Jennifer Quinn-Barabanov
202 429 8027
jquinnba@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

Steptoe

January 29, 2026

Via Email

Secretary Chris Wright
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Alex Fitzsimmons, Director
Office of Cybersecurity, Energy Security, and Emergency Response
1000 Independence Avenue, SW
Washington, DC 20585

Re: Craig Station, Order No. 202-25-7

Dear Secretary Wright and Mr. Fitzsimmons:

Pursuant to Section 313(a) of the Federal Power Act,[1] and Section 301(b) of the Department of Energy Organization Act,[2] Tri-State Generation and Transmission Association, Inc., and Platte River Power Authority hereby submit for filing the enclosed request for rehearing and for clarification.

Please contact me if you have any questions.

Respectfully submitted,

/s/ Jennifer Quinn-Barabanov

Jennifer Quinn-Barabanov
Michelle S. Kallen
Steptoe LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
jquinnba@steptoe.com
mkallen@steptoe.com

[1] 16 U.S.C. § 825*l*(a).

[2] 42 U.S.C. § 7151(b).

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF ENERGY

In re Craig Order No. 202-25-14	)	Order No. 202-25-14
	)	

REQUEST FOR CLARIFICATION AND FOR REHEARING OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION AND PLATTE RIVER POWER AUTHORITY

TABLE OF CONTENTS

Pursuant to Section 313(a) of the Federal Power Act,[1] and Rule 713 of the Rules and Regulations of the Federal Energy Regulatory Commission (FERC or Commission),[2] and the applicable rules of practice and procedure,[3] Tri-State Generation and Transmission Association, Inc. (Tri-State) and Platte River Power Authority (Platte River) (together, Petitioners) hereby file this Request for Clarification and Rehearing of the Order No. 202-25-14 dated December 30, 2025 (the Order) requiring Petitioners and their co-owners to keep coal-fired Unit 1 of the Craig Generating Station in Craig, Colorado (Craig Unit 1) open and available to operate. Craig Unit 1 was scheduled to shut down by December 31, 2025.[4]

SUMMARY

Petitioners and the Department of Energy (DOE) share the goal of securing reliable and affordable electricity generation assets for their service areas' energy grid, including in the event of an energy emergency. For years, Petitioners have engaged in thorough, deliberate, and industry-leading resource planning to achieve this same end. Petitioners' resource planning ensures that the communities they serve are supported by electricity generation resources sufficient to respond to

[1] 16 U.S.C. § 825l.

[2] 18 C.F.R. § 385.713 (2024).

[3] U.S. Dep't of Energy, DOE Rehearing Procedures, https://www.energy.gov/ceser/doe-202c-order-rehearing-procedures (last visited Jan. 15, 2026); *see also* 18 C.F.R. §§ 385.214, 385.713.

[4] Petitioners are co-owners of Craig Unit 1, and named recipients of the Order. Under the Commission's rules and regulations they are parties to this proceeding. However, if necessary to give them party status, out of an abundance of caution, Petitioners ask that this filing also be treated as a motion to intervene under Rule 214 of the Commission's Rules and Regulations. Petitioners' position on the Order and the nature of their interest are set forth in detail in this filing.

forecasted extreme weather events and demand growth, relying on coal, gas, dual-fuel, hydropower, solar, wind, and battery assets.

Petitioners will continue to work with DOE and other government agencies to secure reliable, affordable generation portfolios, but submit this request for clarification and rehearing because keeping Craig Unit 1 available to operate will not best meet DOE's goal of securing dispatchable electricity resources in the northwestern United States. Tri-State and Platte River, as member-owned and municipal public utilities, respectively, face unique challenges from the DOE's Order that lead them to file this request. The costs of compliance fall directly on their members and customers, who must now pay to respond to the DOE's finding that utilities in the northwestern United States have "a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes," DOE Order No. 202-25-14 at 1 (Dec. 30, 2025). The members and customers must pay those costs even though neither Tri-State nor Platte River are experiencing these shortages and not all the members and customers served by Tri-State and Platte River are located in the region identified by the Order. For example, Tri-State has numerous members in New Mexico and Nebraska. Petitioners have already paid for and planned investments in the generation resources needed to secure reliable and sufficient capacity for their systems. The Order therefore imposes additional costs to Tri-State's membership and the communities served by Platte River.

