

ORAL ARGUMENT NOT YET SCHEDULED  
No. 25-1159 (and consolidated cases)

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The People of the State of Michigan, et al.,

*Petitioners,*

v.

United States Department of Energy,

et al.,

*Respondents,*

v.

Midcontinent Independent System

Operators, Inc.,

*Intervenor-Respondent.*

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On Petitions for Review of United States Department of  
Energy Order No. 202-25-3

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Brief of *Amici Curiae* Citizens Action Coalition of Indiana,  
Citizens Utility Board of Michigan, Citizens Utility Board of  
Minnesota, Citizens Utility Board of Wisconsin, and Consumers  
Council of Missouri

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

***A. Parties and amici curiae.*** The case is before this Court on direct judicial review, and thus, no party or amici appeared before the district court. Except for the additional amici curiae listed in this brief, the parties and amici appearing in this Court are listed in the Petitioner's brief.

***B. Rulings under review.*** The rulings under review appear in the Petitioner's brief.

***C. Related cases.*** The case now pending before this Court was not previously before this Court or any court. Except for the related cases listed in Petitioner's brief, counsel is not aware of any related case pending before this Court or any court.

/s/Adam Carlesco  
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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule Fed. R. App. P. 26.1, the amici curiae are nonprofit corporations. They have no parent corporations, and no publicly held corporations own 10 percent or more of their stock.

/s/Adam Carlesco

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**CERTIFICATE OF SEPARATE BRIEF (CIRCUIT RULE 29(d))**

Amici curiae are independent, nonpartisan consumer advocates in states subject to cost-sharing under the order at issue in this case. Amici curiae speak on behalf of electricity ratepayers in state and federal regulatory proceedings and in the courts. They wish to file a separate brief to provide their distinctive perspective on the electricity affordability crisis, the cost impacts of the emergency order in their home states, and the value of public participation and advocacy in utility regulatory proceedings.

No other amicus curiae in the case represents electricity consumers nor will any other amicus curiae provide perspectives that substantially overlap with those of the amici curiae consumer advocates.

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### **Identity and Interest of the Amici Curiae**

Amici curiae are independent, nonpartisan consumer advocates. They represent electricity customers in their states, either primarily or exclusively residential ratepayers, and advocate on their behalf in state and federal regulatory proceedings and other fora. Because the Federal Energy Regulatory Commission (“FERC”) has ordered the creation of a mechanism for Consumers Energy to recover the costs of operating the Campbell plant throughout the Midcontinent Independent System Operator (“MISO”) Regions 1-7, residential ratepayers in each of the states represented by Amici Curiae will be held responsible for those costs.

Citizens Action Coalition of Indiana, Inc. (“CAC”) is Indiana’s oldest and largest consumer and environmental advocacy organization. Since 1974, CAC has helped Hoosiers save more than \$10 billion in excess utility charges. CAC advocates on behalf of Hoosiers on issues regarding energy policy, utility reform, health care, pollution prevention, and family farms. CAC’s activities include research, public education, organizing citizens, lobbying, intervening in utility cases before the Indiana Utility Regulatory Commission, and litigating when necessary. CAC engages in rate

cases, cost recovery proceedings, certificates of public convenience and necessity proceedings, demand side management proceedings, and numerous other matters impacting the cost or reliability of Hoosiers' energy services. CAC also participates in the rigorous Integrated Resource Plan stakeholder processes required for Indiana's jurisdictional electric utilities submitting integrated resource plans every three years according to Indiana Code § 8-1-8.5-3(e)(2).

The Citizens Utility Board of Wisconsin ("Wisconsin CUB") is Wisconsin's legislatively appointed consumer advocate. Organized as a non-profit corporation, Wisconsin CUB advocates on behalf of residential and small business customers on utility issues and represents them in rate proceedings. Wisconsin CUB has approximately 2,000 members, who are primarily Wisconsin citizens and customers of the state's investor-owned utilities. Its purposes include providing public interest legal services to ensure effective and democratic representation of residential, farm and small business utility customers before regulatory agencies and the courts; advocating for reliable, affordable, and sound utility service; and educating consumers on utility service, utility regulation, and

public policy. Wisconsin CUB has saved billions for Wisconsin utility customers since its creation, including \$1.2 billion in the past 10 years.

The Citizens Utility Board of Minnesota (“Minnesota CUB”) advocates on behalf of Minnesota residential utility customers for affordable and reliable natural gas and electric utility service at the Minnesota Public Utilities Commission and the state legislature. Minnesota CUB represents the interests of residential ratepayers in utility rate cases, cost recovery proceedings, affordability program dockets, and numerous other matters that affect the cost or reliability of Minnesotans’ energy services. Minnesota CUB monitors utility practices in Minnesota and advocates for legislative and regulatory policies to ensure electricity and heat are affordable for all Minnesotans. In addition to its policy work, Minnesota CUB directly engages with residential ratepayers throughout the state to provide information, resources, and assistance to utility customers seeking to understand energy bills, reduce energy usage, navigate disconnection from utility services, or otherwise address utility-related issues.

