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CLIENT ALERT

D.C. Circuit Limits DOE's Section 202(c) Emergency Authority to Keep Coal Generator Operational Beyond Planned Retirement

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On September 11, 2026, a unanimous three-judge panel of the U.S. Court of Appeals for the D.C. Circuit vacated a Department of Energy ("DOE") emergency order that had compelled the continued operation of the J.H. Campbell coal-fired generator in West Olive, Michigan beyond its planned closure.[1] The D.C. Circuit held that DOE exceeded its statutory authority under Section 202(c) of the Federal Power Act ("FPA"), finding that Section 202(c) is a narrow, last-resort backstop for genuine emergencies requiring immediate federal action, not a tool for overriding deliberate state-level resource planning and utilities' operational decisions. The ruling has immediate implications for similar DOE orders issued to at least six other coal-fired generators across the country and marks a critical moment in the ongoing tension between federal energy policy and state regulatory authority over electricity generation.

1 *Michigan v. U.S. Dep't of Energy*, No. 25-1159, slip op. (D.C. Cir. Sept. 11, 2026).

Background

Consumers Energy Company planned to retire the aging coal-fired J.H. Campbell Generating Plant and cease its operations on May 31, 2025. To replace J.H. Campbell's generation capacity, Consumers Energy developed a resource adequacy plan incorporating a new natural gas plant, extended operations at existing facilities, expanded solar generation, and battery storage. Consumers Energy designed this replacement portfolio ostensibly to provide cleaner electricity at lower cost while maintaining or improving reliability.[2]

Midcontinent Independent System Operator ("MISO"), the grid operator, and the Michigan Public Service Commission ("Michigan PSC") approved the retirement and replacement plan after regulatory review. The Michigan PSC found that the substitute sources would meet reliability criteria, reduce pollution, lower costs, and more than offset lost generation from J.H. Campbell.[3] The Michigan Court of Appeals affirmed the Michigan PSC's approval, finding substantial evidence that the settlement agreement would improve resource adequacy.[4]

DOE's Section 202(c) Order

On May 23, 2025, eight days before J.H. Campbell's scheduled retirement, Energy Secretary Chris Wright issued an emergency order under Section 202(c) compelling Consumers Energy to continue operating the plant for 90 days, citing grid reliability concerns that contradicted the Michigan PSC's and MISO's findings.[5] DOE renewed the order multiple times, issuing a total of six successive 90-day orders that compelled continued operation for roughly 450 days. According to Consumers Energy, the cost of complying with the emergency order is $259 million.[6]

DOE has argued that the declared emergency orders likely saved hundreds of lives during peak capacity events and prevented blackouts.[7] As an example, DOE pointed to the January 2026 storms, during which coal generation in affected regions increased by 25% during peak demand compared to the previous year and the J.H. Campbell plant provided over 650 megawatts every day from January 21 to February 1.[8]

Michigan v. DOE

Michigan, Illinois, and Minnesota, joined by a coalition of environmental organizations including the Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, Michigan Environmental Council, Environmental Law & Policy Center, Vote Solar, Ecology Center, Urban Core Collective, and Union of Concerned

2 Application of Consumers Energy Co. for Approval of an Integrated Res. Plan, Exhibit A-2 (RTB-2), No. U-21090 (Mich. Pub. Serv. Comm'n June 30, 2021).

3 Application of Consumers Energy Co. for Approval of an Integrated Res. Plan, No. U-21090 (Mich. Pub. Serv. Comm'n June 23, 2022) (order approving settlement agreement).

4 *In re Application of Consumers Energy Co.*, No. 362294, 2023 WL 2620437, at *5-6 (Mich. Ct. App. Mar. 23, 2023).

5 U.S. Dep't of Energy, Order No. 202-25-3 (May 23, 2025); U.S. Dep't of Energy, Order No. 202-25-7 (Aug. 20, 2025); U.S. Dep't of Energy, Order No. 202-25-9 (Nov. 18, 2025); U.S. Dep't of Energy, Order No. 202-26-16 (Feb. 17, 2026); U.S. Dep't of Energy, Order No. 202-26-22 (May 18, 2026); U.S. Dep't of Energy, Order No. 202-26-39 (Aug. 14, 2026) (collectively, the "J.H. Campbell Emergency Orders").

6 CMS Energy Corporation, Consumers Energy Company, Quarterly Report (Form 10-Q) (June 30, 2026).

7 U.S. Dep't of Energy, Fact Sheet: Energy Department Prevented Blackouts & Saved American Lives During Winter Storms (Feb. 6, 2026), https://www.energy.gov/articles/fact-sheet-energy-department-prevented-blackouts-saved-american-lives-during-winter-storms.

8 *Id.*

Scientists, petitioned the D.C. Circuit for review. Consumers Energy intervened in the proceeding to protect its cost-recovery rights. Ultimately, the D.C. Circuit vacated the Order, concluding that DOE exceeded its statutory authority.