Petitioners respectfully ask DOE to reconsider the Order and to work with Petitioners to find a more effective and affordable path forward, one that will not

delay retirement of Craig Unit 1. Petitioners continue to stand ready, willing, and able to work cooperatively with DOE and any other federal agencies to address energy emergencies in a manner that minimizes costs, promotes reliability, and complies with the law.

STATEMENT OF ISSUES

Pursuant to Section 313(a), Petitioners request clarification and, in the alternative, rehearing based upon the following issues:

1. By mandating Craig Unit 1's availability to operate and the terms under which it shall operate, and requiring related changes to Petitioners' physical property, the Order constitutes both a physical taking and a regulatory taking. Because the Order does not provide "just compensation" from the government, this is an uncompensated taking in violation of the Fifth Amendment to the United States Constitution. *United States v. Pewee Coal Co.*, 341 U.S. 114, 116 (1951); *Horne v. Dep't of Agric.*, 576 U.S. 351 (2015); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011 (1984).

2. Because DOE predicated the Order on long-term concerns, Petitioners were deprived of the process due to them pursuant to the Administrative Procedure Act (APA) and the Federal Power Act (FPA), and the Fifth Amendment to the United States Constitution. This constitutes a violation of Petitioners' due process rights as guaranteed by the Fifth Amendment. *Miller v. Campbell Cnty.*, 945 F.2d 348, 353 (10th Cir. 1991); *Pa. Gas & Water Co. v. FPC*, 427 F.2d 568, 576 (D.C. Cir. 1970).

3. There is a disconnect between the energy reliability concerns described by the Order and the means DOE directs for addressing those concerns as compared to alternatives. DOE, therefore, did not establish that the Order "best meet[s] the emergency and serve[s] the public interest." 16 U.S.C. § 824a(c); 10 C.F.R. § 205.373. It is, therefore, arbitrary and capricious.

4. The Order does not align with the statutory objectives of the Federal Power Act (FPA), because it requires the operation of an uneconomic resource and disrupts ordinary and orderly planning, development, and investment in generation resources. It is, therefore, arbitrary and capricious.

BACKGROUND

A. The Petitioners

Tri-State is a wholesale generation and transmission cooperative operating on a not-for-profit basis with its principal place of business in Westminster, Colorado. Organized and existing pursuant to the Colorado Cooperative Act,[5] Tri-State is a public utility subject to FERC jurisdiction under Part II of the FPA.[6] Tri-State is wholly owned by its electric distribution cooperative and public power district members (Utility Members) and three non-Utility Members (Non-Utility Members)[7] and was formed by its Utility Members for the purpose of providing the Utility Members with wholesale power and transmission services for resale to their retail customers.

Through their participation in the cooperative, the Utility Members serve retail customers across Wyoming, Nebraska, New Mexico, and Colorado. Some, but not all, of the Utility Members and their retail customers are located in the 2024 Western Electricity Coordinating Council (WECC) Northwest region.[8] The retail service territories of Tri-State's Utility Members cover approximately 182,000 square miles and their customers include suburban and rural residences, farms and ranches,

[5] COLO. REV. STAT. § 7-55-101 *et seq.* (2019) (Cooperatives- General); Articles of Incorporation (2020).

[6] *Tri-State Generation and Transmission Ass'n*, 170 FERC ¶ 61,221, at P 37 (2020).

[7] Tri-State's Non-Utility Members are: (i) MIECO, Inc., a wholesale supplier of natural gas in the United States; (ii) Olson's Greenhouses of Colorado, LLC, a grower/distributor of plants throughout the western United States that has a contract to purchase thermal energy from Tri-State; and (iii) Ellgen Ranch Company, which leases property from a Tri-State subsidiary.

[8] The boundaries of this region changed from 2024 to 2025, *see* note 24, *infra*.

and large and small businesses and industries, serving approximately 522,000 retail electric meters. Tri-State's Utility Members are the sole state-certified providers of electric service to retail (residential and business) customers within their designated service territories.

