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Federal Power Act: The Department of Energy's Emergency Authority

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Section 202(c) of the Federal Power Act (16 U.S.C. §824a(c)) grants the Secretary of Energy certain authorities over the temporary operation of the electricity system during emergencies. Actions by the Trump Administration have highlighted this authority and raised questions about its future implementation. This report provides a brief history of the emergency authorities and discusses current issues.

History of Section 202(c)

The Federal Power Act was enacted in 1935 and included emergency authority language. At the time, federal oversight of the electricity system was conducted by the Federal Power Commission (FPC). Now, the Federal Energy Regulatory Commission (FERC) has most responsibilities for electricity system oversight—but not for emergencies. The emergency authority was transferred to the Secretary of Energy when the Department of Energy (DOE) was established by the Department of Energy Organization Act (P.L. 95-91) in 1977. Hereinafter, the emergency authority is described as residing with DOE.

Section 202(c) provides DOE broad discretion to require almost any change to the operation of the U.S. electricity system on a temporary basis. Specifically, DOE 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."

DOE may execute this authority during war or at any other time it "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." This report focuses on the authority as used during emergencies, not war, and it focuses on DOE's authority—it does not discuss other energy emergency authorities.[1]

In 2015, Congress amended Section 202(c) to specify how the emergency authority should interact with environmental requirements for power plants. In practice, the amendments prioritize electric reliability over environmental outcomes, essentially by providing a waiver of federal, state, or local environmental laws and regulations during times of emergencies.

This waiver has limitations. First, DOE emergency orders that may result in conflicts with environmental requirements may be issued only for 90-day periods. They may be renewed for additional 90-day periods as long as DOE deems these renewals necessary to meet the emergency.

Second, if an emergency order would result in a violation of a federal, state, or local environmental law or regulation, DOE must ensure the order is in effect "only during hours necessary to meet the emergency and serve the public interest." Lastly, DOE must "to the maximum extent practicable" ensure the order is consistent with environmental laws or regulations and "minimizes any adverse environmental impacts."

DOE Implementation

DOE's regulations for implementing its emergency authority were finalized in 1981.[2] The regulations define terms, including "emergency," and specify requirements for requesting an emergency order.

[1] For example, in the 1970s, Congress passed several laws granting the President certain authorities to respond to energy shortages at the time. A discussion of those laws is beyond the scope of this report.

[2] 10 C.F.R. §§205.370-205.379.

The Section 202(c) emergency authority is focused primarily on short-term situations—though, as shown below, DOE has exercised this authority in situations of varying duration. DOE's regulations emphasize the short-term nature of "emergencies" in this context. In the 1981 rulemaking, DOE explained

> The DOE does not intend these regulations to replace prudent utility planning and system expansion. This intent has been reinforced in the final rule by expanding the 'Definition of Emergency' to indicate that, while a utility may rely upon these regulations for assistance during a period of unexpected inadequate supply of electricity, it must solve long-term problems itself.[3]

DOE and FPC have used the emergency authority several dozen times since 1935 in response to different kinds of emergencies.

DOE's website contains information on use of the emergency authority from 2000.[4] From 2000 through June 2025, DOE used its emergency authority in response to 20 events (**Table 1**). Eleven events were weather-related and included hurricanes, heat waves, and winter storms. Some events prompted multiple emergency orders, either because more than one utility experienced emergency conditions (e.g., Winter Storm Elliot in 2022) or because the initial emergency order was extended (e.g., the California energy crisis of 2000-2001).

Details on the use of the Section 202(c) emergency authority prior to 2000 are not available in a single DOE repository; they are therefore more difficult to comprehensively compile. According to one compilation, the emergency authority was used 29 times prior to 2000; 22 of these occasions were in association with World War II.[5]

The duration of emergency orders under Section 202(c) has varied; some have lasted just a few hours, while others have been extended to cover events lasting more than a year. Among the orders listed on DOE's website, the shortest order CRS identified occurred in response to a heat wave in Texas in September 2023. DOE granted an emergency order in this case for four hours on each of two days to respond to the highest levels of expected electricity demand.[6] The order allowed one coal-fired unit and 16 natural gas-fired units to operate in violation of limits on sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and wastewater during those hours, if required to maintain reliability.

