REPORT OF THE ELECTRICITY COMMITTEE

I. AMERICAN EFFICIENT, *JARKESY*, AND THE FUTURE OF FERC ENFORCEMENT

On December 16, 2024, the Federal Energy Regulatory Commission (FERC) issued an Order to Show Cause and Notice of Proposed Penalty (OSC) to American Efficient, LLC, and its subsidiaries (American Efficient) for allegedly manipulating capacity markets in Pennsylvania-New Jersey-Maryland (PJM) and Midcontinent Independent System Operator, Inc.'s (MISO.)[1] The OSC claimed that American Efficient bought sales data for energy efficient products from commercial retailers and then sold the estimated energy savings into PJM and MISO capacity markets.[2] However, FERC ruled that this practice violated the PJM and MISO tariffs by bidding estimated savings from energy efficient products without any rights to these resources.[3] FERC assessed a civil penalty of $722,000,000 against American Efficient and ordered American Efficient to disgorge $2,116,057 to MISO and $250,937,821 to PJM for violations of their tariffs.[4] Alternatively,

1. *American Efficient, LLC.*, 189 FERC ¶ 61,196 at P 1 (2024).
2. *Id*. at app. A.I.
3. *Id*. at P 3.
4. *Id*. at P 1.

American Efficient can show cause for why they should not be assessed those penalties.[5]

In *Securities and Exchange Commission v. Jarkesy,* the Securities and Exchange Commission (SEC) pursued an antifraud action against George Jarkesy Jr. and his firm.[6] After handling the matter in an administrative proceeding, the SEC imposed a $300,000 penalty against Jarkesy and his firm.[7] Jarkesy challenged the penalty in the 5th Circuit and the case eventually arrived at the Supreme Court.[8] The Supreme Court held that the Seventh Amendment's right to a jury trial is implicated whenever the punishment: (1) is a monetary civil penalty and (2) is imposed to deter harmful conduct, rather than to make the harmed party whole.[9]

In January 2025, American Efficient brought an action against FERC in the Middle District of North Carolina to contest the OSC and to seek a preliminary injunction.[10] American Efficient alleged that FERC only allowed them two options to respond, either by "a penalty proceeding before FERC or a hearing before one of the commission's administrative law judges."[11] American Efficient argues that under *Jarkesy*, only allowing those two options is unconstitutional because it does not allow American Efficient the right to a jury trial.[12]

FERC responded to the allegations brought by American Efficient.[13] FERC stated that because the OSC is not the final step in enforcement of a civil action, the Seventh Amendment has not been implicated.[14] FERC argues that when it is mandated to bring an action in district court because an alleged violator has failed to pay their fine, the district court has the authority to adjust the FERC-proposed penalty.[15] FERC argues that that their process is different from *Jarkesy* because they allow defendants to make a decision on the forum, including granting an option for the district court.[16]

If American Efficient's action against FERC is successful, it would have major implications for enforcement of FERC penalties. A successful challenge by American Efficient would hinder the ability of FERC to assess penalties without going to district court, which could require FERC to use more time and resources to pursue the penalties.

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5. 189 FERC ¶ 61,196 at P 1.

6. 603 U.S. 109, 118-19 (2024).

7. *Id*. at 119.

8. *Id*. at 120.

9. *Id*. at 122-25.

10. Shayna Greene, *FERC Penalties, Investigation Challenged as Unconstitutional*, BL (Jan. 30, 2025), https://www.bloomberglaw.com/bloomberglawnews/environmentandenergy/XEVR6SC4000000?bna_news_filter=e nvironment-and-energy#jcite.

11. *Id.*

12. *Id.*

13. American Efficient LLC v. FERC, No. 1:25-CV-00068-TDS-JEP, 2025 WL 1354216 (M.D.N.C. Mar. 3, 2025).

14. *Id*. at 7-9.

15. *Id*. at 9.

16. *Id*. at 9.

II. DRR ENFORCEMENT REFORMS

MISO's demand response programs have faced growing pains, culminating in a series of enforcement actions by the FERC, the most recent of which involved Aggregators of Retail Customers (ARCs).[17] MISO responded by filing revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to abate payment for nonexistent curtailment, gaming baseline calculations, fraudulent resource registration, and dual-registration gaming.[18] FERC accepted the revisions with an effective date of July 19, 2025.[19] Apart from these revisions, MISO proposed reforms to demand response accreditation, performance measurement, and real power testing.[20]

A. Enforcement Actions Involving ARCs

In *Ketchup Caddy*, FERC found that a company and its co-founder, Philip Mango, violated section 222 of the Federal Power Act (FPA), FERC's Anti-Manipulation Rule, and the MISO Tariff by registering and offering uncontracted capacity as Load Modifying Resources (LMRs) in MISO's capacity market. Mango submitted to MISO falsified curtailment plans created from web-scrapped data, registered, and offered capacity to curtail without the underlying resources' knowledge or consent. By Mango's own admission, he and by extension Ketchup Caddy, had "no intention of signing up actual customers," knew that the resources "would not perform if dispatched," and created an illusion of legitimacy for his co-founder.[21]