Tri-State owns, directly or indirectly, or controls the output of, various power generation facilities within the Western Area Power Administration's (WAPA) Western Area Colorado Missouri (WACM) balancing authority area, and purchases wholesale power within both the Western and Eastern Interconnections. Among other generation facilities, Tri-State is a partial owner of Craig Unit 1, with a 24% ownership share. Tri-State's generating facilities are included in the Western Power Pool reserve sharing pool. This pool facilitates sharing of generation reserves to be activated during a system emergency, such as loss of a generating unit or transmission line. Tri-State expects to participate in the Southwest Power Pool's (SPP) regional transmission organization, with respect to Tri-State's service in the WACM balancing authority area within the Western Interconnection, beginning in April 2026.

Platte River is a not-for-profit, municipally-owned power utility and joint action agency that generates reliable, financially sustainable, and environmentally responsible electricity for its owner communities of Estes Park, Fort Collins, Longmont, and Loveland, Colorado. Platte River is a political subdivision of the State of Colorado and a government-owned utility under FPA Section 201(f), 16 U.S.C.

§ 824(f). Platte River furnishes cost-of-service wholesale electrical power and energy to its four owner communities.

Platte River is headquartered in Fort Collins, Colorado. At Platte River's main generating facility, Rawhide Energy Station, Platte River has one coal-fired power plant, Unit 1, with a nameplate capacity of 280 megawatts (MW), as well as five natural gas-fired units with a total capacity of 388 MW. Platte River also purchases 297 MW of wind energy and 202 MW of solar energy through long-term power purchase agreements and is a preference customer of WAPA's Colorado River Storage Project and Loveland Area Projects, providing up to 78 MW of hydropower. Platte River is a partial owner of two additional coal-fired units, Craig Units 1 and 2, with an 18% ownership share in the Craig units. Platte River's share of the total net capacity from both Craig units is 151 MW. Platte River also owns and operates an integrated transmission system of high-voltage aerial and underground power lines that deliver electricity to the electric utilities of Platte River's owner communities in Northern Colorado. Like Tri-State, Platte River plans to participate in SPP's regional transmission organization beginning in April 2026.

B. The Craig Generating Station

Craig Generating Station is a three-unit, coal-fired power plant located in Craig, Colorado. Craig Units 1 and 2 were built by and are jointly owned by several utilities through what is known as the Yampa Project. Tri-State operates those two units on behalf of all the co-owners, including Platte River, PacifiCorp, Public Service Company of Colorado, and Salt River Project. Tri-State separately owns and operates

Craig Unit 3. Together, these units are transmission-interconnected to the broader power grid and supply electricity into Western energy markets.

As part of its resource plan to address the long-planned retirement of Craig Unit 1, Tri-State has placed into service the 145 MW Axial Basin generating facility. This facility, approximately 26 miles from the Craig facility, relies on much of the same transmission infrastructure. Absent the retirement of Craig Unit 1, this interconnection faces transmission constraints such that, when Craig Unit 1 remains interconnected and available to operate, Tri-State may be required to curtail output from Axial Basin when all facilities are generating at or near full output due to limited transmission capacity.

As a result of changed market conditions and state and federal requirements, Unit 1 has been scheduled for retirement since 2016, and Units 2 and 3 have been scheduled for retirement since 2020, beginning with Craig Unit 1 by December 31, 2025, followed by Craig Unit 3 by January 1, 2028, and Craig Unit 2 by September 30, 2028. A retirement date for each Craig unit is now specified in Colorado Air Quality Control Commission Regulation No. 23 on Regional Haze Limits.[9] In 2016, Craig Unit 1's retirement date was adopted into what was then Colorado Air Quality Control Commission Regulation No. 3 on Stationary Source Permitting and Air Pollutant Emission Notice Requirements and the Regional Haze State Implementation Plan, the latter of which was approved by EPA in 2018.[10]

---

[9] COLO. CODE REGS. 1001-27.