In the longest event CRS identified among the orders listed on DOE's website, DOE granted multiple renewals to a request to allow two coal-fired units in Virginia to continue operating, as needed for reliability, in violation of mercury emissions limitations while a transmission facility was constructed. Emergency orders in response to that event were in effect from June 16, 2017, to March 8, 2019.[7]

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[3] Department of Energy (DOE), Economic Regulatory Administration, "Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power" (final rule), 46 *Federal Register* 39985, August 6, 1981, https://archives.federalregister.gov/issue_slice/1981/8/6/39984-39991.pdf#page=2.

[4] See DOE, "DOE's Use of Federal Power Act Emergency Authority," https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority; and DOE, "DOE's Use of Federal Power Act Emergency Authority – Archived," https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority-archived.

[5] Benjamin Rolsma, "The New Reliability Override," *Connecticut Law Review*, vol. 57, no. 3 (May 2025).

[6] Additional information is available at DOE, "Federal Power Act Section 202(c): ERCOT September 2023," https://www.energy.gov/ceser/federal-power-act-section-202c-ercot-september-2023.

[7] Additional information is available at DOE, "Federal Power Act Section 202(c) – PJM Interconnection & Dominion Energy Virginia, 2017," June 19, 2017, https://www.energy.gov/oe/articles/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017.

Table 1. Events for Which DOE Issued Emergency Orders

2000 through June 2025

Year	Event	Affected State(s)	Multiple Emergency Orders?
2025	Heat Wave	North Carolina, South Carolina	No
2025	Shortage of Generation Facilities	Pennsylvania	No
2025	Shortage of Generation Facilities	Michigan	No
2025	Shortage of Generation Facilities	Puerto Rico	Yes
2024	Hurricane Milton	Florida	No
2023	Heat Wave	Texas	No
2022	Winter Storm Elliott	PJM Region, Texas	Yes
2022	Heat Wave	California	Yes
2021	Heat Wave	California	No
2021	Winter Storm Uri	Texas	No
2020	Heat Wave	California	No
2020	Hurricane Laura	Texas	No
2017-2019	Shortage of Transmission Facilities	Virginia	Yes
2017	Shortage of Generation Facilities	Oklahoma	No
2008	Hurricane Ike	Texas	No
2005	Hurricanes Katrina and Rita	Texas	Yes
2005-2007	Shortage of Transmission Facilities	Virginia	Yes
2003-2004	Northeast Blackout	Connecticut, New York	Yes
2002	Shortage of Transmission Facilities	Connecticut, New York	No
2000-2001	California Energy Crisis	California	Yes

Source: CRS analysis of information from Department of Energy (DOE), "DOE's Use of Federal Power Act Emergency Authority," https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority; and DOE, "DOE's Use of Federal Power Act Emergency Authority – Archived," https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority-archived.

Notes: PJM is the grid operator for all or part of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. Puerto Rico is listed as a state for purposes of this table.

Trump Administration Actions

On April 8, 2025, President Trump issued Executive Order (E.O.) 14262, "Strengthening the Reliability and Security of the United States Electric Grid."[8] E.O. 14262 directs DOE to "streamline, systemize, and expedite" its processes for issuing emergency orders when "the relevant grid operator forecasts a temporary interruption of electricity supply is necessary to prevent a complete grid failure." A blackout is an example of a temporary interruption of electricity supply.

The E.O. additionally directs DOE to develop a protocol to identify generation resources that are critical to system reliability. The protocol must "include all mechanisms available under applicable law, including Section 202(c) of the Federal Power Act, to ensure any generation resource identified as critical within an at-risk region is appropriately retained." Further, the protocol must prevent, "as the Secretary of Energy deems appropriate and consistent with applicable law," identified resources from "leaving the bulk-power system" or converting fuels in such a way that reduces their accredited capacity. An example of fuel conversion that could reduce accredited capacity is replacing a coal-fired power plant with a solar farm.