The Citizens Utility Board of Michigan (“Michigan CUB”) was formed in 2018 to represent the interests of residential energy customers across Michigan. Michigan CUB educates and engages Michigan consumers in support of cost-effective investment in energy efficiency and renewable energy and against unfair rate increase requests. Michigan CUB helps to ensure that Michiganders pay the lowest reasonable rate for utility services. Its members are individual residential customers of Michigan’s energy utilities. Michigan CUB was a party to the settlement agreement approved by the Michigan Public Service Commission under which Consumers Energy agreed to retire the Campbell plant in 2025 as part of an Integrated Resource Plan that substantially increased the amount of generation available to Consumers Energy.

The Consumers Council of Missouri is a nonprofit corporation dedicated to educating and empowering consumers statewide and to advocating for their interests. Consumers Council of Missouri was originally founded in 1971 and routinely participates in electric utility rate cases at the Missouri Public Service Commission and in state courts, exclusively representing the interests of residential utility customers, with a focus on the affordability burden placed on

low- and moderate-income customers, and on the health and safety of medically vulnerable customers.

Each of the states represented by amici curiae is within the MISO Zones 1-7. Amici curiae's members pay MISO charges bundled into their retail electricity charges. Thus, amici's members will pay higher rates if the Department's emergency order – along with subsequent orders premised on similar rationales – is allowed to stand.

While the Attorney General's Offices of Petitioner States of Michigan, Illinois, and Minnesota also represent electricity ratepayers in their states, in this proceeding they represent the interests of their states as a whole, while the missions of the amici curiae are focused on residential ratepayers. Ratepayers in the States of Wisconsin, Missouri, and Indiana are not otherwise represented in this proceeding. Accordingly, no other party represents the same interests as amici curiae, and they present a unique perspective on the issues in this case.

### **SUMMARY OF ARGUMENT**

At a time when American electricity consumers are dealing with rates that are climbing faster than they have in decades, the

Department of Energy's order to keep an uneconomic Michigan coal plant operating only adds to their burden. The retirement of the Campbell coal plant was a critical component of a settlement agreement between Michigan regulators, consumer advocates, and Consumers Energy, the owner of the plant, that would have saved consumers nearly \$600 million. Instead, the Department has forced the utility to incur \$53 million in net costs in just 90 days (the length of the order), with another \$27 million by September 30 and far more to come under subsequent orders. And under FERC's August 2025 order, these costs – and ongoing costs of ensuing orders – will be spread among consumers throughout the MISO North and Central regions (Zones 1-7).

The harm inflicted by the order is not, however, limited to consumers' pocketbooks. By upending the state regulatory framework devoted to local utility decision-making, the order also harms the interests of consumer advocates and the public in active participation in utility regulation generally and resource planning specifically. The result is a less informed, less predictable, and less

democratic regulatory environment that impacts billions of dollars in infrastructure investment. The order should be vacated.

## ARGUMENT

### **A. The order exacerbates the ongoing affordability crisis in the Midwest with no corresponding benefits to electricity consumers.**

Americans are in the midst of an electricity affordability crisis unlike any in recent memory. According to data from the Energy Information Administration, the average electric rate for residential consumers increased by 13% from January to September 2025.<sup>1</sup> Retail electricity prices have increased faster than the rate of inflation since 2020, rising an average of 6.8% annually during that period.<sup>2</sup>

Electricity prices are not only outpacing inflation, but have become one of its top drivers, ahead of groceries, gasoline, and

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<sup>1</sup> Energy Information Administration, Electricity Power Monthly – Table 5.3: Average Price of Electricity to Ultimate Customers, [https://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.php?t=table\\_5\\_03](https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=table_5_03)

<sup>2</sup> Energy Information Administration, *U.S. electricity prices continue steady increase* (May 14, 2025), <https://www.eia.gov/todayinenergy/detail.php?id=65284>; Energy Professionals, *Electricity Costs Surge in Illinois: Energy Professionals Warns Customers Will See Higher Bills, Here's What You Need to Know*, PR Newswire (June 10, 2025), <https://www.prnewswire.com/news-releases/electricity-costs-surge-in-illinois-energy-professionals-warns-customers-will-see-higher-bills-heres-what-you-need-to-know-302477898.html>



housing.<sup>3</sup> In the first three quarters of 2025, utilities requested and received approvals to increase rates by more than \$34 billion – more than double the amount for the same period in 2024.<sup>4</sup>

There is no single factor behind the relentless upward climb of electricity prices. Load growth driven by data centers, utility profits, capital expenditures on distribution and transmission projects, weather-related costs, and general inflation are primary culprits, but none offer ready solutions.

While the increased costs of electricity have not been spread equally, the states represented by the amici have all been hit hard.