[10] *See Approval and Promulgation of Implementation Plans; Colorado; Regional Haze 5-Year Progress Report State Implementation Plan*, 84 Fed. Reg. 47884 (Sept. 11, 2019); Co. Air Pollution

The Craig units have been fueled primarily by coal from the nearby Colowyo and Trapper mines. The Colowyo Mine has ceased active mining and transitioned to full reclamation, with two pits in final reclamation and the third transitioned to reclamation on October 15, 2025. Similarly, the Trapper Mine plans to cease active mining and convert to site remediation in calendar year 2026. Before the closure of the Colowyo Mine, Tri-State stockpiled sufficient coal to meet Tri-State's projected demand of the Craig Units 2 and 3 through their respective planned retirement dates. Before the Trapper Mine closes, Platte River will have stockpiled sufficient coal to meet its projected demand of the Craig Unit 2 through its planned retirement date.

C. Craig Unit 1

Craig Unit 1 can produce up to 427 MW of electricity and has been running since 1980. Over the last ten years, the operations and maintenance cost (without consideration of coal cost or depreciation expense) to run Craig Unit 1 has averaged $12.99 million annually.[11] By the standards of an older coal plant, Craig Unit 1 has generally provided reliable performance when called upon. However, in the last three years (due primarily to economic factors and some forced outages), Craig Unit 1 has run well below half of its capacity for Petitioners.

Control Div., *Colorado Visibility and Regional Haze State Implementation Plan for the Twelve Mandatory Class I Federal Areas in Colorado* (Dec. 15, 2016), https://oitco.hylandcloud.com/POP/DocPop/DocPop.aspx?docid=3303135.

[11] Over the last ten years, the operations and maintenance cost to run Tri-State's share of Craig Unit 1 has averaged $23.9 million annually (inclusive of coal cost and depreciation expense). Over the last ten years, the fixed operations and maintenance cost to run Platte River's share of Craig Unit 1 has averaged roughly $2.3 million (exclusive of coal cost and depreciation expense) annually.

Operation and maintenance of Craig Unit 1 has been undertaken prudently to reflect the scheduled 2025 retirement. The Craig Unit 1 owners have deferred optional maintenance since 2019. Craig Unit 1 has had multiple breakdowns and required significant repairs to continue operating into 2025. On December 19, 2025, the unit suffered a valve failure that rendered Craig Unit 1 inoperable, although the unit is now available to operate following repairs made in direct response to the Order.[12]

D. DOE Order No. 202-25-14

On December 30, 2025, DOE issued Order No. 202-25-14. The Order declared that "an emergency exists within the WECC-NW assessment area due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes." DOE Order No. 202-25-14 at 1 (Dec. 30, 2025). The Order predicated its emergency on (1) "increasing demand" and (2) "shortage from accelerated retirement of generation facilities [that] will continue in the near term and are also likely to continue in subsequent years." DOE stated, "[t]his could lead to the loss of power to homes, and businesses in the areas that may be affected by curtailments or power outages, presenting a risk to public health and safety." *Id.* at 3.

DOE predicated energy reliability concerns on the 2024 Long-Term Reliability Assessment (2024 LTRA) from the North American Electric Reliability Corporation (NERC) for the WECC-NW assessment area, "which includes Colorado, Idaho,

[12] Tri-State Generation & Transmission Ass'n, Inc., *U.S. DOE Orders Tri-State to Keep Craig Generating Station Unit Operating Next 90 Days*, TRI-STATE (Dec. 31, 2025), https://tristate.coop/us-doe-orders-tri-state-keep-craig-generating-station-unit-operating-next-90-days.