FERC imposed a $25 million and $1.5 million civil penalty against the company and Mango, respectively, and ordered Mango to disgorge $506,502 in profits. Relying on *Coaltrain*, FERC found Mango individually liable because he partook in the decision to execute the manipulative scheme.[22]

Voltus, Inc. resolved investigations into Voltus, Inc. (Voltus) and former CEO Greg Dixon. Although Voltus and Dixon neither admitted nor denied the allegations in the approved Stipulation and Consent Agreement, both stipulated to facts showing repeated violations of the Anti-Manipulation Rule and the MISO Tariff. Between 2017 and 2020, Voltus registered approximately 529 MW of uncontracted or over-contracted resources in MISO's capacity markets.[23] The investigation revealed three main behaviors: Voltus (1) used scrapped customer

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17. *Ketchup Caddy, LLC*, 186 FERC ¶ 61,132 (2024); *Voltus, Inc.*, 190 FERC ¶ 61,008 (2025).

18. *Midcontinent Indep. Sys. Operator, Inc.*, FERC Docket No. ER25-1729-000 (Mar. 21, 2025); *Midcontinent Indep. Sys. Operator, Inc.*, FERC Docket No. ER25-2050-000 (Apr. 25, 2025).

19. *Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,060 at P 1 (2025); *Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,059 at P 1 (2025).

20. As part of its reforms to Resource Adequacy, MISO proposed reforms to measurement and verification (with an emphasis on baseline calculations), accreditation, real-time availability, and testing procedures for demand resources, with a requested an effective date of September 1, 2027. *Midcontinent Indep. Sys. Operator, Inc.,* FERC Docket No. ER25-1886-000 (Apr. 4, 2025). MISO also proposed annual real power testing requirements to prove demand reduction capability, with a requested effective date of July 15, 2025. *Midcontinent Indep. Sys. Operator, Inc.,* FERC Docket No. ER25-2845-000 (July 14, 2025).

21. 186 FERC ¶ 61,132 at app. A. p. 14 (2024).

22. *Id.* at app. A, p. 16; *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732, 2018 WL 7892222, at *20 (S.D. Ohio Mar. 30, 2018).

23. 190 FERC ¶ 61,008 at P 53.

data to register uncontracted capacity; (2) submitted above-contract curtailment levels for some contracted customers; and (3) dual-registered cleared, uncontracted capacity as both LMRs and Emergency Demand Resources (EDRs), to take advantage of the deployment order. By offering a resource as an EDR at zero MW, Voltus could supersede the resource's LMR availability. As an active EDR, the dual-registered resource would be unavailable for dispatch as an LMR. Voltus agreed to disgorge $7.08 million and pay a civil penalty of $10.91 million and Dixon agreed to pay a civil penalty of $1 million.

B. MISO Tariff Reforms

These cases revealed certain weaknesses in MISO's demand response resource (DRR) program, which MISO seeks to strengthen through a series of reforms. In the reforms accepted by FERC, MISO seeks to prevent (1) payment for nonexistent or overstated curtailments; (2) inaccurate or inflated baseline calculations; (3) fraudulent registration of resources; and (4) dual- registration of DRRs as LMRs and EDRs.

First, to prevent payments for nonexistent or overstated curtailments, DRRs must respond with "performance," defined as "taking action to drop load or increase Behind the Meter Generation," and attest that any load reduction is not pre-planned.[24] MISO will also expand meter data-submission obligations for demand resources. Importantly, the MISO Independent Market Monitor (IMM) will be explicitly tasked with quantifying the opportunity costs associated with DRR curtailment, and where necessary, mitigating DRRs. Opportunity costs reflect the economic value of the DRR's foregone activity, "whether that is shutting down an industrial process or turning off an air conditioner."[25] "Establishing some verification of actual costs to the DRR will assist in preventing further manipulation."[26]

Second, MISO seeks to ensure accurate curtailment baselines.[27] Key changes include: (1) using a lower average for baselines where limited non-event days exist, (2) establishing a minimum offer price threshold (~$40) for DRRs participating in the energy markets, and (3) prohibiting DRRs from self-scheduling. These changes are intended to make curtailment data more reliable and prevent resources from staging demand curves simply to secure compensation.

Third, market participants acting as ARCs or offering LMRs or EDRs must prove their "exclusive rights" to sell the capacity offered.[28] Furthermore, an officer of the ARC must attest to the ARC's ongoing compliance, confirm that the DRR, LMR, or EDR resource has all necessary approvals to participate, and pledge not to engage in fraud, market manipulation, or gaming.