- Across the Midwest, utility rate increases through the first three quarters of the year total \$4.7 billion with 21.6 million customers impacted.<sup>5</sup>
- In Wisconsin, Northern States Power (an Xcel Energy affiliate) requested approval to increase its electric rates

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<sup>3</sup> U.S. Bureau of Labor Statistics, *Consumer Price Index News Release*, <https://www.bls.gov/news.release/cpi.htm>

<sup>4</sup> PowerLines, *Utility rate increase requests and approvals total more than \$34 billion in the first three quarters of 2025, impacting 124 million billpayers* (Oct. 27, 2025), <https://powerlines.org/utility-rate-increase-requests-and-approvals-total-more-than-34-billion-in-the-first-three-quarters-of-2025-impacting-124-million-utility-billpayers/>

<sup>5</sup> PowerLines, *Utility Bills are Rising, Q3 2025 Update* (Oct. 2025), [https://powerlines.org/wp-content/uploads/2025/10/1026\\_PowerLines\\_Rising-Utility-Bills-Q3-Update-2.pdf](https://powerlines.org/wp-content/uploads/2025/10/1026_PowerLines_Rising-Utility-Bills-Q3-Update-2.pdf)

by 11.8% in 2026 and 18.93% from current rates in 2027.<sup>6</sup>

- Across the state line, Xcel Energy's Minnesota affiliate – the state's largest electric utility – has sought permission to increase rates by 5.8% in 2025 and another 4.2% in 2026.<sup>7</sup> Otter Tail Power Company has similarly requested to raise rates nearly 17.69% above current revenues, increasing annual residential utility bills by over \$200.<sup>8</sup>
- In March 2024, Michigan's largest utility, DTE, filed a request to increase rates by \$456 million for its customers – just months after it received approval to increase rates by \$368 million. This was part of a trend that has seen Michigan utilities ask for increased rates roughly every 15 months.<sup>9</sup>
- Average supply prices for Ameren Illinois (the state's largest MISO utility) have more than doubled (from 4.46 cents to 9.32 cents) from 2020 to 2025.<sup>10</sup>

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<sup>6</sup> *Application of Northern States Power Company-Wisconsin for Authority to Adjust Electric and Natural Gas Rates*, Wis. PSC Docket No. 4220-UR-127.

<sup>7</sup> *See In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Minn. PUC Docket No. E002/GR-24-320, Rebuttal Testimony and Schedules of Benjamin C. Halama at 3 (Oct. 10, 2025).

<sup>8</sup> *See In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Minn. PUC Docket No. E017/GR-25-359, Notice of Change in Rates at 1 (Oct. 31, 2025).

<sup>9</sup> Lucas Smolcic Larson, 'Burden' or path to reliability? Michigan utilities seek more frequent rate hikes, Mlive (Oct. 31, 2024)

<https://www.mlive.com/environment/2024/10/burden-or-path-to-reliability-michigan-utilities-seek-more-frequent-rate-hikes.html>

<sup>10</sup> Jim Chilsen, *Average Electric Supply Charges, by Year* (June 2, 2025), Illinois Citizens Utility Board, <https://public.flourish.studio/visualisation/14119939/>

This pattern of rate increases has translated directly to negative and sometimes drastic consequences for people with low and moderate incomes. Nationally, more than 24 percent of households were unable to pay their energy bills in full in 2024, according to Census Bureau data, up from 20 percent in 2021.<sup>11</sup> In Michigan, low-income families spend approximately 22% of their income on energy, nearly four times the 6% threshold that the industry considers a high energy burden.<sup>12</sup> Families with high energy burdens are more likely to sacrifice other basic needs like food or medicine to pay their energy bills, or face electricity shutoffs, which have increased as electricity rates soar.<sup>13</sup>

In Minnesota, residential customers' past-due balances have grown exponentially since the onset of the COVID-19 pandemic,

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<sup>11</sup> National Energy Assistance Directors Association, *Energy Hardship Report* (Aug. 2024) at 7-9, <https://neada.org/wp-content/uploads/2024/08/August-Summer-Hardship-Report-Final.pdf>; Brad Plumer, Harry Stevens, and Rebecca Elliott, *Why the Price of Electricity is Spiking Around the Country*, New York Times (Oct. 30, 2025), <https://www.nytimes.com/2025/10/30/climate/electricity-prices.html>

<sup>12</sup> U.S. Dep't of Energy, Low-income Energy Affordability Data Tool, [https://www.energy.gov/scep/slsc/\\_lead-tool](https://www.energy.gov/scep/slsc/_lead-tool); see also Michigan CUB, *Power Struggle: Energy Insecurity in Michigan's Low-Income Communities* (Oct. 2025), [https://cubofmichigan.org/wp-content/uploads/2025/10/2025\\_CUB\\_PowerStruggle\\_1022.pdf](https://cubofmichigan.org/wp-content/uploads/2025/10/2025_CUB_PowerStruggle_1022.pdf).