Montana, Oregon, Utah, Washington, and Wyoming[.]" *Id.* at 1. DOE also pointed to the 2024 WECC Western Assessment of Resource Adequacy. The concerns included (1) greater "energy variability" due to the region's use of wind and hydropower; (2) planned retirement of baseload generation facilities fueled by coal, natural gas and nuclear; and (3) projected regional load growth. *Id.* at 2.[13]

The Order required Tri-State and the other co-owners of Craig Unit 1 to:

1. Take all measures necessary to ensure that Craig Unit 1 is available to operate at the direction of either Western Area Power Administration (WAPA)—Rocky Mountain Region Western Area Colorado Missouri (WACM) in its role as Balancing Authority or the Southwest Power Pool (SPP) West in its role as the Reliability Coordinator, as applicable;
2. Limit operation of Craig Unit 1 to the times and within certain parameters to minimize adverse environmental impacts;
3. Provide daily notification to DOE reporting whether Craig Unit 1 has operated in compliance with the Order;
4. Comply with applicable environmental requirements including, but not limited to, monitoring, reporting, and recordkeeping requirements, to the maximum extent feasible while operating consistent with the emergency conditions;
5. Update DOE on measures taken or planned to ensure operational availability of Craig Unit 1 by January 20, 2026; and
6. File with the FERC Tariff revisions or waivers to effectuate the Order with rate recovery available pursuant to 16 U.S.C. § 824a(c).

Tri-State has already taken and will continue to take steps to comply with the Order. In coordination with the other co-owners of Unit 1, it timely submitted its

[13] The Order placed these concerns in the broader context of Executive Orders 14156 and 14262. Executive Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025) (*Declaring a National Energy Emergency*), https://www.federalregister.gov/documents/2025/01/29/2025-02003/declaring-a-national-energy-emergency; Executive Order No. 14262, 90 Fed. Reg. 15521 (Apr. 8, 2025) (*Strengthening the Reliability and Security of the United States Electric Grid*), https://www.federalregister.gov/documents/2025/04/14/2025-06381/strengthening-the-reliability-and-security-of-the-united-states-electric-grid.

update to DOE on January 20, 2026, describing the measures it has taken and plans to take to ensure operational availability of Craig Unit 1. Tri-State has submitted and continues to submit daily notification to DOE pursuant to the Order.

ARGUMENT

Petitioners seek rehearing and clarification on two fronts. *First*, the Order, as drafted, effectuates a taking of Petitioners' property under the Fifth Amendment to the United States Constitution without an adequate process to obtain constitutionally required compensation. *Second*, the Order does not meet Section 202(c)'s requirement for a reasoned finding that compels operation of Craig Unit 1 as the "best" solution to the identified emergency.

I. THE ORDER CONSTITUTES AN UNCOMPENSATED TAKING OF PETITIONERS' PROPERTY INTERESTS

Petitioners chose to close Craig Unit 1 largely because of the uneconomic nature of the facility, and Petitioners have taken numerous steps over the years to prepare for its closure. By mandating that Tri-State continue operating the facility on a sustained basis for months beyond its planned closure date, and thus directing its operations in a manner entirely inconsistent with Petitioners' own planned retirement of the facility, the Order effects an uncompensated taking of Petitioners' property in violation of the Fifth Amendment of the United States Constitution. By compelling continued operational availability of Craig Unit 1, DOE took effective control over the physical infrastructure of the facility and mandated a variety of changes to Petitioners' infrastructure and business operations, constituting both a *per se* physical and regulatory taking.

A taking is not prohibited so long as it provides just compensation, but this taking comes with no assured government compensation. FERC cost recovery shifts costs onto ratepayers; it does not assure compensation *from the government*. And, due in part to the broad scope of the declared energy emergency, FERC cost recovery related to the Order will be complex procedurally and substantively and could leave material costs unrecovered from the Order's putative beneficiaries. The Order gives Petitioners no constitutionally adequate avenue for just compensation.

A. The Order Constitutes a Physical Taking

The Fifth Amendment provides, "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. "When the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) (citation omitted).

Physical takings can take a variety of forms, including intermittent or limited-value intrusions. *Id.* at 149–55; *see also Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). Moreover, "[i]f government action would qualify as a taking when permanently continued, temporary actions of the same character may also qualify as a taking." *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 26 (2012). This is true even when the government has not seized title to a property but rather directed it to operate in a particular way. Temporary seizures of property to operate are takings in "as complete a sense as if the Government held full title and ownership." *See Pewee Coal Co.*, 341 U.S. at 116 (quoting *United States v. United Mine Workers of Am.*, 330 U.S. 258, 285–86 (1947)).

