which “cannot serve as a sufficient predicate” for the Agency’s actions. *Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 539 (1981). Yet most evidence the Department presented in the Rehearing Orders was not produced until *after* the agency issued the Initial and Renewed Orders, and thus provides improper post hoc rationale. For example, the First Rehearing Order cites the report *The Economic Benefits of Unleashing American Energy*, JA___[AR1_DOE0012_12], which was published in July 2025, over a month after the May 2025 Order; Eddystone running during the summer 2025 heat wave, JA___[AR1_DOE0012_14-15], which occurred at least a month after the Initial Order; PJM only expressed support of the Initial Order after the Department published it, JA___[AR1_DOE0012_16]; and PJM’s 2027/2028 Base Residual Auction, JA___[AR1_DOE0012_17], was published December 17, 2025, six months after the Order.

The Second Rehearing Order also relies on “evidence subsequently available”: the 2027/2028 Base Residual Auction published December 17, 2025;

⁶⁹ *Id.*

NERC’s Long-Term Reliability Assessment released January 2026; and PJM’s response to the January 2026 Winter Storm Fern. JA___[AR2_DOE0023_22-24]. As evidence that could not have been before the Department when it made its decisions to issue the Order and Renewed Order, the Court should not consider it when determining whether the agency’s Orders were rational.

The Department’s heavy reliance on post hoc evidence also underscores the absence of adequate evidence at the time the Department issued the Orders, which is a hallmark of arbitrary and capricious agency action. A “foundational principle” of administrative law is that a court may uphold agency action only on “the grounds that the agency invoked when it took the action.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 4 (2020) (citing *Michigan v. EPA*, 576 U.S. 743, 758 (2015)). Specifically, “if those grounds are inadequate, a court may remand for the agency to offer ‘a fuller explanation of the agency’s reasoning at the time of the agency action.’” *Id.* (citing *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 654 (1990) (emphasis added)). The Department conceded this point: “[t]he exigencies that section 202(c) is designed to address necessarily require that the Secretary’s determination is informed by the facts *available at the time.*” Rehearing Order at 11, JA___[AR1_DOE0012] (emphasis added); *see also* Second Rehearing Order at 16, JA___[AR2_DOE0023]. Thus, evidence that was made available only after the orders were issued could not have provided adequate

grounds for the Department’s action, and that information may not supply a basis to uphold the Orders.

D. The Department ignored relevant facts.

Petitioners’ rehearing requests provided ample evidence that PJM had sufficient capacity resources for 2025. However, the Department simply ignored that evidence, e.g., by issuing the Renewed Order despite the absence of any short-term need, and failed to meaningfully address that evidence in the Rehearing Orders. This willful failure to “consider an important aspect of the problem” and to “offer[] an explanation” for action “that runs counter to the evidence” epitomizes arbitrary and capricious agency action. *State Farm*, 463 U.S. at 43.

For example, NERC’s 2025 Summer Reliability Assessment, published in May 2025, indicated that PJM had adequate anticipated resources for both normal and extreme summer load conditions, and that PJM anticipated calling upon demand response resources during any extreme high temperatures. PIO Petitioners’ First Rehearing Request at 58, JA___[AR1_DOE0008]. And PJM’s Base Residual Auction for the delivery year encompassing the period of emergency that the Department identified in the Orders—Delivery Year 2025-2026—cleared more capacity than the target. *Id.* at 56-57, JA___[AR1_DOE0008] (citing PJM, 2025/2026 Base Residual Auction Report 3 (July 30, 2024)). PJM had even more capacity than the resources included in the Base Residual Auction because the

resources committed through that auction excluded a host of other resources. *See supra* 82; PIO Petitioners’ First Rehearing Request at 57-58, JA ___[AR1_DOE0008].

The Department’s deliberate ignorance of evidence showing that PJM had sufficient capacity over the duration of the Orders goes hand in hand with its self-contradictory actions—approving electricity exports while concurrently issuing 202(c) Orders due to a supposed electricity shortage—and underscores the arbitrariness of the Department’s actions.

