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# *COMMENTARY*

## *From Wartime Authority to Energy Policy Tool: DOE's Reinterpretation of Section 202(c) of the Federal Power Act*

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Few sectors have become as politically charged as the electric utility industry. As climate change accelerates and the energy transition reshapes how electricity is produced and delivered, debates over grid reliability, affordability, and energy independence have taken center stage. At the heart of these debates is a persistent push to preserve coal and other fossil fuel generation even as market forces, environmental regulations and utility planning point toward retirement for some of these plants.

During the first and second Trump administrations, that push took on a novel and controversial form: the aggressive repurposing of a little-used emergency power under federal law to override utility decisions and keep fossil fuel plants running against their owners' wishes. For example, in late May of 2025 the J.H. Cambell Power Plant and units three and four of the Eddystone Generating Station were ordered to remain open beyond their scheduled retirement dates.[1] These generating facilities were either coal-fired or ran on natural gas/oil.

Section 202(c) of the Federal Power Act was enacted in 1935 in response to and in anticipation of wartime grid issues.[2] It authorizes the Department of Energy ("DOE") to issue temporary emergency orders requiring power plants to operate during grid emergencies to serve the public interest.[3] The statute allows the Secretary of Energy to act when an emergency exists on the bulk electric system, typically during situations involving sudden spikes in demand, shortages of generation or transmission facilities, or fuel supply disruptions.

Historically, this authority has been used sparingly and narrowly. DOE and its predecessor agencies typically invoked Section 202(c) only during acute, immediate crises like

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[1] Department of Energy, Order No. 202-25-3 (May 23, 2025); Department of Energy, Order No. 202-25-4 (May 30, 2025).

[2] Benjamin Rolsma, "The New Reliability Override," 57 CONN. L. REV. 789, 798-802 (May 2025).

[3] 16 U.S.C. § 824a(c).

hurricanes, heat waves, winter storms, or catastrophic equipment failures.[4] The typical 202(c) orders of the past were issued at the request of grid operators themselves, not initiated *sua sponte* by the DOE.[5]

DOE's own regulations reinforce this limited role. Those regulations emphasize that 202(c) sufficient "emergencies" should be unexpected inadequacy issues, leaving utilities themselves responsible for long-term planning and resource adequacy challenges.[6] The regulations only contemplate emergencies like natural disasters and "unforeseen occurrences not reasonably within the power of the affected 'entity' to prevent."[7] Consistent with that framework, past 202(c) orders were narrowly tailored, time-limited, and promptly modified or cancelled once conditions stabilized.

Emergency operation can also create environmental compliance issues. For example, a coal plant ordered to run at maximum capacity during a heat wave might exceed emissions limits under the Mercury and Air Toxics Standards. To address this, Congress amended Section 202(c) in 2015 to allow DOE to waive federal, state, and local environmental requirements during emergency orders, shielding generators from liability for forced noncompliance.[8] This amendment presumably assumes that emergency orders would remain infrequent and short-lived. Its implications are far more significant if Section 202(c) is used repeatedly or to support long-term operations.

During the Trump administrations, DOE began stretching Section 202(c) beyond its traditional bounds. Rather than responding to sudden reliability emergencies, the agency increasingly framed plant retirements and broader resource adequacy concerns as emergencies in their own right. In doing so, DOE used Section 202(c) to prevent planned shutdowns of fossil fuel plants even where no unexpected crisis existed and utilities themselves opposed continued operation. Keeping uneconomic plants online imposes significant and unforeseen costs on public utilities and, ultimately, their ratepayers.

The most recent example in Colorado illustrates how far this interpretation has gone. On December 30, 2025, DOE issued a Section 202(c) order halting the retirement of Unit 1 at the Craig Station coal-fired plant in Colorado, which was scheduled to close that same month.[9] The order was not issued at the utility's request and was not tied to a documented, sudden reliability emergency. Instead, it reflects a new and expansive reading of Section 202(c) that treats long-term resource adequacy concerns and policy preferences as emergencies.

DOE and its predecessor agencies have invoked Section 202(c) only several dozen times since 1935.[10] Prior to 2000, most uses occurred during World War II.[11] From 2000 through mid-

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[4] Ashley J. Lawson, *Federal Power Act: The Department of Energy's Emergency Authority,* CONG. RSCH. SERVS. (July 1, 2025), https://www.congress.gov/crs_external_products/R/PDF/R48568/R48568.4.pdf.

[5] *See generally* Department of Energy Order No. 202-22-1 (Sept. 2, 2022); Department of Energy Order No. 202-21-1 (Jan. 14, 2021).

[6] 10 C.F.R. § 205.371.

[7] 10 C.F.R. § 205.370.

[8] 16 U.S.C. § 824a(c)(4)(A).

[9] Department of Energy, Order No. 202-25-14 (Dec. 30, 2025).

[10] Rolsma, *supra* note 2, at 803.

[11] *Id.*

2025, 202(c) orders were largely driven by extreme weather and other acute reliability threats.[12] Against that backdrop, using Section 202(c) to manage long-term generation portfolios represents a sharp break from historical practice.

By transforming wartime emergency power into a tool for managing energy policy and plant retirements, DOE risks exceeding the Secretary's statutory authority. In a post-*Loper Bright* legal environment, courts are less likely to defer to expansive agency interpretations untethered from statutory text and historical use. That shift may open the door to serious challenges to this controversial use of emergency powers.

[12] *Id.* at 839-44.