Finally, MISO will no longer allow demand side resources to dual register as both EDRs and LMRs.[29]

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24. *Midcontinent Indep. Sys. Operator, Inc*., FERC Docket No. ER25-1729-000, at 8 (Mar. 21, 2024).
25. *Id*. at 11.
26. *Id*.
27. *Id*.
28. *Midcontinent Indep. Sys. Operator, Inc*., FERC Docket No. ER25-1729-000, at 13 (Mar. 21, 2024).
29. *Midcontinent Indep. Sys. Operator, Inc.*, FERC Docket No. ER25-2050-000, at 1 (Apr. 25, 2025).

Beyond these central themes, MISO now has the right to audit or verify information provided by DRRs, EDRs, and ARCs. MISO will also limit the amount of spinning reserve that can be offered by a DRR when it fails to deploy in response to an instruction and institute day-ahead margin assurance payment eligibility and testing criteria for DRR resources that corresponds to the criteria for other resources. These final changes should ensure that DRRs are not paid rewards as a result of poor performance.

III. GAS-ELECTRIC COORDINATION

Two recent actions highlight the increased attention to interdependence between the bulk electric system and natural gas system[30] and, consequently, the need for improved gas-storage coordination when it comes to the markets, operations, and infrastructure for gas and electricity. FERC and industry observers recognized that the interdependency of these systems intensifies during extreme cold weather events[31] and as intermittent resources continue to join the electric resource mix.[32] Observers have also recognized that the co-dependencies, without adequate backup facilities, can represent a significant area of vulnerability for both systems.[33]

In February 2024, regional transmission organizations ISO-NE, PJM, MISO, and SPP (Joint RTOs) published a joint position paper entitled "Strategies for Enhanced Gas-Electric Coordination: A Blueprint for National Progress."[34] The Joint RTOs proposed ten recommendations to achieve three near-term objectives – "increase[ed] gas market liquidity and scheduling flexibility" to improve supply and pricing options, addressing co-dependency vulnerabilities of gas and electric infrastructure, and "alignment of curtailment priorities at both the state and federal levels."[35] One of the recommendations proposed by the Joint RTOs advised that "additional attention be brought to incenting the development of packages of firm transportation and storage and other pipeline services that can better meet the flexibility needs driven by changing electric system demands."[36]

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30. Natural gas is the largest source of U.S. electricity generation; in 2023 approximately 43.1% of utility-scale generation in the U.S. was from natural gas. *Electric Power Monthly*, U.S. Energy Info. Admin. tbl. ES1.A (Feb. 2024), https://www.eia.gov/electricity/monthly/archive/february2024.pdf.

31. Order No. 698, *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, 119 FERC ¶ 61,317 (2007) (codified at 18 C.F.R. pts. 38, 284) (final order). *See Statement of Gordon van Welie, President and CEO, ISO New England*, FERC Docket No. AD24-7-000, at 1 (Apr. 25, 2025) [hereinafter *Statement of Gordon van Welie*] ("ISOs and RTOs have observed a high degree of interdependency between the natural gas and electric systems in several recent winter weather events.").

32. *See Initial Remarks of Nancy Bagot of the Electric Power Supply Association*, FERC Doclet No. AD24-7-000 (Apr. 25, 2025) [hereinafter *Initial Remarks of Nancy Bagot*]; *Statement of Gordon van Welie, supra* note 31, at 2 ("[T]he increasing number of intermittent resources on the electric grid… means that the instantaneous loading of the gas system, and the overall average capacity factor, becomes more volatile as the gas system needs to respond to help balance the electric grid.").

33. ISO-NE ET AL., STRATEGIES FOR ENHANCED GAS-ELECTRIC COORDINATION: A BLUEPRINT FOR NATIONAL PROGRESS 10 (2024), https://www.iso-ne.com/static-assets/documents/100008/20240220_joint_rtos-gas-electric-coordination-white-paper.pdf [hereinafter BLUEPRINT FOR NATIONAL PROGRESS].

34. *Id.* at 1.

35. *See id*. at 2, 5-14. The whitepaper's initiatives were developed under the assumption "that we will continue to operate for some time with the existing gas and electric infrastructure." *Id*. at 5.

36. *See* BLUEPRINT FOR NATIONAL PROGRESS*, supra* note 33, at 3, 9.