III. Even if there were an emergency, the Orders violate Section 202(c) and the APA.

Even if there were an “emergency,” the Department failed to consider any viable alternatives when issuing the emergency orders, violating its statutory mandate to determine whether emergency operation of the Eddystone plant was the “best” way to “meet the emergency and serve the public interest.” 16 U.S.C. § 824a(c)(1). And by ordering Eddystone to operate when economical instead of “only during hours necessary to meet the emergency and serve the public interest,” the Department violated yet another statutory requirement in issuing the emergency orders. 16 U.S.C. § 824a(c)(2). The Department does not own up to either of these failures because, in its view, its authority to determine what is

“best” and what “meet[s] the emergency” is absolute and unquestionable, a position which conflicts with statutory text and precedent. *See supra* Part I.

A. Eddystone does not best meet the emergency.

Section 202(c)(1) requires that the Department order only “generation” that “in its judgment will *best* meet the emergency and serve the public interest.” 16 U.S.C. § 824a(c)(1) (emphasis added). To meet that obligation, the Department needed to compare compelling Eddystone’s generation to alternative generation resources that could have been tapped. *See Spirit Airlines, Inc. v. U.S. Dep’t of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (the agency is required to consider reasonable alternatives and provide reasoned explanation for rejecting such alternatives). But as the record reflects, the Department considered no alternatives and thus fell “well short of what is needed to demonstrate the agency grappled with an important aspect of the problem before it or considered another reasonable path forward.” *Id.*

And even assuming for the sake of argument that the Department’s years-distant, region-wide shortage of capacity constitutes an “emergency,” the Eddystone units are not the “best” option to meet that emergency. By the time of the first emergency order, the Eddystone units were already more than 50 years old

and well past their operational lifetimes.⁷⁰ Constellation admitted that further maintenance would be necessary “to allow for safe and reliable operations.”⁷¹ The units go “offline” or are “unable to operate” without warning.⁷² Even compared to other sources that were also slated for retirement over the summer, the Eddystone units are older, less productive, and less efficient. *See* PIO Petitioners’ Second Rehearing Request at 86, JA ___[AR2_DOE0020].

As the PIO Petitioners pointed out in their rehearing requests, the statute, the regulations and even the sources cited by the Department show that there were better alternatives to requiring generation from Eddystone. PJM’s 2025 Summer Outlook, which the Department cited in support of its first emergency order,

⁷⁰ PIO Petitioners’ First Rehearing Request at 14, JA ___[AR1_DOE0008]; PIO Petitioners’ Second Rehearing Request at 49 n.50, JA ___[AR2_DOE0020] (citing Constellation Energy, Eddystone Generation Station, *available at* <https://perma.cc/27DG-UXX2> (“These units were installed between 1967 and 1970”)).

⁷¹ PIO Petitioners’ First Rehearing Request at 28 & n.40, JA ___[AR1_DOE0008]; PIO Petitioners’ Second Rehearing Request at 84 & n.111, JA ___[AR2_DOE0020] (citing Jon Hurdle, *Aging Pennsylvania power plant to keep running after Trump order on eve of shutdown*, Pennsylvania Capital-Star (June 9, 2025), <https://perma.cc/XN2Q-QQTF>).

⁷² PIO Petitioners’ First Rehearing Request at 74, JA ___[AR1_DOE0008]; Petitioners’ Second Rehearing Request at 84, JA ___[AR2_DOE0020] (citing PJM Interconnection, LLC, Compliance Report (June 24, 2025), <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250624-doe-compliance-report-for-eddystone-units-3-and-4.pdf>; PJM Interconnection, LLC, Compliance Report (July 29, 2025) <https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250729-pjm-report-in-compliance-with-ordering-para-b-of-doe-20250530-order-no-202-25-4.pdf>)

provides that in case of an all-time peak load, PJM would turn to existing programs, including demand response programs.⁷³ PJM has also historically pulled from its neighboring regions to support its grid when needed. *See supra* 17. The FPA and the Department’s implementing regulations also point to demand response and interregional transmission as better alternatives. Section 202(c)(1) allows the Department to order “interchange” and “transmission” from neighboring regions. And the Department has previously required exhaustion of “all reasonably and practicably available resources,” including “available imports,” “demand response,” and “behind-the-meter generation resources” to minimize increased emissions before dispatching the specified resources in a Section 202(c) order. Order No. 202-22-4 at 4-5, JA ___ [AR1_DOE0009]. Yet the Department did not mention or assess these alternatives in its Initial or Renewed orders, nor did it defend its choice in its denials of rehearing.