The Order operates as a physical taking in two interrelated ways. *First*, by directing Petitioners to maintain and operate Craig Unit 1, on a prolonged basis,[14] and in clear departure from Petitioners' own planned retirement of the facility, the Order falls within a near-century-old tradition of classifying mandatory operations—even under wartime and emergency authorities—as takings that must be compensated. *Second*, even if not characterized as a government seizure of operations, the Order constitutes a physical taking by compelling Petitioners to make material physical changes to the plant, including repairing out-of-service equipment, requiring staff onsite, and physically diverting coal allocated for Craig Units 2 and/or 3 to fuel Craig Unit 1 as the facility's operations deplete limited fuel reserves that were allocated to other units that remain operational and are needed for reliability—the depletion of these stockpiled reserves will require Petitioners to obtain replacement coal at uncertain future prices, creating an additional uncompensated cost. And because of transmission constraints, Craig Unit 1's operations could further impede Tri-State's use of the nearby Axial Basin generating facility by constraining Tri-State's ability to inject power from that facility onto the grid.

[14] Petitioners note that other similar Section 202(c) orders, issued to other utilities and on similar grounds, have been repeatedly renewed. *See, e.g.*, DOE Order No. 202-25-3 (May 23, 2025), *renewed for 90 days by* DOE Order No. 202-25-7 (Aug. 20, 2025), *renewed for 90 days by* DOE Order No. 202-25-9 (Nov. 18, 2025). Petitioners are reasonably concerned that DOE Order No. 202-25-14 could be similarly repeatedly renewed.

1. The Order's Direction of Prolonged Operations at Craig Unit 1 Contrary to Petitioners' Plan to Retire the Facility Constitutes a Physical Taking

Section 202(c) was enacted to address energy shortages that occurred during the First World War,[15] making it particularly suitable for analysis under post-war interpretations of the Takings Clause. These cases show that, even in the context of an emergency, where the government takes control of part or all of a business's facilities to use and operate for the government's purposes, a compensable taking occurs, *see, e.g.*, *United States v. Gen. Motors Corp.*, 323 U.S. 373 (1945) (holding that a government seizure of part of a leased warehouse space for military purposes was a compensable taking). Similarly, where the government requires a private business to operate in the public interest, this too constitutes a *per se* physical taking. *Pewee Coal Co.*, 341 U.S. at 116 (taking occurred when government responded to work stoppages and strikes at coal mines by directly operating them or arranging for their continued operation). Finally, these cases illustrate that a taking is particularly likely to occur where the imposition of government control extends over a lengthy period of time. *See Gen. Motors Corp.*, 323 U.S. at 375 (warehouse seized for more than a year); *Pewee Coal Co.*, 341 U.S. at 115 (government-directed operation of coal mine continued for more than 160 days).

In that light, the Order constitutes a taking of Petitioners' property. The Order requires Petitioners to, in relevant part: (1) take all measures necessary to ensure that Craig Unit 1 is available to operate; and (2) limit operation of Craig Unit 1 to

[15] Benjamin Rolsma, *The New Reliability Override*, 57 Conn. L. Rev. 789, 789–846, 800–02 (2024) (hereinafter "Rolsma (2024)").

certain times and parameters to minimize adverse environmental impacts. Even the narrowest version of the measures necessary to ensure that Craig Unit 1 is available to operate include extensive repairs to Craig Unit 1's physical facility and the ongoing employment of some share of approximately 130 staff to maintain the Craig facility, operate equipment, and remain ready to operate. The Order requires Petitioners to take these significant steps, unnecessary but-for the Order, for a prolonged period of time. This closely resembles the sustained mandate to operate that the *Pewee Coal* Court held was a taking.[16]

Indeed, the federal government recently recognized that where the government appropriates the right to control operation of a facility and deprives owners of their freedom to dispose of their property, a taking has occurred. *See* EPA-R08-OAR-2024-0607-0067, Regional Haze Round 2 at 19–21 (Jan 9, 2026), https://www.regulations.gov/document/EPA-R08-OAR-2024-0607-0067 (describing how the "unconsented closure" of a coal-fired power station constituted a *per se* taking of the facility owner's property) (citing *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) and *Horne*, 576 U.S. 351).