<sup>13</sup> *Supra* n. 12, *Energy Hardship Report* at 3.

with total arrears regularly exceeding \$100 million since mid-2020.<sup>14</sup> Approximately 59 percent of Minnesotans experienced difficulty paying for usual household expenses in 2024, with that statistic rising to 68 percent for households earning less than \$75,000 each year.<sup>15</sup> More than 91,000 residential customers of Minnesota's investor-owned utilities were involuntarily disconnected from energy services in 2024.<sup>16</sup>

Ratepayers of Indiana's five investor-owned electric utilities experienced an average increase of over \$28/month (17.5%), the highest year-over-year jump since at least 2005, nearly double the prior year's record increase of 9.3%.<sup>17</sup> Northern Indiana Public Service Company residential customers were hit hardest with a

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<sup>14</sup> See generally *In the Matter of Recent Utility Cold Weather Rule Data*, Minn. PUC Docket No. E,G-999/PR-YR-2, Residential Customer Status Reports.

<sup>15</sup> *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Minnesota PUC Docket No. E002/GR-24-320, Direct Testimony and Schedules of Annie Levenson-Falk at 6 (Aug. 22, 2025).

<sup>16</sup> See, e.g., Annie Levenson-Falk, *Protect LIHEAP: Fund the Program at the Highest Level*, CUB Minnesota (May 13, 2025), <https://cubminnesota.org/protect-liheap-fund-program-highest-possible-level>.

<sup>17</sup> Citizens Action Coalition, *Monopoly Electric Utilities Slam Hoosiers with Historic Bill Hikes* (July 23, 2025), <https://www.citact.org/utilities-slam-hoosiers>; <https://secure.in.gov/iurc/energy-division/electricity-industry/electricity-residential-bill-survey/>

\$50/month (26.7%) increase, compounding a 17.8% hike in 2024.<sup>18</sup>

CenterPoint electric bills surged \$44/month (25%), and Duke Energy Indiana raised residential bills nearly \$26 per month (20%) to largely subsidize its uneconomic, unreliable coal plants.<sup>19</sup> In 2023, Indiana utilities disconnected customers 182,203 times.<sup>20</sup>

These issues are shaping the national political landscape: electric prices featured heavily in recent campaigns in Georgia, Virginia, and New Jersey. Nearly 75% of Americans are concerned about rising prices.<sup>21</sup> The factors behind these trends show no signs of abating. Load growth is expected to continue.<sup>22</sup> Inflation remains stubbornly high.

Against this backdrop, the consequences of the Department's order (DOE0001) will be stark. The order will cause millions of

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Indiana University, *Utility Disconnections Dashboard*, <https://utilitydisconnections.org/dashboard/index.html>

<sup>21</sup> PowerLines, *Skyrocketing Utility Bills Nationwide Leave American Consumers Feeling Stressed, Powerless* (Apr. 23, 2025), <https://powerlines.org/skyrocketing-utility-bills-nationwide-leave-american-consumers-feeling-stressed-powerless/>

<sup>22</sup> Monitoring Analytics, LLC, Independent Market Monitor for PJM, *State of the Market Report for PJM* (Nov. 13, 2025), pp. 1-2, [https://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2025/2025q3-som-pjm.pdf](https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2025/2025q3-som-pjm.pdf) (“Data center load growth is the primary reason for recent and expected capacity market conditions, including total forecast load growth, the tight supply and demand balance, and high prices.”)

Americans to pay more for electricity. No record evidence rebuts this fact, nor has the Department contradicted it either in the order itself or any other filings or communications with the parties. The Department's failure to consider this critical element of the public interest was arbitrary and capricious. *See* 16 U.S.C. § 824a(c) (emergency order must "serve the public interest"); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious where agency "entirely failed to consider an important aspect of the problem.")

In 2021, Consumers Energy estimated that the closure of the plant would avoid more than \$365 million in capital expenditures and maintenance, while the overall resource plan would save customers \$600 million.<sup>23</sup> But the Department's last-minute order to reverse the Campbell retirement will likely rack up costs faster than even the 2021 estimates. Leading up to the closure, Consumers Energy exhausted its coal reserves and re-assigned

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<sup>23</sup> *In the Matter of the Application of Consumers Energy Company for Approval of an Integrated Resource Plan under MCL 460.6t*, Mich. PSC Case No. U-21090-0867, Reply Br. of Consumers Energy at 1 – 2, <https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y0000032ZSXAA2>.

employees, undoubtedly resulting in added costs to get the plant running again. Consumers Energy also intentionally opted out of maintenance investments in anticipation of retirement, which it will now need to catch up on to comply with the order.