The language of the E.O. is nonspecific regarding the duration of any DOE action to retain resources or prevent them from leaving the bulk-power system. The E.O. language could be interpreted to mean DOE should take long-term action (i.e., lasting multiple years) or indefinite action. Emergency orders issued in response to multiyear events would be unusual, though not unprecedented, applications of DOE's Section 202(c) authority. It is unclear the extent to which limits to the authority might exist through judicial review or other avenues if DOE were to choose to issue long-term or indefinite emergency orders.

DOE issued emergency orders for three separate events in May 2025, all involving seemingly new interpretations of the emergency authority. One event is anticipated electricity supply shortages in Puerto Rico in summer 2025.[9] One of the DOE emergency orders pertaining to Puerto Rico directs the local utility to conduct vegetation management (e.g., shrub clearing) around specified transmission lines on the island.[10] No other emergency order issued from 2000 to the present has addressed vegetation management.

The other events involve elevated risk of supply shortages in parts of the Midwest and Eastern United States in the summer of 2025. DOE ordered a delay in retirement plans for a coal-fired power plant in Michigan and a natural gas/oil dual-fired power plant in Pennsylvania.[11] Unlike in the cases of other emergency orders issued since 2000, the relevant grid operators in these cases

[8] Executive Order 14262 of April 8, 2025, "Strengthening the Reliability and Security of the United States Electric Grid," 90 *Federal Register* 15521-15522, April 14, 2025, https://www.federalregister.gov/documents/2025/04/14/2025-06381/strengthening-the-reliability-and-security-of-the-united-states-electric-grid.

[9] For background on Puerto Rico's electricity system, see CRS In Focus IF12913, *Electric Reliability and Resiliency in Puerto Rico*, by Corrie E. Clark.

[10] Secretary of Energy Chris Wright, *Order No. 202-25-2*, May 16, 2025, https://www.energy.gov/sites/default/files/2025-05/PREPA%20202%28c%29%20Emergency%20Measures%20Transmission.pdf.

[11] Secretary of Energy Chris Wright, *Order No. 202-25-3*, May 23, 2025, https://www.energy.gov/sites/default/files/2025-05/Midcontinent%20Independent%20System%20Operator%20%28MISO%29%20202%28c%29%20Order_1.pdf; and Secretary of Energy Chris Wright, *Order No. 202-25-4*, May 30, 2025, https://www.energy.gov/sites/default/files/2025-05/Federal%20Power%20Act%20Section%20202%28c%29%20PJM%20Interconnection.pdf.

appear to have not requested DOE action. Moreover, neither had identified reliability risks specifically associated with the retirement of the power plants in question at the time they approved those retirements. One of the affected grid operators, PJM, issued a supportive statement following the emergency order.[12] For both delayed retirements, it is unclear how the costs of maintaining the power plants are to be shared among electricity consumers in the affected regions. Regulatory procedures for determining that cost allocation are underway.

In June 2025, DOE issued another emergency order in response to a request from a utility anticipating high electricity demand during a heat wave.[13] The June 2025 emergency order was more typical of orders in previous Administrations since 2000, in that it was in response to a utility request. The duration of the June 2025 emergency order was less than two days.

Issues for Congress

E.O. 14262 does not specify how the Secretary of Energy should streamline its processes for issuing emergency orders. Congress could evaluate whether DOE's existing regulations would benefit from streamlining and, if Congress determines they do, could provide policy direction and set a timeline for updating the regulations. Congress could also leave it to DOE's discretion as to when and how to update its regulations.