This issue was explored further on April 30, 2025, when FERC convened the second public meeting of the Federal and State Current Issues Collaborative (Collaborative)[37] to examine the role gas storage plays in gas-electric coordination.[38] Natural gas and electric industry stakeholders appearing before the Collaborative expressed general agreement that gas storage could address the "co-dependency vulnerabilities in the electric and gas systems," in part, by increasing resilience during high-demand periods and unexpected disruptions.[39] However, multiple participants cautioned that impediments remain to gas storage's potential role as an "insurance product" within the bulk electric system; namely, that Independent System Operators (ISOs) and U.S. Regional Transmission Organizations (RTOs) are required to produce market designs that are resource neutral[40] and the electric system is planned and built on forecast load, while the gas system relies on ad hoc, long-term customer contracts.[41]

IV. INTERCONNECTION QUEUE STATUS

Interconnection queues across the RTOs and ISOs remain backlogged, though Order Nos. 2023 and 2023-A reforms[42] and RTO/ISO interconnection process enhancements are beginning to show results.[43]

PJM Interconnection has made progress in clearing its backlog through a cycle-based process and stricter readiness requirements and financial commitments.[44] The transition to this model, which began in 2023, is expected to fully take effect by 2026.[45] PJM has approximately sixty-three GW of generation projects in the interconnection queue.[46]

California ISO (CAISO) has 353 interconnection requests and 148.7 GW of total generation capacity in the queue.[47] CAISO also implemented major reforms following FERC Order No. 2023 through its Interconnection Process

37. *See Order Establishing the Federal and State Current Issues Collaborative*, 186 FERC ¶ 61,189 (2024). The Collaborative comprises all FERC Commissioners as well as representatives from 10 state Commissions.

38. *Meeting on Gas-Electric Coordination*, FERC Docket No. AD24-7-000, at 6 (May 19, 2025).

39. *See Statement of Gordon van Welie, supra* note 31, at 11; *Initial Remarks of Nancy Bagot*, *supra* note 32; *Prepared Statement of Karen Harbert President and CEO of the American Gas Association*, FERC Docket No. AD24-7-000 (Apr. 30, 2025).

40. *Transcript of the 11/12/2024 In Person/Virtual WebEx Meeting* FERC Docket No. AD24-7-000, at 21 (Dec. 4, 2024).

41. *Id*..

42. Order No. 2023, *Improvements to Generator Interconnection Procedures and Agreements,* 184 FERC ¶ 61,054 (2023) (codified at 18 C.F.R. pt. 35), *order on reh'g*, 185 FERC ¶ 61,063 (2023), *order on reh'g*, Order No. 2023-A, 186 FERC ¶ 61,199, *errata notice*, 188 FERC ¶ 61,134 (2024).

43. All information in this report is as of July 2025.

44. *PJM Interconnection L.L.C*, 181 FERC ¶ 61,162 at P 1, 133 (2022); *see also Interconnection Process Reform*, PJM (last visited Nov. 5, 2025), https://www.pjm.com/planning/service-requests/interconnection-process-reform.

45. *New Fact Sheet Highlights Interconnection Process Reform Progress*, PJM (July 21, 2025), https://insidelines.pjm.com/new-fact-sheet-highlights-interconnection-process-reform-progress/.

46. *Generator Interconnection*, PJM (Mar. 5, 2025), https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/fact- sheets/interconnection-reform-progress-fact-sheet.pdf.

47. *Resource Interconnection Management System*, CAL. INDEP. SYS. OPERATOR (last visited Nov. 5, 2025), https://rimspub.caiso.com/rimsui/logon.do.

Enhancements initiative.[48] Cluster 15, which initially saw over 540 requests totaling 347 GW, was reduced by over 70% after a resubmission process.[49] Battery energy storage continues to dominate CAISO's queue, with 137.95 GW in the queue, inclusive of hybrid projects.[50]

MISO has one of the largest interconnection queues, with 1,573 active requests and 291.15 GW of total generation capacity.[51] The region has adopted a queue cap and uses a cluster-based study process to manage volume.[52] Solar remains the leading technology constituting 46% of the queue; battery energy storage constitutes 19% and hybrid projects are 15% of the queue.[53]

Southwest Power Pool (SPP) has 664 active interconnection requests and 158.6 GW of total generation capacity.[54] The SPP interconnection queue is 46% solar, 19% wind, 20% battery energy storage, and 12% hybrid projects.[55]

Electric Reliability Council of Texas (ERCOT), which operates outside of FERC jurisdiction, includes 2,054 interconnection requests and 420.48 GW of total generation capacity,[56] which includes 177.9 GW of battery energy storage and 161.6 GW of solar projects.[57] This is an increase from 350.32 GW of total generation capacity in June 2024.[58]

New York ISO's (NYISO) interconnection queue has 136 active requests and 21.06 GW of total generation capacity.[59] The Class Year 2024 process is underway, with a focus on improving study timelines and cost allocation

48. *See generally Cal. Independent Syst. Operator Corp.*, 188 FERC ¶ 61,225 (2024*); see also* Danielle Mills & Bob Emmert, Initiative: *Interconnection Process Enhancements 2023*, CAL. INDEP. SYS. OPERATOR (Feb. 27, 2023), https://stakeholdercenter.caiso.com/StakeholderInitiatives/Interconnection-process- enhancements-2023.

49. Robert Emmert & Danielle Mills, *Summary of Cluster 15 Intake Scoring Results*, CAL. INDEP. SYS. OPERATOR fig. 1 (June 12, 2025). https://www.caiso.com/documents/summary-of-cluster-15-intake-scoring-results.pdf.