Some of these costs have now been made public. In its securities filings, Consumers Energy disclosed its net cost of operating the plant (*i.e.*, after crediting the plant's electricity sales) was \$53 million for the first 90-day emergency order.<sup>24</sup> Further, for the period between August 20 (when the Department issued a renewed order) and September 30, Consumer's net cost was an additional \$27 million – meaning that running the plant cost \$80 million in little more than four months, or roughly \$615,000 per day.<sup>25</sup> Not surprisingly, Consumers Energy reassured its shareholders that it “intends to file for recovery and allocation of costs” to its customers.<sup>26</sup>

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<sup>24</sup> Consumers Energy Form 10-Q at 62 (Oct. 30, 2025), <https://www.sec.gov/Archives/edgar/data/811156/000081115625000077/cms-20250930.htm>

<sup>25</sup> Joe Barrett and Jennifer Hiller, *\$615,000 a Day: Order to Keep Coal Plant Open Ignites Debate in Michigan*, Wall Street Journal (Nov. 3, 2015), [https://www.wsj.com/business/energy-oil/615-000-a-day-order-to-keep-coal-plant-open-ignites-debate-in-michigan-aa8bf2a6?mod=hp\\_lead\\_pos7](https://www.wsj.com/business/energy-oil/615-000-a-day-order-to-keep-coal-plant-open-ignites-debate-in-michigan-aa8bf2a6?mod=hp_lead_pos7)

<sup>26</sup> Consumers Energy Form 10-Q, *supra* n.24, at 62.

True to its word, in June, Consumers Energy asked FERC to order MISO to revise its tariff to allow Consumers Energy to pursue cost recovery.<sup>27</sup> Consumers Energy requested that the tariff apportion costs proportionate to load throughout MISO Zones 1 through 7, which includes most of the Midwest. FERC granted the request without addressing the question whether an emergency actually exists.<sup>28</sup> FERC further ruled that Consumers Energy may seek recovery of the costs through the newly-created tariff mechanism in the future. Following FERC's order, a coalition of large industrial companies asserted that costs should be allocated based on demand rather than energy, an allocation that would favor industrial customers at the expense of residential customers.<sup>29</sup>

Thus, FERC has authorized Consumers Energy to seek recovery of the costs associated with the order – \$53 million for the initial 90 days, another \$27 million through September 30, and, at

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<sup>27</sup> *Consumers Energy v. Midwestern Independent Sys. Operator, Inc.*, Complaint at 3, FERC Docket No. EL25-90 (June 6, 2025)

<sup>28</sup> *Consumers Energy v. Midwestern Independent Sys. Operator, Inc.*, Order on Complaint, FERC Docket No. EL25-90 (August 15, 2025).

<sup>29</sup> *Consumers Energy v. Midwestern Independent Sys. Operator, Inc.*, Protest of the Coalition of MISO Transmission Customers et al., FERC Docket No. EL25-90 (Oct. 6, 2025).



the current rate of costs, \$615,000 for every day the order runs beyond that – from utilities, and ultimately ratepayers, in MISO Zones 1-7. If the industrial companies prevail, then residential ratepayers will bear the principal burden.

The Department's order for the Campbell plant to operate on economic dispatch provides little or no relief. Economic dispatch may, at best, ensure that the plant covers its variable costs (such as fuel) for whatever time periods it applies. But this does not account for all costs. The wholesale electricity markets dispatch generating resources in order, starting with resources with the lowest marginal cost. A power plant's marginal cost includes its fuel cost and variable operations and maintenance costs, but does not account for capital or other fixed costs that are incurred regardless of whether the power plant operates. Those capital and fixed costs drove the \$365 million price tag of running Campbell<sup>30</sup>; running on economic dispatch does little or nothing to change that. And if the plant is operated on a must-run basis, rather than on economic dispatch, those costs will soar even higher because the plant will run even

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<sup>30</sup> DOE0008, Ex. 13 at 3-4, (Direct Testimony of Norman J. Kapala).

when it loses money on each megawatt-hour it sells – all money likely to be subsidized by customers.

These circumstances violate basic principles of regulatory law and utility ratemaking. The cost-causation principle – which requires costs to be allocated to those who cause the costs to be incurred and reap the resulting benefits, *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 87 (D.C. Cir. 2014) (citing *Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007)) – is necessarily violated because MISO ratepayers receive no benefits from the plant’s operations. In its answer filed at FERC, MISO itself confirmed that its ratepayers have sufficient resource adequacy, stating that “existing processes have cleared sufficient electric generating capacity across MISO for the periods of time covered by the Order.”<sup>31</sup> No substantial evidence controverts this assertion. The Secretary’s bare declaration that an emergency exists does not make it so.

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<sup>31</sup> *Consumers Energy v. Midwestern Independent Sys. Operator, Inc.*, Answer of the Midcontinent Independent System Operator, Inc. at 2, 5, Docket No. EL 25-90-000, (June 19, 2025).

Nor is it conceivable that these costs could be just and reasonable, as required by the Federal Power Act, 16 U.S.C. § 824d(a). A utility's decision to keep an uneconomic plant running when less costly options exist, while passing the exorbitant costs to its customers, is textbook imprudence. It is no better for consumers – not more just or reasonable – when the Department orders the utility to do the same thing.