⁷³ PIO Petitioners’ First Rehearing Request at 75 & nn. 119-20, JA ___ [AR1_DOE0008]; PIO Petitioners’ Second Rehearing Request at 85, JA ___ [AR2_DOE0020] (citing Summer Outlook 2005 & FERC Commission Meeting, June 2025 Open Meeting, Statement by Commissioner Chang https://youtu.be/eAHyYMKI_Yg (“In particular, I do want to highlight the PJM’s use of nearly 4,000 MW of demand response to reduce the peak load, their peak load, on Tuesday from what would have been the third highest peak load experienced on the PJM system. I see load flexibility as a key tool for grid operators to meet the challenges that we face and I commend PJM for the successful use of demand response during the system strain.”)).

The Department’s perspective is that its “judgment” that a particular generation resource is the “best” way to address an emergency cannot be questioned, and that it has no obligation to assess alternatives at all. First Rehearing Order at 20-21, JA___[AR1_DOE0012]; Second Rehearing Order at 28-29, JA___[AR2_DOE0024]. But the Department’s failure to identify and analyze alternatives “leaves too many questions unanswered to satisfy the APA.” *See Cboe Futures Exch., LLC v. SEC*, 77 F.4th 971, 978 (D.C. Cir. 2023). And refusal to assess alternatives is contrary to decisions by the Supreme Court and this Court, which regularly review agency judgments for whether they appropriately assess alternatives. *City of Brookings Mun. Telephone Co. v. Fed. Comm’n*, 822 F.2d 1153, 1163 (D.C. Cir. 1987) (agencies must consider responsible alternatives).

Petitioners acknowledge the Department’s need to act expeditiously to address genuine emergencies, and for time to respond to objections raised after the fact, but the Department has now had ample time to consider the few, discrete, obvious alternatives described above. Yet the Department refused to consider any alternatives not only when issuing the Initial Order but also when issuing that Renewed Order in August 2025 and in the First Rehearing Order in January 2026, which is even more egregious given the months that elapsed after Petitioners first raised this issue. First Rehearing Order at 20-21, JA___[AR1_DOE0012]; *cf. Am.*

Gas Co. v. FERC, 593 F.3d 14, 19 (D.C. Cir. 2010) (“In cases where parties raise reasonable alternatives to the Commission’s position, we have held that reasoned decisionmaking requires considering those alternatives.”).

The agency’s second rehearing denial is no better. Even though the Department cursorily acknowledged the potential alternatives Petitioners had raised, Second Rehearing Order at 29, JA ___[AR2_DOE0024], the Department’s only further reference to best meeting the emergency or alternatives merely recites the alternatives set forth by Petitioners and then summarily concludes, without any reasoning, that the alternatives would not best meet the emergency. Second Rehearing Order at 31 ¶ 67, JA ___[AR2_DOE0024]. Such “conclusory statements will not do; an agency’s statement must be one of *reasoning*.” *Amerijet Int’l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) (cleaned up); *see also Doctors for America v. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 147 (D.D.C. 2025) (rejecting agency action based on an “administrative record ... devoid of reasoning”).

B. The Orders do not limit generation to hours necessary to meet the emergency and to minimize environmental impacts.

For any Section 202(c) emergency orders that “may result in a conflict with a requirement of ... environmental law, the Department may order generation “only during hours necessary to meet the emergency” and in a way that “minimizes any adverse environmental impacts.” 16 U.S.C § 824a(c)(2). The Department has

acknowledged that running the Eddystone units may conflict with environmental laws. *See* First Rehearing Order at 3, JA___[AR1_DOE0012]; Second Rehearing Order at 7, JA___[AR2_DOE0024]. Yet the Department has not limited generation to hours necessary to meet the emergency and to minimize environmental impacts.