By requiring Petitioners to involuntarily keep Craig Unit 1 available for operations according to the government's instructions and mandating an

[16] The *Pewee Coal* Court did not enjoin the government's actions—the wartime emergency justified the government's effort to keep coal mines operational. The fact of a justified emergency, however, did nothing to abate the Takings Clause requirement that the government compensate the plaintiff. *See Pewee Coal Co.*, 341 U.S. at 118 (holding that government is "entitled to the benefits and subject to the liabilities" of operating a facility it takes over).

unconsented re-opening of a non-operational facility—for not hours or days but months—DOE engages in a taking.

2. The Order Mandates Physical Changes to Petitioners' Property That Constitute a Physical Taking

The physical changes to Petitioners' property mandated by the Order also constitute a *per se* physical taking of Petitioners' property rights in Craig Unit 1 and other related property, such as fuel. *First*, mandating that Petitioners make Craig Unit 1 ready for operations compels Petitioners to make material physical changes to Craig Unit 1, including repairing out-of-service equipment that would otherwise remain unused. *Second*, operations require fuel, which compels Petitioners to deplete the Craig facility's limited fuel reserves intended for Craig Units 2 and/or 3 as operations at Unit 1 continue; these reserves were acquired and measured for the anticipated operation of two specific coal units and based on the assumption that Craig Unit 1 would retire at the end of 2025. Because the Order forces Petitioners to surrender and exhaust coal inventory for the government's chosen public purpose—coal that Petitioners acquired, allocated, and reserved for other units—it effects a *per se* physical taking of that property. And *third*, transmission capacity limitations for Petitioners' facilities at and near Craig Unit 1—the Craig units and Axial Basin—mean that requiring Craig Unit 1 to remain interconnected and possibly operating could constrain the ability of these resources to fully access the grid.

a. Physical Changes to Craig Unit 1

Bringing Craig Unit 1 back into service has already required modifications to the physical infrastructure on the site, beginning with repairs to Craig Unit 1's failed

Main Steam Stop Valves #1 and #2, and including additional maintenance to the unit's baghouse that had previously been deferred based on the unit's planned December 31, 2025 retirement. Petitioners must also perform emissions testing and other evaluations to ensure that Craig Unit 1 complies with applicable environmental requirements to the "maximum extent feasible while operating consistent with the emergency conditions." Order No. 202-25-14 at 4. Ongoing operations at the site will also require continual maintenance and staffing readiness, with the potential for further equipment failures that require repair and staffing (including overtime). And long before Craig Unit 1 was scheduled to retire, Petitioners both engaged in careful resource planning resulting in generation portfolios for the future that meet all member/customer needs, as well as planning reserve margins necessary to ensure reliable capacity in the event of extreme weather events and other emergencies, all based on the assumption that Craig Unit 1 would retire from service on December 31, 2025.

Compelling a property owner to make improvements to their property constitutes a physical taking when the mandated improvement benefits others—particularly the public at large—but do not benefit the property owner. "Put in general terms, government may not force a landowner to make an improvement that, while valuable to others, is useless to him" without it constituting a compensable taking. *Furey v. City of Sacramento*, 780 F.2d 1448, 1454 (9th Cir. 1986) (citing *Norwood v. Baker*, 172 U.S. 269 (1898) and *Myles Salt Co. v. Bd. of Comm'rs*, 239 U.S. 478 (1916)), *abrogated on other grounds, Cumbre Inc. v. State Compensation*

Ins. Fund, 403 F. App'x 272 (9th Cir. 2010). The Order requires Petitioners to make significant repairs to a facility they had planned to imminently retire for good. This is the kind of taking described in *Furey*.

b. The Craig Facility's Fuel Reserve

All three Craig Units were designed to run on coal obtained from the now-shuttered Colowyo Mine and the soon-to-be-shuttered Trapper Mine.[17] Before closing the Colowyo Mine, Tri-State stockpiled sufficient reserves to operate its share of the Craig Units until their respective retirements. The only practical source of fuel for Craig Unit 1 to maintain readiness after its planned retirement, and to make use of in the event of a dispatch, are Craig Units 2 and/or 3's previously acquired and allocated reserves.[18]