Electricity consumers in the Midwest – and many other parts of the country – are already suffering from rising rates from a variety of causes that regulators, utilities, and consumer advocates are scrambling to address. The Department's order to keep an economically unviable plant in operation, and its determination that those same customers should pay for that decision, only makes matters worse. That does not serve the interests of the electricity-consuming public.

**B. By usurping the role of state agencies in utility regulation generally and resource planning in particular, the federal government has undermined the public's right to participate in decision-making that affects its interests.**

For more than a century, state and federal regulation of electricity has developed a framework that seeks to neutrally

evaluate evidence, balance competing interests, assess relevant stakeholder positions, and make reasoned decisions that advance the public's interest in reliable and affordable energy. These regulatory priorities are carried out by both federal and state authorities, a balance struck by the Federal Power Act. Under this split, states retain control over local matters, including “administration of integrated resource planning ... and authority over utility generation and resource portfolios.” *New York v. FERC*, 535 U.S. 1, 24 (2002) (*quoting* FERC Order 888.)

Integrated resource planning (“IRP”), by law and by tradition, thus occurs at the state level. In the IRP process, utilities propose and state regulators evaluate a publicly available plan for the optimal way to meet forecasted consumer needs over a period of time. Regulated utilities file IRPs with state commissions, where they are evaluated with input from other stakeholders. Regulators consider a comprehensive range of reasonable alternatives for supplying adequate power, including supply resources (*i.e.*, generation), demand resources (*i.e.*, demand response) and distributed resources (*i.e.*, customer-sited resources). These alternatives are scrutinized using complex, technology-driven

modelling that assesses them against a set of criteria defined by statute or regulation.

In a 2024 report funded by the Department and co-authored by the Lawrence Berkeley National Laboratory, titled “Best Practices in Integrated Resource Planning”, the authors explained:

Robust resource planning is critical for utilities to make investment decisions that are reasonable, prudent, and in the public interest. Poor utility resource investment decisions can burden customers with electricity costs that are higher than necessary, lead to over- or under-procurement of resources, disrupt achievement of state policy goals, and forego solutions to contain costs and risks in the future.<sup>32</sup>

Most states require IRPs, including Michigan, Minnesota, Missouri, and Indiana, while Wisconsin requires the state commission to file a long-term energy assessment and Illinois recently passed legislation requiring a statewide IRP.

Under Michigan’s IRP statute, for instance, utilities must file an IRP every five years. Mich. Comp. Laws § 460.6t. The Michigan Public Service Commission must determine that the IRP is “the

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<sup>32</sup> Bruce Biewald et al., *Best Practices in Integrated Resource Planning: A guide for planners developing the electricity resource mix of the future* (Nov. 2024), at 1, Synapse Energy Economics, Inc. and Lawrence Berkeley National Laboratory, [https://www.energy.gov/sites/default/files/2024-12/best\\_practices\\_irp\\_nov\\_2024\\_final\\_optimized.pdf](https://www.energy.gov/sites/default/files/2024-12/best_practices_irp_nov_2024_final_optimized.pdf).

most reasonable and prudent means of meeting the electric utility's energy and capacity needs." *Id.* § 460.6t(8).

Input from consumer advocates, electricity consumers, and other stakeholders is critical to the decision-making process. Consumer advocates ensure that the utility considers resource options that will benefit residential ratepayers, rather than rewarding utility shareholders. While utilities have an economic incentive to build more generation to drive a higher return for investors, consumer advocates may support acquisition of resources that will incur the least cost over time for consumers while maintaining a reliable system, including demand-side and distributed resources that enhance reliability and ensure system capacity but are less profitable for utilities to build. Consumer advocates have also asked for retirement of generation facilities that are no longer cost-competitive – including coal plants outcompeted in the market by other generation resources. In short, consumer advocates are a check on utilities' incentive to overbuild their systems with expensive capital investments.

The necessity of stakeholder participation is recognized in the Department-funded IRP report, which begins its list of fifty best

practices for resource planning with two suggestions “for making the process inclusive for a wide audience as well as ensuring that technical stakeholders have the tools necessary to participate in the modeling process.”<sup>33</sup> As the report notes, “A well-developed stakeholder engagement process provides access to all stakeholders who have a reasonable interest and stake in the utility decision-making process—including those who have traditionally been underrepresented in these processes.”<sup>34</sup>

Congress has likewise recognized the importance of public participation in the federal regulatory process, creating the Office of Public Participation under Section 319 of the Federal Power Act, 16 U.S.C. § 825q-1, to “empower, promote, and support public voices in FERC proceedings.”<sup>35</sup>

The emphasis on public participation by state and federal regulators reflects a foundational truth of administrative law recognized by this Court: public participation is essential to wise and responsive agency decision-making. “[P]ublic participation

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<sup>33</sup> *Id.* at 9.

