



Trump Executive Order on Grid Reliability Seeks to Expand Federal Role Over Resource Adequacy

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On April 8, 2025, President Trump issued an Executive Order (EO) directing the Department of Energy (DOE) to take steps to expand the use of its emergency authority under Federal Power Act (FPA) Section 202(c) to require the retention of generation resources deemed necessary to maintain resource adequacy within at risk-regions of the bulk power system regulated by the Federal Energy Regulatory Commission (FERC).¹ The EO appears to envision a more active role for DOE in overseeing and supporting the resource adequacy of the grid that deviates from the historic use of Section 202(c) and touches on issues at the intersection of state and federal authority over resource planning.

As background, Section 202(c) of the FPA provided FERC's predecessor, the Federal Power Commission (FPC), the authority to require temporary connections of facilities and the generation, delivery, interchange, or transmission of electric energy "[d]uring the continuance of any war in which the United States is engaged" or when the FPC determined 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."² Section 202(c) effectively overrides other federal, state and local environmental and energy laws for up to 90 days as necessary to address a shortage of electricity—although the 90 days may be renewed through the issuance of a new emergency order. These authorities were transferred to DOE as part of the Department of Energy Organization Act of 1977.

The DOE has relied upon Section 202(c) infrequently to direct specific generation resources and transmission owners to make their facilities available to address discrete needs for

generation capacity during extreme weather events or other emergencies. For instance, during Winter Storm Uri, DOE issued an order to the Electric Reliability Council of Texas, Inc. (ERCOT) authorizing specific electric generating units located within the ERCOT area to operate at their maximum generation capacity.³ In the Fall of 2022, DOE issued orders to the California Independent System Operator Corporation and other west coast grid operators authorizing certain electric generating units located within their service territories to operate at their maximum output levels in order to preserve reliability in the face of ongoing wildfires, extreme heat and droughts.⁴ These emergency orders were largely focused on allowing the identified generation facilities to exceed certain operating limits imposed on them by environmental laws and regulations during the emergency period.

Under the EO, the DOE's traditional implementation of FPA Section 202(c) could be expanded significantly. The EO directs DOE to develop a uniform methodology for analyzing current and anticipated reserve margins in regions of the bulk power system "regulated by" FERC.⁵ The methodology must analyze current grid conditions and operating scenarios and accredit specific generation resource types based on historical performance under different operating scenarios. The EO requires the Secretary of Energy to publish this methodology on DOE's website by July 7, 2025. Based on this methodology, the EO requires that DOE establish a process for analyzing the results of this methodology that includes a mechanism to:

1. Ensure any generation resource identified as critical within an at-risk region of the bulk power system subject to FERC's jurisdiction is appropriately retained as an available generation resource within the at-risk region.
2. Prevent ... an identified generation resource in excess of 50 megawatts of nameplate capacity from leaving the bulk-power system or converting the source of fuel of such generation resource if such conversion would result in a net reduction in accredited generating capacity.

The EO's direction to DOE to establish a framework for the issuance of orders under Section 202(c) to require the retention of capacity needed to meet a DOE-defined reserve margin represents a marked departure from how Section 202(c) has been applied historically and does not fully align with the language of the statute. Section 202(c) authorizes DOE to act where it determines that an "emergency exists" due to a sudden increase in demand for electric energy or a shortage of electric energy or generation facilities. In cases decided prior to the transfer of this authority to the DOE, the FPC found that it lacked a sufficient basis to

issue an order under Section 202(c) absent evidence of a system emergency even where a region argued that it was facing a potential supply shortage.

For example, in *Richmond Power & Light v. FERC*, the Court of Appeals for the District of Columbia Circuit affirmed the FPC's decision not to issue an order under Section 202(c) to compel utilities with excess capacity to transfer electricity to New England during the 1973 oil embargo out of concern that the region—which was heavily dependent on oil-fueled generation—would be unable to maintain reliability in the face of oil shortages. In declining to issue an order, the FPC determined that an emergency within the meaning of Section 202(c) of the FPA did not exist notwithstanding the potential fuel constraints confronting the region.⁶ Certain parties challenged FERC's decision not to issue an order as an abuse of discretion. The court quickly dispensed with these arguments on the basis that Section 202(c) “speaks of ‘temporary emergencies,’ epitomized by wartime disturbances, and is aimed at situations in which demand for electricity exceeds supply and not at those in which supply is adequate[.]”⁷

It is not clear whether the failure to meet a DOE-defined reserve margin—rather than a specific emergency—would provide a basis to act under Section 202(c). Typically, the term “reserve margin” is used to refer to the amount of generation capacity in excess of expected peak demand that is available to address unexpected events. Thus, the fact that the amount of generation capacity available is below a particular reserve margin does not necessarily mean that the grid is in a state of emergency and may have sufficient capacity to meet demand in the vast majority of intervals.

The EO also is notable in that it claims authority for the DOE not only to require the retention of “critical” generation resources, but to block resources from converting to a fuel source with a lower-capacity accreditation. Because wind, solar, and storage resources generally have a lower capacity accreditation than thermal and other baseload generation resources, this language appears to raise the prospect that DOE may intervene to prevent existing generation resources from transitioning to the use of renewable or energy storage technology.