Congress could weigh DOE action in this space against other priorities for the department, given that updating processes for issuing emergency orders could divert DOE resources from other activities. On the one hand, brownouts or blackouts due to insufficient electricity supplies are relatively rare in the United States. Grid operators have their own processes in place for managing the grid during times of supply shortages and, historically, DOE emergency orders have rarely been requested. On the other hand, many observers anticipate electricity demand to increase in the coming years faster than new supply can be brought online. If these trends continue, brownouts or blackouts could become more common, potentially increasing DOE's use of its emergency authority or Congress's interest in addressing emergency situations for electricity supply.

Regarding the statutory authority itself, Congress could consider whether amendments to Section 202(c) of the Federal Power Act are appropriate. The primary language has remained unchanged since 1935, potentially reflecting Congress's continued view over this time period that the original authorization is appropriate. Nonetheless, the U.S. electricity system has changed in many ways since 1935, and Congress might choose to consider reevaluating the authority.

One potential aspect for congressional consideration is the duration of DOE emergency orders, especially in relation to critical resources identified pursuant to E.O. 14262. Under current law, and assuming such orders might result in a conflict with environmental requirements, DOE could potentially reissue its emergency orders every 90 days for an indeterminate amount of time. Repeated emergency orders may raise feasibility questions, such as whether successive emergency orders would be upheld by the courts or whether power plant owners would make long-term investments to maintain power plants that are operating primarily under emergency orders.

[12] PJM, "PJM Statement on the U.S. Department of Energy 202(c) Order of May 30," press release, May 31, 2025, https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/2025-releases/20250531-doe-202c-statement-to-defer-retirements-of-certain-generators.pdf.

[13] Secretary of Energy Chris Wright, *Order No. 202-25-5*, June 24, 2025, https://www.energy.gov/sites/default/files/2025-06/Duke%20Energy%20Carolinas%20202%28c%29%20Order.pdf.

Congress could consider evaluating and clarifying via legislation whether the Section 202(c) authority is better reserved for short-term situations or whether application to long-term situations is appropriate. Some backers of power plants at risk of retirement (e.g., coal-fired power plants) might support extended emergency orders based on long-term economic considerations. At the same time, some backers of power plants with low greenhouse gas emissions (e.g., solar generators) might support extended emergency orders based on long-term environmental considerations. Others might prefer to limit DOE's emergency authorities to short-term situations. A more limited role for DOE in electricity system operations allows for greater use of market forces and reliance on local- and state-level processes to prepare for and respond to emergencies.

Another potential aspect for congressional consideration is the definition of "emergency" in the context of Section 202(c). Current law gives DOE broad discretion in determining what constitutes an emergency. Congress could consider whether this level of discretion is appropriate, or whether additional (or alternative) statutory direction would better serve current system needs.

As noted above, some supporters of specific kinds of power plants might view sustained economic conditions or environmental impacts as emergencies that warrant DOE action. Those situations would appear to be novel exercises of DOE authority under Section 202(c), if DOE were to interpret them in such a way. Amendments to the Federal Power Act could clarify congressional intent regarding use of DOE's emergency authority in response to those situations or any other long-term situation.

Other stakeholders might wish to limit DOE's discretion in when to issue emergency orders—for example, by modifying the currently broad statutory language or by requiring additional review by FERC or another entity.

A third potential aspect for congressional consideration is the scope of interventions allowed under the emergency authority. Current law allows DOE to order almost any change in operation of the electricity system.

Emergency orders between 2000 and 2024 directed either the operation of certain generators as needed for reliability or the temporary interconnection of the main Texas grid with neighboring regions' grids. One of DOE's May 2025 emergency orders requires Puerto Rico's local utility to conduct vegetation management activities.

One operational consideration that has not been tested under DOE's emergency authority (at least not in the orders available on DOE's website) is the curtailment of certain generators. Curtailment occurs when a grid operator directs a generator to reduce its output or cease operating altogether for a certain amount of time. Curtailment is sometimes necessary when generation levels in a given location exceed the transmission system's capacity to transmit energy out of that location.

Congress could evaluate the appropriateness of DOE's currently broad discretion to order interventions in the operation of the electricity system. Amendments to the Federal Power Act could clarify what kinds of interventions DOE would be authorized to require.

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