<sup>34</sup> *Id.*

<sup>35</sup> FERC Office of Public Participation, <https://www.ferc.gov/OPP>.

assures that the agency will have before it the facts and information relevant to a particular administrative problem ... [and] increase[s] the likelihood of administrative responsiveness to the needs and concerns of those affected.” *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1061 (D.C. Cir. 1987) (concurring) (*quoting Guardian Fed. Sav. & Loan v. Fed. Sav. & Loan Ins. Corp.*, 589 F.2d 658, 662 (D.C. Cir. 1978)).

The record in this case underscores why it is crucial to involve local consumer advocates and the public in decisions that directly affect them – and why it is folly to shut them out. The planned retirement of the Campbell plant was part of a broader IRP proceeding in which the Michigan Public Service Commission, Consumers Energy, the Michigan Attorney General’s Office, Michigan CUB, and numerous other organizations were active parties. Alternatives were proposed and evaluated, a full record was developed through party discovery and a contested evidentiary hearing, and key issues were litigated and resolved at the Michigan Court of Appeals.

Ultimately, a settlement was negotiated between the utility, consumer advocates, and other parties, then approved by the



Michigan Public Service Commission. In conjunction with the plan to retire Campbell, the settlement authorized Consumers Energy to acquire a new gas plant, continue operations of two gas peaker plants, and acquire a host of renewable resources. In total, the deal substantially increased the amount of generation available to Consumers Energy. Like any settlement, this one was the product of negotiation and compromise. Had the utility not planned to retire Campbell – avoiding \$365 million in capital expenditures – the consumer advocates may not have consented to other increases in generation capacity. The Campbell retirement was a material part of the deal.

Following the settlement, MISO approved the retirement of the Campbell plant after determining that the retirement would not violate applicable reliability criteria.<sup>36</sup> MISO decisions also invite stakeholder involvement. First, MISO has an internal stakeholder process that allows affected parties – utilities, industry participants, consumer advocates, and other interest groups – to either vote or provide comments. Second, parties can seek FERC

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<sup>36</sup> DOE0009, Ex. 29, at 9.

review of MISO actions they believe violate its tariff or federal law. Interested parties can intervene and participate in those proceedings. Here, no party challenged MISO's decision.

The outcome of these fully litigated proceedings, informed by a wealth of record evidence and robust participation by consumer advocates, regulators, MISO, the utility owner, and others, was a determination that, largely as a result of the bargain struck by the interested parties in the settlement agreement, there would be adequate capacity both in Michigan and in MISO. The parties to the settlement agreement, along with the state regulator and MISO itself, were indisputably best positioned to evaluate the evidence neutrally and free from political considerations, and to ensure that their interests would be protected.

Those proceedings, including the opportunities for public participation, contrast sharply with the Department's actions here. Not only did the Department fail to engage stakeholders or the public, but it seemingly ignored the volume of record evidence available from both the Michigan and MISO decisions. Rather than consult with the parties most knowledgeable about the Campbell plant and resource adequacy in Michigan, the Department heavily

relied on a flawed North American Electric Reliability Corporation (“NERC”) report never intended to be used to undercut local resource-planning decisions.

Had the Department engaged stakeholders, it would have learned that MISO’s Independent Market Monitor identified erroneous data in the NERC report that overstated the risk of insufficient capacity. Contrary to the Department’s characterization of the NERC report, the Independent Market Monitor found that MISO capacity was “more than adequate moving into the Summer of 2025”, relying in part on MISO’s “tremendous import capability that is routinely utilized during tight conditions to supplement its internal resources.”<sup>37</sup> Lacking adequate process and neglecting to solicit public involvement, the Department failed to consider conclusive findings about the Campbell plant’s impacts on resource inadequacy – including the unanimous conclusions of the Michigan Public Service Commission, Consumers Energy, MISO, and the Independent Market Monitor: there is no capacity shortfall and no emergency. *See Illinois Pub.*

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<sup>37</sup>DOE0009, Ex. 35 (Comments of David Patton), at 2.

*Telecommunications Ass'n v. F.C.C.*, 117 F.3d 555, 564 (D.C. Cir. 1997), *decision clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997) (agency's "failure to respond to contrary arguments resting on solid data[] epitomizes arbitrary and capricious decisionmaking.")

The Department's interference with the settled process and the parties' contractual arrangement not only reached the wrong outcome, but it also raises a host of long-term structural problems.

First, the Department's actions upend state-level resource planning. When state regulators evaluate the evidence (including detailed resource modeling) and positions supplied by affected parties to determine the resources needed – and not needed – to meet customer demands into the future, they must now try to anticipate the Department's unpredictable interventions that may unwind previously-settled plans. In resource planning, utilities must propose new facilities and evaluate existing facilities based on load forecasts, the current and planned availability of resources, and other factors. Billions of dollars in utility investment, passed directly on to consumers, depend on sound analysis. But now utilities, state regulators, and consumer advocates must confront – and try to rationally evaluate – the possibility that they will

engineer a carefully balanced plan only for the Department to suddenly and unilaterally decide that obsolete and uneconomic resources must stay in the mix. These plans are worth little if they can be gutted at any time by the federal government.