50. Steven Zhang & Chris Talley, *U.S. County Map of Active California ISO Battery Interconnection Requests, 1995-2025*, INTERCONNECTION.FYI (last updated Nov. 5, 2025), https://www.interconnection.fyi/?market=CAISO&status=Active&type=Battery.

51. *MISO Generator Interconnection DPP Active Queue Overview*, MISO (last visited Nov. 5, 2025) https://cdn.misoenergy.org/GIQ%20Web%20Overview272899.pdf.

52. *See generally Midcontinent Indep. Syst. Operator, Inc.*, 190 FERC ¶ 61,057 (2025).

53. *U.S. County Map of Active Midcontinent ISO Interconnection Requests, 1995-2025*, INTERCONNECTION.FYI (last updated Nov. 5, 2025), https://www.interconnection.fyi/?market=MISO&status=Active.

54. *Southwest Power Pool Generation Interconnection Queue Dashboard*, SPP (last visited Nov. 5, 2025), https://app.powerbigov.us/view?r=eyJrIjoiYjE0NzI1NmQtZDM5Yi00NGYwLTkwNWQtMmFkYjRmMjg3ZTg2Ii widCI6IjMyMzA5MjZhLTcxYjctNDM3MC1hMTM3LTE5N2JhZGMwNjZhMiJ9.

55. *Id.*

56. *ERCOT Monthly*, ERCOT (June 2025), https://www.ercot.com/files/docs/2025/07/09/ERCOT-Monthly-June-2025.pdf.

57. *Id.*

58. *ERCOT Monthly*, ERCOT (June 2024), https://www.ercot.com/files/docs/2024/06/28/ERCOT-Monthly-June-2024.pdf

59. *NYISO Interconnection Queue*, N.Y. INDEP. SYS. OPERATOR (June 2025), https://www.nyiso.com/interconnections [hereinafter *NYISO Interconnection Queue*].

transparency.[60] NYISO's queue includes 10.01 GW of battery energy storage, which makes up nearly half of the queue.[61]

ISO New England (ISO-NE) maintains a relatively smaller, but growing queue, with 156 active requests and 4.84 GW of total generation capacity.[62] Nearly 100% of the resources currently in the queue are grid-scale wind, solar, and battery projects. Wind consists of 47% of the queue, battery energy storage consists of 44% and solar is 8%.[63]

The total capacity of active interconnection requests in RTOs/ISOs is 1,478.16 GW with solar, battery energy storage, and hybrid projects dominating new requests.

V. EXECUTIVE ORDER NO. 14261 AND DEPARTMENT OF ENERGY ORDER NO. 202-25-3 KEEPING THE J.H. CAMPBELL COAL PLANT ONLINE PAST ITS PLANNED RETIREMENT

Executive Order 14261 (EO 14261)[64] authorized an increase in domestic energy production. The order encourages and supports the coal industry to increase energy supply and stabilize the grid.[65] Key points of the order give national priority to the domestic coal industry, urge removal of federal regulatory barriers undermining coal production, and "encourage[e] the utilization of coal to meet growing domestic energy demands."[66]

Following EO 14261, the Department of Energy (DOE) issued Order No. 202-25-3[67] requiring additional dispatch of the J.H. Campbell coal-powered plant.[68] In times of emergency, the FPA authorizes the Secretary of Energy to order temporary connections of facilities, and generation, delivery, interchange, or transmission as the Secretary determines best suited to "meet the emergency and serve the public interest."[69] Energy Secretary Chris Wright stated the emergency determination was based on "the insufficiency of dispatchable capacity and anticipated demand during the summer months, and the potential loss of power to

60. *See generally New York Indep. Sys. Operator, Inc.*, 191 FERC ¶ 61,049 (2025).

61. *NYISO Interconnection Queue*, *supra* note 59.

62. *ISO-New England IRTT System*, INDEP. SYS. OPERATOR-NEW ENG. (last updated Nov. 5, 2025), https://irtt.iso-ne.com/reports/external.

63. *Resource Mix*, ISO NEW ENG. (last updated Jan. 19, 2025), https://www.iso-ne.com/about/key-stats/resource-mix#on-the-way-in (citations omitted).

64. Exec. Order No. 14261, Reinvigorating America's Beautiful Clean Coal Industry and Amending Order 14241, 90 Fed. Reg. 15517, 15517 (Apr. 8, 2025).

65. *Id.*

66. *Id.*

67. Order No. 202-25-3 (Dep't of Energy 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 [hereinafter DOE Order].

68. *Id*. at 2. The J.H. Campbell coal-fired power plant in West Olive, MI, was scheduled to retire on May 31, 2025. *Id*. at 1. The retirement would decrease available dispatchable generation within the MISO system by 1,560 MW. *Id* at 1. MISO and the plant's owner, Consumers Energy, had planned the retirement in their supply forecasts and MISO's Planning Resource Auction Results for Planning Year 2025-26 indicated sufficient capacity for the northern and central zones, which includes Michigan. DOE Order, *supra* note 67, at 2.