By calling on DOE to take steps to ensure sufficient reserves and prevent resources from changing their fuel source, the EO touches on areas that historically have been viewed as falling within the authority of state regulators. Section 201(b) of the FPA reserves for the states authority over “facilities used for the generation of electric energy.”⁸ Courts have

interpreted the language of Section 201(b) as requiring that states be permitted to “forbid new entrants from providing new capacity, to require retirement of existing generators, to limit new construction to more expensive, environmentally-friendly units, or to take any other action in their role as regulators of generation facilities without direct interference from the” federal government.⁹ At the same time, the courts have recognized that the jurisdictional carve-out does not prohibit federal agencies from exercising jurisdiction over matters within their control merely because they have the potential to affect matters within the jurisdiction of the states.¹⁰ Although these cases generally have concerned the intersection between FERC and state authority, the limitations imposed by Section 201(b) would appear to extend to orders under Section 202(c) as well.¹¹

The EO raises the question of how far the DOE may go before encroaching on the jurisdiction of the states. While Section 202(c) was amended in 2015 to clarify that a generation resource may not be deemed to be in violation of a state environmental regulation for generating electricity in compliance with an order issued under that section, Section 202(c)(2) states that any order that conflicts with a state or local environmental law should require generation, delivery, interchange or transmission of electric energy “only during hours necessary to meet the emergency and serve the public interest” and shall expire not later than 90 days after the date of issuance.¹² Section 202(c) gives DOE the authority to renew an order that conflicts with state and local environmental regulations for additional 90 day periods. However, it also requires DOE to consult with the federal agency with expertise in the environmental interest protected by the violated law or regulation to establish conditions on the order to minimize any adverse environmental impacts to the extent possible.¹³ Thus, rather than granting DOE broad authority to erase the jurisdictional divide established by Section 201 of the FPA, Section 202(c) can be read as reflecting a decision by Congress to grant DOE the authority to compel interconnections and the generation, delivery, interchange or transmission of electric energy on a temporary basis to address emergency conditions while avoiding unnecessary interference with the authorities reserved to the states.

The EO is an echo of controversies that arose during the first Trump administration after certain utilities and coal companies sought to invoke Section 202(c) to support the continued operation of at-risk coal-fired generation resources. The Trump administration ultimately denied these requests, stating that it would not use its authority under Section 202(c) to prevent the retirement of uneconomic plants.¹⁴ During this same period, DOE filed a

proposed rule with FERC proposing to require regional transmission organizations and independent system operators to compensate resources with a 90-day fuel supply on-site—an effort that was rejected by FERC and that was widely criticized as an effort to provide out-of-market subsidies to coal-fired generation resources.¹⁵

The EO was issued on the same day as three other energy-focused executive orders—including an executive order that appears to challenge state authority to shape the resource mix¹⁶—focused on the continued use of coal to produce electricity and related issues. They also follow a string of executive orders issued in early January focused on expanding the production of fossil fuels and undermining the prior administration’s efforts to support the growth of renewable and zero-carbon resources.

The Akin energy regulatory team will continue to monitor these executive orders and other executive actions impacting the energy industry.

¹ Executive Order, Strengthening the Reliability and Security of the United States Electric Grid (April 8, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-the-reliability-and-security-of-the-united-states-electric-grid/>.

² 16 U.S.C. § 824a(c).

³ DOE, Order No. 202-21-1 (Feb. 14, 2021), *available at*: https://www.energy.gov/oe/articles/federal-power-act-section-202c-ercot-february-2021?nrg_redirect=364318.

⁴ See DOE, Order No. 202-22-1 (Sept. 2, 2022), *available at*: <https://www.energy.gov/ceser/federal-power-act-section-202c-caiso-september-2022>.

⁵ Part of the EO’s stated purpose is to maintain “the integrity of [the] Nation’s electric grid,” but it is not clear whether the EO’s applicability to “all regions of the bulk power system regulated by the Federal Energy Regulatory Commission” is intended to extend to ERCOT. While FERC does not have jurisdiction over wholesale rates in ERCOT, FERC has oversight responsibility for reliability in the ERCOT region under Section 215 of the FPA. DOE also has relied on Section 202(c) to issue orders to generation resources in ERCOT during emergency conditions.

6 *In re New England Power Pool Participants, Coal-by-Wire*, 52 F.P.C. 410, 412 (1974).

7 *Richmond Power & Light v. FERC*, 574 F.2d 610, 617 (D.C. Cir. 1977).

8 16 U.S.C. § 824(b)(1).

9 *Conn. Dept. of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009).

10 *Id. See, e.g., Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150 (2016).

11 The limits established by Section 201(b) applied generally to the authority of the FPC. Because authority to issue orders under Section 202(c) was transferred from the FPC to DOE, these same limits would appear to apply to the authority of DOE.

12 16 U.S.C. § 824a(c)(4)(A).

13 *Id.* § 824a(c)(4)(B).

14 UtilityDive, Dive Brief: DOE ‘would never use’ emergency order for uneconomic plants, Walker Says (Feb. 20, 2018), *available at*: <https://www.utilitydive.com/news/doe-would-never-use-emergency-order-for-uneconomic-plants-walker-says-1/517455/>.

15 *Grid Reliability and Resilience Pricing*, 162 FERC 61,012 (2018), *order on reh’g*, 174 FERC ¶ 61,112 (2021). *See* NPR, Federal Regulator Rejects Energy Department’s Bid to Prop Up Coal, Nuclear (Jan. 9, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/09/576742270/federal-regulator-rejects-energy-departments-bid-to-prop-up-coal-nuclear>.

16 Executive Order, Protecting American Energy From State Overreach (April 8, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-energy-from-state-overreach/>.

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