This very predicament now faces officials in Indiana, where utility executives are weighing their commitments to imminently close two coal plants (as approved by state regulators) against the uncertain but real possibility that the administration will intervene at the last minute.<sup>38</sup> The ramifications of the Department's assertion of power thus reverberate far beyond this 90-day order. Already, the Department has renewed the order twice, with shifting rationales each time. Similar orders have been issued for plants in Pennsylvania and Washington State, and utility executives are planning for the Department's interference to "continue for the long-term", according to Consumers Energy's CEO.<sup>39</sup> An industry

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<sup>38</sup> Kari Lydersen, *Indiana says it's retiring two coal plants, but is it making other plans?*, Canary Media (Dec. 15, 2025), <https://www.canarymedia.com/articles/clean-energy/indiana-retiring-two-coal-plants>

<sup>39</sup> Marianne Lavelle, *Trump's Order to Keep Michigan Coal Plant Running Has Cost \$80 Million So Far*, Inside Climate News (Oct. 31, 2025), <https://insideclimatenews.org/news/31102025/michigan-campbell-coal-plant-operation-has-cost-80-million/>

consultant estimates potential cost to customers could be nearly \$6 billion per year.<sup>40</sup>

Second, the Department's interference creates perverse incentives for utilities. Rather than having to justify the expense of inefficient resources to state regulators, plant owners can receive a subsidy – mandated by the government but paid for by ratepayers – to keep plants operating. Utilities can thus get cover for uneconomic decisions by claiming they want to retire plants and invoking federal involvement.

Third, the Department is distorting the efficacy of the energy markets created under the Federal Power Act and administered by FERC and the regional transmission organizations, such as MISO. Market participants no longer choose the resources that best fit their needs; instead, the Department handpicks plants that the rest of the industry has decided should be retired. For every costly megawatt-hour produced by Campbell and the like, more cost-effective suppliers will be pushed out of the picture.

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<sup>40</sup> Michael Goggin, *The Cost of Federal Mandates to Retain Fossil-Burning Power Plants*, Grid Strategies (Aug. 2025), at 1, [https://gridstrategiesllc.com/wp-content/uploads/Grid-Strategies\\_Cost-of-Federal-Mandates-to-Retain-Fossil-Burning-Power-Plants.pdf](https://gridstrategiesllc.com/wp-content/uploads/Grid-Strategies_Cost-of-Federal-Mandates-to-Retain-Fossil-Burning-Power-Plants.pdf)

Finally, there is no limiting principle to the Department's claimed authority. Based on a thin record and scant evidence, the Department asserts authority to intervene in decisions that have long been at the heart of state regulation. A central government with such powers not only can pick economic winners and losers (and force consumers to live with the consequences), it can arbitrarily reward political allies and punish opponents. Further, by tying its powers to the mere possibility of potential for a future electricity shortage, rather than an existing emergency, the government need not stop at reversing coal plant retirements – siting decisions, long-term resource planning, and even basic utility ratemaking all have ramifications for reliability and resource capacity. It is thus imperative for the Court to clearly define the limits of the Department's power.

Participants in electricity regulation understand that there are tradeoffs between affordability and reliability. A system that is overbuilt by a factor of two would all but assure resource adequacy. But the costs of such a system would be higher than any consumer or rational regulator would tolerate. The function of the regulatory system is to assess and balance these two key considerations in

open, deliberative proceedings guided by the participation of all affected parties – utilities, consumer advocates, and other stakeholders.

The process that led to this order – to the extent there was any process at all – lacked these features. The Secretary simply exercised his will. This is not part of a rational and effective regulatory environment that protects consumers, investors, and the public. Resource planning should be conducted with the involvement of stakeholders before a regulator that neutrally evaluates the evidence before it. That was not done here.

## CONCLUSION

The order forces already overburdened consumers in the Midwest and around the country to bear millions of dollars in costs in exchange for dubious benefits. Worse, the Department's decision was made without the participation or advocacy of the people who will bear the brunt of its impacts. The order thus not only affects Americans' pocketbooks in the short run, it causes institutional damage to functional and democratic regulatory decision-making in the long run. The order should be reversed.



Respectfully submitted,

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## CERTIFICATIONS

All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

Pursuant to Federal Rule of Appellate Procedure 29(a)(4), I certify that the brief was wholly authored by amici curiae and their counsel, and no other person authored the brief in whole or in part. No party, party's counsel, or other person aside from amici curiae contributed money that was intended to fund preparing or submitting the brief.

Pursuant to Fed. R. App. P. 32(g)(1) this brief complies with the type-volume limitation in Fed. R. App. 29(a)(5). This brief uses a 14-point proportionally spaced serifed font and contains 5,666 words as determined by the word processing system, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

s/Adam Carlesco

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 23, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Adam Carlesco

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