69. 16 U.S.C. § 824a(c)(1).

homes and local businesses in the areas that may be affected by curtailments or outages, presenting a risk to public health and safety."[70]

The order directed Consumers Energy and MISO to take all measures "necessary to ensure the Campbell Plant is available to operate"[71] but to comply with applicable environmental requirements. This included but was not limited to "monitoring, reporting, and recordkeeping requirements, to the maximum extent feasible while operating consistent with the emergency conditions."[72] An order issued under FPA section 202(c) dictates that generation of electric energy shall ensue only "during hours necessary to meet the emergency and serve the public interest."[73] To the maximum extent practicable, the order must also comply with "any applicable Federal, State, or local environmental law" with efforts to minimize adverse environmental impacts.[74]

Multiple public interest organizations opposed the DOE Order, filing motions to intervene and requests for rehearing.[75] The main points of opposition can be summarized as: (1) the Campbell Plant does not benefit Consumer Energy's customers because it is old, unreliable, dirty, and expensive, (2) multiple authorities already protect resource adequacy (MISO through reserve margin requirements and a residual capacity auction, Michigan through integrated resource planning and annual capacity demonstration requirements, and NERC through standards and regular assessments), (3) the plant's retirement and resource adequacy for summer 2025 have already been carefully planned.[76]

Similar petitions[77] for rehearing were filed by other groups, claiming the order exceeded the DOE's authority because the department had not demonstrated

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70. DOE Order, *supra* note 67, at 2.

71. *Id*.

72. *Id*. at 3.

73. 16 U.S.C. § 824a(c)(2).

74. *Id*.

75. *See e.g*., Motion to Intervene and Request for Rehearing and Stay of Sierra Club et al., Order No. 202-25-3 (Dep't of Energy June 18, 2025), https://www.energy.gov/sites/default/files/2025-07/PIO%20Request%20for%20Rehearing%20of%20Order%20No.%20202-25-3.pdf [hereinafter Sierra Club Motion to Intervene].

76. *Id*. at 1; *see also* Motion to Intervene and Petition for Rehearing of the States of Minnesota and Illinois, Order No. 202-25-3 (Dep't of Energy June 23, 2025), https://www.energy.gov/sites/default/files/2025-07/Motion%20to%20Intervene%20and%20Petition%20for%20Rehearing%20by%20the%20States%20of%20Minnesota%20and%20Illinois.pdf; Motion to Intervene of the Maryland Office of People's Counsel in Support of the Public Interest Organizations and Michigan Attorney General's Petitions for Rehearing and Stay of Proceedings, Order No. 202-25-3 (Dep't of Energy June 23, 2025), https://www.energy.gov/sites/default/files/2025-07/Motion%20to%20Intervene%20of%20the%20Maryland%20Office%20of%20People%E2%80%99s%20Counsel.pdf.

77. Request for Rehearing by Michigan Attorney General Dana Nessel, Order No. 202-25-3 (Dep't of Energy June 18, 2025), ttps://www.energy.gov/sites/default/files/2025-07/Michigan%20AG%20Request%20for%20Rehearing%20of%20Order%20No.%20202-25-3.pdf; Petition to Intervene and Request for Rehearing of the Organization of MISO States, Inc., Order No. 202-25-3 (Dep't of Energy June 23, 2025), https://www.energy.gov/sites/default/files/2025-07/Petition%20to%20Intervene%20and%20Request%20for%20Rehearing%20of%20the%20Organization%20of%20MISO%20States.pdf.

an emergency necessitating continued operation of the plant.[78] The requests stated that FPA section 202(c) authority only allows the DOE to respond to "specific, imminent, and temporary events necessitating immediate response."[79] The DOE's Order was referred to as "unlawfully ambiguous, impermissibly vague, and [did] not provide fair notice of what MISO, Consumers Energy, and others [were] required to do."[80]

On July 28, 2025, Secretary of Energy Chris Wright undersigned an order denying rehearing and providing for further consideration in a future order, a common practice in review requests.[81] At the time of writing, no parties have filed a petition for judicial review. If the use of this authority is accepted without challenge or approved by a reviewing court, it could present a change in how the Department of Energy exerts jurisdictional influence over resource adequacy issues at the federal, state, and local level.

