

## **Use of Federal Power Act Section 202(c) to Prevent Electricity Shortages**

**May 1, 2025**

Officials representing the North American Electric Reliability Corporation (NERC) and the nation's largest electric grid operators, members of the Federal Energy Regulatory Commission (FERC), state utility commissioners, and other authorities have warned about the precarious state of our country's electricity supply. NERC has projected that more than half of the U.S. is at risk of electricity shortages over the next 5 years. The premature retirement of power plants, mostly coal-fired power plants, combined with huge growth in electricity demand are the two main reasons for what the chairman of FERC has called a "crisis."

Responding to this problem, President Trump signed an Executive Order "Strengthening the Reliability and Security of the United States Electric Grid" on April 8 that, among other things, directs the Department of Energy (DOE) to use section 202(c) of the Federal Power Act to prevent the retirement of electric generating resources that are critical to maintaining reliability. This would presumably include preventing the retirement of coal-fired power plants since utilities have announced plans to retire almost one-third of the nation's coal fleet during the next 5 years, and many of these retiring coal plants are located in regions with the greatest risk electricity shortages. The FAQ below explains some of the basics about section 202(c).

**What is the purpose of section 202(c)?** Section 202(c) gives DOE the authority to issue orders that require power plants and other facilities that are needed during an "emergency" to operate until the emergency ends.

**What qualifies as an "emergency"?** An emergency is (1) an inadequate supply of electricity due to weather conditions, acts of God, unforeseen occurrences, or a sudden increase in electricity demand; (2) inability to obtain fuel to generate electricity; or (3) a regulatory action that limits or prohibits the operation of a power plant. An insufficient power supply caused by inadequate planning (for example, an unexpected increase in electricity demand) or failure to construct facilities (for example, transmission) also can qualify as an emergency. President Trump issued an earlier Executive Order "Declaring a National Energy Emergency" on January 20. The president declared a national emergency, citing inadequate energy supply and infrastructure, an increasing reliance on intermittent energy resources, and growing demand for energy. The January Executive Order noted the threat to the economy, national security, and foreign policy caused by the country's energy shortage.

**Who determines whether there is an "emergency"?** The Secretary of Energy is the only person who can declare an emergency for purposes of section 202(c).

**What is included in a 202(c) order?** An order indicates where and why an emergency exists. For example, an order issued in response to a request from CAISO declared an emergency because of a shortage of electric generating capacity, a shortage of water used to generate electricity, unusual volatility of electricity and natural gas markets, and for

other reasons. An order would list the entities that are required to take action in response to the emergency declaration and establish the start and end date of the emergency. A typical order would provide that compensation for continuing operation is to be negotiated and if agreement is not reached, FERC would set compensation.

**Can section 202(c) be used for any purpose other than emergencies?** No. Section 202(c) applies only to emergencies as defined by the Federal Power Act and DOE's implementing regulations.

**Who can request a 202(c) order?** Requests can be made by any "entity," an electricity generator, a grid operator, a state public utility commission, a state energy agency, or a governor; or DOE can initiate the order itself.

**Who can be required to operate?** A 202(c) order can require the owner/operator of a power plant, transmission, or distribution facility to operate, regardless of whether that owner/operator is a private or public corporation (utility), a government agency, a municipality, or an electric cooperative.

**Can a power plant owner/operator reject a 202(c) order?** No, although a court could overturn an order if an owner/operator successfully challenged the order.

**Can a 202(c) order be challenged in court by other parties?** Yes, an order can be challenged in court by any person, organization, etc. that claims to be harmed by the order.

**How long can a power plant operate under a 202(c) order?** A 202(c) order remains in effect until the emergency no longer exists. In cases where a 202(c) order conflicts with environmental law or regulations, the order can be in effect for only 90 days at a time, but is subject to 90-day renewals for as long as the emergency lasts. However, there have been instances where a 202(c) order covered a longer period of time. For example, when DOE determined that the Mirant Potomac River power plant was needed to preserve reliability in Washington, D.C., DOE issued an initial order that extended over a period of 9 months and was later extended an additional 4 months, for a total of 13 months.

**Are there limits to a 202(c) order?** Yes. If operation of any facility directed by a 202(c) order would conflict with a federal, state, or local environmental law or regulation, the order would limit the requirement to generate electricity to the hours during which the emergency exists. If the owner/operator subject to the order operates in a manner inconsistent with the order, it could be subject to enforcement actions.

**Who pays to keep a plant operating pursuant to a 202(c) order?** Generally, the beneficiaries (typically, local utility customers) pay. When a 202(c) order has directed generators to operate in a regional transmission organization or independent system operator region, the RTO/ISO pays the generator and passes the costs on to customers. FERC establishes the compensation if there is a dispute.

**Would the risk of electricity shortages that NERC has projected qualify as an emergency under section 202(c)?** Yes. NERC's Long-Term Reliability Assessment (December 2024) projects that more than half of the U.S. is at either "high" or "elevated" risk of electricity shortages. High risk refers to a region where electricity shortfalls could

occur during the next five years (2025-2029) under normal conditions, and elevated risk refers to a region where shortfalls could occur under extreme conditions.

**How have 202(c) orders been used in the past?** DOE has issued 202(c) orders or extended existing orders 21 times since 2000. In many cases, one of the explicit purposes has been to “preserve the reliability of the bulk electric power system.” These orders have sometimes enabled generators to operate up to their maximum output and exceed air quality limits during weather events like heat waves, extreme cold, hurricanes, drought, or fire risk, despite restrictions that would have limited operation. However, one power plant that was planning to retire because it could not comply with the 2012 Mercury and Air Toxics Standard rule was ordered to remain in operation because of the need for reactive power support until new generation could begin operation. As discussed earlier, the Mirant Potomac River plant was ordered to operate for several months to allow time for transmission upgrades.

This paper simplifies 202(c) orders, so readers should seek expert legal advice if they have more complicated questions.

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