The D.C. Circuit concluded that Section 202(c) is "best read to apply where the Department identifies a risk of substantial harm from inadequate electricity supply that calls for immediate action by DOE in particular, as opposed to by the states."[9] The D.C. Circuit's analysis was both textual and structural.

Section 202(c) authorizes the Secretary to act "[d]uring the continuance of any war" or "whenever 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."[10] The D.C. Circuit emphasized that "emergency" refers to an event requiring immediate action and that the listed statutory causes, such as shortages and sudden demand increases, are potential causes of emergencies, not emergencies in themselves. A shortage or demand increase rises to an "emergency" only when it poses an imminent threat requiring immediate federal intervention.

Section 202(a) provides for voluntary coordination among utilities, operating through industry cooperation and interconnection. Section 202(b) authorizes coercive federal action, but only upon application by a state commission or utility. Section 202(c) permits unilateral federal action in emergencies, the most extreme intervention and the last alternative among the three. The D.C. Circuit held that the structure of Sections 202(a)-(c) demonstrates that Congress intended Section 202(c) to be an extraordinary last-resort measure.

Application to the J.H. Campbell Order

Applying this framework, the D.C. Circuit found DOE's justifications fundamentally deficient for several reasons. The North American Electric Reliability Corporation Report cited by DOE stated that MISO had "adequate anticipated resources" for peak load conditions.[11] The MISO capacity auction confirmed sufficient capacity with a reserve margin nearly two percentage points above the target level. No state entity had declared an emergency or requested intervention from the Federal Energy Regulatory Commission. The court found nothing approaching the kind of imminent crisis the statute contemplates. The court further found DOE's assertion of unacceptable reliability risks within five years fell outside the meaning of emergency requiring federal intervention. Long-term resource adequacy risks are routinely and properly managed by states, regional transmission organizations, and NERC through ordinary planning processes.

The D.C. Circuit also observed that DOE's repeated renewals, totaling approximately 450 days of compelled operation, underscored that the situation was not the kind of transitory emergency that Section 202(c) was designed to address. The serial nature of the orders was evidence that DOE was using Section 202(c) as a tool for ongoing resource planning rather than emergency response. The court granted the petition and vacated DOE's Section 202(c) order.

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9 *Michigan*, No. 25-1159, slip op. at 6.

10 *Id.* at 17.

11 *Id.* at 8, 23.

The separate petitions challenging the renewal orders for the J.H. Campbell plant, which had been held in abeyance, will now proceed in light of the D.C. Circuit's decision. A separate proceeding also remains pending before FERC over whether Consumers Energy may pass the costs of the forced J.H. Campbell operating extension on to ratepayers. Further appellate proceedings are widely anticipated. DOE may seek en banc rehearing before the full D.C. Circuit, and if unsuccessful, a petition for certiorari to the Supreme Court.

Implications and Looking Ahead

Because the D.C. Circuit's holding that Section 202(c) is a narrow, last-resort emergency backstop provides adverse precedent and a blueprint for challengers, the J.H. Campbell decision has immediate implications for a series of similar DOE Section 202(c) orders issued to power plants across the country. On the regulatory side, affected utilities and regional grid operators have indicated that they are reviewing the decision and will continue to comply with existing DOE orders as they determine next steps. These reactions underscore the decision's significance not only for the immediate dispute, but also for the broader debate over the limits of DOE's emergency authority and the future of coal plant retirements.

Further, the decision has drawn significant reaction from stakeholders across the energy sector. Leading environmental organizations, including Earthjustice, the Environmental Law & Policy Center, the Sierra Club, and the Environmental Defense Fund, have celebrated the ruling. These groups emphasized that DOE should reserve its emergency powers for genuine emergencies rather than using them to prevent market-driven coal plant retirements, and characterized the decision as a repudiation of broader efforts to keep aging, costly, and polluting coal plants online against market realities. These groups also noted that the ruling strengthens pending legal challenges against similar DOE orders. Coal-industry groups, however, supported the policy rationale for keeping the J.H. Campbell plant open but appear to have remained outside the litigation. No coal producer or coal trade association appears to have intervened or filed an amicus brief defending the J.H. Campbell order. America's Power, a coal-industry trade association, publicly defended DOE's use of Section 202(c) and argued that keeping the J.H. Campbell plant open provided reliability and economic benefits.[12]

The decision is a significant articulation of the division of authority under the FPA, which reserves to the states exclusive jurisdiction over the siting, construction, and retirement of electricity generation facilities. The D.C. Circuit makes clear that this division is not merely a policy preference but a structural feature of the statute that constrains DOE's emergency powers. State public utility commissions, regional grid operators, and NERC retain primary responsibility for ensuring resource adequacy through established planning processes.

While the immediate holding is limited to vacatur of the J.H. Campbell order, its legal reasoning will shape pending challenges to other Section 202(c) orders and the boundaries of federal emergency authority.

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[12] America's Power, What's the Real "Cost" of Retaining the Campbell Power Plant (Sept. 5, 2025), https://americaspower.org/whats-the-real-cost-of-retaining-the-campbell-power-plant/.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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