VI. MARKETS +

The Western Interconnection, apart from the CAISO region, has long operated without a centralized day-ahead or real-time market, instead relying on bilateral transactions and local Open Access Transmission Tariffs (OATTs) administered by individual Transmission Service Providers (TSPs) and Balancing Authorities (Bas).[82] In March 2024, SPP submitted a proposed Markets+ Tariff under section 205 of the Federal Power Act, seeking to create a voluntary, regional day-ahead and real-time market.[83] On January 16, 2025, FERC issued an order accepting the tariff subject to condition, directing SPP to clarify the definition of "unused physical capability," further specify the minimum duration and mechanics for TSP opt-outs, and implement compliance monitoring and reporting obligations.[84]

SPP identified several drivers motivating Markets+. The Western Interconnection faces a rapidly evolving resource mix, including accelerated retirement of thermal units and expanded integration of variable energy resources.[85] Centralized day-ahead and real-time commitment and dispatch are intended to enable more efficient energy transfers and maximize the load-serving potential of diverse resources. Additionally, SPP cited load growth fueled by data

78. Motion to Intervene and Comments of Michigan Public Power Agency, Order No. 202-25-3 (Dep't of Energy June 23, 2025), https://www.energy.gov/sites/default/files/2025-07/Motion%20to%20Intervene%20and%20Comments%20of%20Michigan%20Public%20Power%20Agency.pdf.

79. Sierra Club Motion to Intervene, *supra* note 75, at 26.

80. *Id.* at 42.

81. Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, Order No. 202-25-3A (Dep't of Energy July 28, 2025), https://www.energy.gov/sites/default/files/2025-07/Notice%20of%20Denial%20of%20Rehearing%20by%20Operation%20of%20Law%20and%20Providing%20for%20Further%20Consideration%20-%20Order%20No.%20202-25-3A.pdf.

82. *Southwest Power Pool Inc.*, 190 FERC ¶ 61,030 at PP 6, 13 (2025).

83. *Id.* at P 1.

84. *Id.* at PP 1-2, 82.

85. *Id.* at P 7.

centers and electrification, as well as the region's exposure to extreme weather and localized supply shortages, as key reasons for improved coordination.[86]

The Markets+ platform is structured as a stand-alone service, distinct from SPP's role as a RTO.[87] It features centralized unit commitment and dispatch in both a financially binding day-ahead market and a five-minute real-time balancing market. Market participants submit offers for energy and flexibility reserves, which SPP co-optimizes to meet system needs at least cost while enforcing operational constraints. The market will leverage locational marginal prices (LMPs) for transparency and investment signaling, and will incorporate a must-offer requirement to ensure resource sufficiency.[88] The design preserves BA authority over operating and contingency reserves; SPP does not procure or direct deployment of such reserves, but receives information from participating BAs to coordinate actions and prevent duplication.[89]

Settlement processes for Markets+ will operate on a five-minute basis, aligning charges and credits with actual resource output, load consumption, and cleared market positions.[90] The tariff outlines protocols for import, export, and through transactions, as well as special adjustments for losses and compensation for resources dispatched through reliability unit commitment.[91] Participants are required to register all load and resources (except certain small behind-the-meter generation), execute participation agreements, and comply with data, dispatch, and WRAP-related obligations.[92]

Implementation will proceed over several years. SPP anticipates a second quarter 2027 go-live date, with required participant training, market trials, and, where necessary, state regulatory approval processes to be completed in advance.[93] SPP and its Market Monitor must submit progress reports to FERC every six months during implementation and for three years after market launch, and will provide at least six months' notice before the effective date.[94]

Overall, FERC's approval of Markets+ marks a major milestone for the Western Interconnection, signaling the region's ongoing transition toward greater coordination, efficiency, and reliability through voluntary, centralized market structures.

VII. ORDER NO. 1920B

Order No. 1920-B primarily serves to reinforce and clarify the enhanced procedural and substantive role of state regulators in regional transmission planning and cost allocation established under Orders 1920 and 1920-A. The key development is the formalization of state influence. If states within a planning region reach agreement on a regional cost allocation formula, the transmission

86. 190 FERC ¶ 61,030 at PP 7-9.
87. *Id*. at P 12.
88. *Id*. at PP 11, 13, 16.
89. *Id*. at P 14.
90. 190 FERC ¶ 61,030 at PP 19-20.
91. *Id*. at PP 20-21.
92. *Id*. at P 23.
93. *Id*. at P 24.
94. 190 FERC ¶ 61,030 at P 1.

provider is obligated to include that formula in its Order No. 1920-B compliance filing, regardless of the provider's preferences.[95] FERC will consider both the state-endorsed proposal and the provider's proposal on the merits.[96]

The compliance regime further codifies a robust, front-loaded consultation requirement. Transmission providers must consult with states in advance on both the development of the three required planning scenarios and the underlying cost allocation factors, and states are explicitly authorized to direct additional scenario modeling, including baseline scenarios that strip out state policy-driven project costs.[97] Under this structure, incremental costs associated with state policy drivers are to be allocated solely to the responsible states, addressing cross-subsidization concerns and matching policy benefits to cost responsibility.[98]

Additionally, Order No. 1920-B reaffirms the continued viability of existing state agreement approaches, which do not require re-approval and can be retained or invoked voluntarily for future policy-driven projects.[99] Any future changes to the cost allocation methodology by a transmission provider are subject to a renewed consultation obligation with the states before a Federal Power Act section 205 filing.[100] The decision-making process among states for arriving at cost allocation formulas is left to the states' discretion, whether by existing organizational bylaws or a new voting mechanism adopted for Order No. 1920 purposes.[101]

The rule provides procedural flexibility, including the option for states to extend the engagement period for reaching an agreement.[102] Overall, 1920-B cements states' leverage in regional transmission planning, providing new tools to isolate, allocate, and defend the costs of policy- driven projects while preserving the states' authority over process and timeline.