Instead, the Department ordered PJM to “take every step to employ economic dispatch of the units to minimize cost to ratepayers.” Initial Order at 3, JA___[AR1_DOE0001]; *see also* Renewed Order at 6, JA___[AR2_DOE0001]. “Economic dispatch” is a term of art that means “the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.” 42 U.S.C. § 16432(b). In other words, the Department ordered Eddystone to run when it is the least costly option, not just when the “emergency” has rendered PJM’s resources otherwise inadequate. And because PJM’s resources have been adequate, this means that whenever the Eddystone units run, they will unnecessarily and adversely impact the environment. The Department’s failure to include measures to minimize reliance on Eddystone thus fell short of its obligations under Section 202(c)(2).

IV. Remedy

Vacatur is the “normal remedy” to address unlawful agency action. *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014). To determine

whether to depart from this default remedy, the Court evaluates two factors, including: (1) “the likelihood that deficiencies in an order can be redressed on remand” and (2) “the disruptive consequences of vacatur.” *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 64 (D.C. Cir. 2024) (cleaned up). The second factor is “weighty only insofar as the agency may be able to rehabilitate its rationale.” *Env’t Def. Fund v. FERC*, 2 F.4th 953, 976 (D.C. Cir. 2021) (citation omitted).

Here, the deficiencies in the Eddystone Orders cannot be redressed on remand because the Department acted beyond the scope of its authority under Section 202(c). The only way the Department could remedy its *ultra vires* overreach would be to withdraw the two challenged Orders and each of the subsequent renewals that share that same flawed basis: the misuse of Section 202(c) to usurp authority for long-term grid management and resource adequacy planning. Absent an order from this Court, the Department has made plain that it intends to indefinitely continue issuing renewals on the same invalid basis. Thus, the Court should enter an order vacating Orders 202-25-4 and 202-25-8 and declaring the invalidity of the Department’s interpretation of Section 202(c) as a basis for further renewals.⁷⁴

⁷⁴ A ruling affirming Petitioners’ reading of Section 202(c) but not reaching subsequent renewals should constrain the Secretary going forward, even without an express mention of subsequent renewals. Future panels of this Court will be bound

Nor would vacatur would be disruptive. As to the lives of area residents and ratepayers, retirement of the Eddystone Units would remove the disruption the Section 202(c) Orders have imposed. Those persons are being forced to bear the burden of more pollution and higher utility bills arising from the unnecessary operation of an obsolete and unreliable power plant. Conversely, there would be no disruption to the Department.

Allowing the Eddystone Units to retire does not jeopardize system reliability in the near or long term. Rather, it allows the entities Congress tasked with responsibility for managing system reliability and retirement approvals—namely PJM, its member states, and FERC—to plan and manage their grid operations without unwarranted interference. Indeed, retirement would clear the way for PJM’s capacity market to function as intended by freeing up limited transmission headroom for the entry of cheaper, more efficient, and more reliable supply resources.⁷⁵ Nor would a ruling from this Court that Section 202(c) orders may be

by “those portions of the opinion necessary to that result,” *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 67 (1996), and would adhere should the Department continue down the same path.

⁷⁵ Indeed, Constellation recently sought to transfer the transmission capacity rights reserved for the Eddystone Units to another planned generation facility that it would own and operate, the Crane Clean Energy Center, in order to “expedite Crane’s full deliverability” of over 800 megawatts of “critical baseload, dispatchable nuclear generation in Southern Pennsylvania as soon as next year.” Constellation Energy Generation, LLC’s Request for Prospective, Limited Waiver

issued only in response to genuine emergencies—i.e., those that are so sudden, imminent, or unexpected that the normal resource-adequacy planning process cannot address them—disturb the Secretary’s ability to employ Section 202(c) when those *true* emergency circumstances may arise going forward.

CONCLUSION

This Court should grant the petitions and vacate the Orders as modified by the Rehearing Orders. The Court should also declare the Department’s interpretation of Section 202(c) invalid as a basis for further renewals, or, in the alternative, order Respondents to show cause why all subsequent Eddystone 202(c) emergency orders pending review before this Court should not be summarily vacated.

at 1-2, FERC Dkt. No. ER26-2028, *available at* https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260331-5562&optimized=false&sid=317e1ed3-621e-4ba8-aa6e-4418a38613e0. Constellation stated that moving its capacity interjection rights would ensure “an adequate supply of thermal resources [] needed to maintain grid stability.” *Id.* at 1.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 8, 2026, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit through this Court's CM/ECF system, which will serve a copy on all registered users.

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