VIII. "PJM SHOW CAUSE ORDER – CO LOCATION"

A. Order Instituting Proceeding Under Section 206 Of the Federal Power Act and Consolidated with Other Proceedings

1. *PJM Interconnection L.L.C. v. PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,115, Docket No. EL25-49-000, AD24-11-000, EL25-20-000 (Consolidated)

B. Background and Introduction

On February 20, 2025, FERC issued a show cause proceeding order (Order) requiring PJM Interconnection L.L.C. (PJM) and the PJM Transmission Owners

95. *What State Regulators Need to Know About Order No. 1920-B*, FERC (last updated Apr. 22, 2025), https://www.ferc.gov/what-state-regulators-need-know-about-order-no-1920-b [hereinafter *About Order No. 1920-B*].

96. *Id.*

97. *Id.*

98. *Id.*

99. *About Order No. 1920-B, supra* note 95.

100. *Id.*

101. *Id.*

102. *Id.*

(Transmission Owners or Tos) to: 1) show cause as to why the OATT and related agreements remain just and reasonable and not unduly discriminatory or preferential without changes to rates, terms, and conditions that apply to co-location arrangements, or 2) explain what remedies would be needed to the OATT if the Commission were to identify concerns with regards to co-location and were "to determine that the [OATT] has in fact become unjust and unreasonable." [103] The Order follows a technical conference on co-location held on November 1, 2024, which also requested and received post-conference comments from numerous parties.[104] Separately, Constellation Energy Generation, L.L.C. (Constellation) filed a complaint against PJM in Docket No. EL25-20-000 arguing that the PJM Tariff is unjust, unreasonable and unduly discriminatory because it doesn't provide sufficient rules and direction for generators to follow that seek to serve co-located load.[105] The Order considers the facts in these proceedings that address common topics and consolidates the show cause proceeding with the Technical Conference and Constellation complaint.

C. Discussion of Issues

The Order outlines several issues with regards to co-location and the current Tariff provision for co-location. These issues include clarity and consistency of rates and terms, PJM process for determining transmission service (NITS vs Network), system reliability study process, ancillary service requirements, and reliability and resource adequacy implications.

Specifically, the Order is concerned that the tariff considered does not provide sufficient clarity and consistency of terms such that "participants… may not be required to pay for wholesale services that they receive, as required by cost causation principle…"[106] Accordingly, the Order is concerned those costs could be shifted to other customers.[107]

Although the order discusses numerous co-location issues as outlined above, it prominently addresses the topic of resource adequacy and reliability. This topic entails broader ranging implications to the wider grid. Commentors argue that the unique physical and operational nature of co-located arrangements can potentially cause a variety of unforeseen and unplanned reliability contingencies.[108] The Order requires PJM owners to answer a series of questions on reliability and resource adequacy that will allow it to better understand what changes to the PJM capacity market rules, additional studies, and other changes are needed to reduce potential impacts of co-located resources upon reliability and resource adequacy.[109] It also requires them to answer a number of other questions on topics

103. *Constellation Energy Generation v. PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,115 at P 2 (2025).

104. *Commissioner-led Technical Conference Regarding Large Loads Co-Located at Generating Facilities*, FERC (Nov. 1, 2024), https://www.ferc.gov/news-events/events/commissioner-led-technical-conference-regarding-large-loads-co-located

105. *See generally Motion for Leave and Answer of Constellation Energy Generation LLC*, FERC Docket No. EL25-20-000 (Dec. 24, 2024).

106. 190 FERC ¶ 61,115 at P 74.

107. *Id*.

108. *Id*. at PP 62-64.

109. Id. at P 87-88.

of: transmission service, ancillary and other services, interconnection procedures and cost allocation, and other general matters.[110]

D. Conclusion

This Order has potentially far-reaching impact upon the wider grid – beyond the PJM capacity rules alone. The unique physical and operational characteristics of co-location arrangements and their grid and cost implications are not confined to PJM footprint. The issues addressed in the order – although presented within the context of the PJM capacity market rules – can apply to nearly all network operations in the country. As is often the case, technology can advance more quickly than regulation; and this Order is the first significant step by FERC to update regulations to address the technology advance. The outcome of this Order and its compliance findings will most likely provide significant direction for other organized network operators as they consider tariff modifications to address co-location in their footprints.

110. 190 FERC ¶ 61,115 sy P 87-88.