This too constitutes a taking. *See Horne*, 576 U.S. at 357–65 (USDA requirement that a percentage of a grower's crop be set aside for public use constituted a *per se* physical taking). Just as the government in *Horne* effected a *per se* taking by requiring raisin growers to surrender a specific, identifiable portion of their crop for public use, by mandating that Petitioners consume coal inventory purchased and reserved for Craig Units 2 and/or 3, DOE appropriates that property for a public reliability objective. Under *Horne*'s reasoning, forced depletion of a

[17] Tri-State believes that co-owners supply their share of Craig Units 1 and 2 through Trapper or other mines.

[18] The diversion of this coal will necessitate future purchases of replacement fuel at uncertain cost, thereby imposing an additional, uncompensated expenditure that independently constitutes a taking. Use of an alternative source of supply not only results in additional costs, but also requires Tri-State to negotiate new contracts and alter operations at the Craig facility to account for variances between the physical qualities of different coal supplies.

utility's fuel reserves—no less than forced surrender of raisins—constitutes a physical taking of personal property requiring just compensation.

c. Axial Basin

The 145 MW Axial Basin generating facility is in the same general location as the Craig Generating Station and relies on much of the same transmission infrastructure. There is insufficient transmission capacity to move all electricity generated by the three Craig units and Axial Basin to the broader power grid. The Order thus constitutes appropriation of Tri-State's transmission infrastructure, a clear physical intrusion. This transmission limitation could lead to further physical intrusion by potentially forcing the curtailment of one or more of the other generation facilities to ensure that there was sufficient transmission capacity available for Unit 1 to comply with the Order.

B. DOE's Order Constitutes a Regulatory Taking

In addition to being a *per se* physical taking, the Order constitutes a regulatory taking. Regulatory takings occur where the government "imposes regulations that restrict an owner's ability to use his own property" but goes too far. *Cedar Point Nursery*, 594 U.S. at 148. The property rights implicated by the Takings Clause can include contract rights, *see Lynch v. United States*, 292 U.S. 571, 579 (1934), and government-created entitlements with economic value, *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984) (trade secrets constituted property for takings purposes). When evaluating whether a regulatory burden constitutes a taking, courts look to the test established in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1982), which evaluates regulatory takings based on: (1) the regulation's economic

impact; (2) its interference with reasonable investment-backed expectations; and (3) the character of the government action.

The Order constitutes a regulatory taking under this analysis. The Order levies substantial economic impacts on Petitioners through both direct maintenance costs and the disruption to Petitioners' planning with associated downstream costs. The Order also disrupts Petitioners' reasonable investment-backed expectations rooted in years-long resource and economic planning, and interferes with Petitioners' operations and their contractual and regulatory rights.

1. Economic Impact

In requiring Petitioners to "take all measures necessary to ensure that Craig Unit 1 is available to operate," the Order places a heavy economic burden on Petitioners. As discussed above, Petitioners will necessarily incur a variety of operations and maintenance costs to ensure that Craig Unit 1 is ready and able to operate on request, with no economic benefit available from retaining the to-be-retired facility because it is uneconomic to operate.

Moreover, because of limited capacity over common transmission facilities, dispatching Craig Unit 1, while the other Craig Units are operating, can impede Tri-State's ability to dispatch its nearby Axial Basin generating facility. This in turn, prevents Petitioners from gaining the benefit of a margin on more economic resources, including renewable energy credits (which themselves have tangible value). *See Ruckelshaus*, 467 U.S. at 1011 (trade secrets are property); *Cienega Gardens v. United States*, 331 F.3d 1319, 1329 (Fed. Cir. 2003) (option rights to prepay subsidized mortgage and exit affordable-housing program are property); *Casitas*

Mun. Water Dist. v. United States, 543 F.3d 1276, 1288–96 (Fed. Cir. 2008) (water capacity rights are property). Forced operations would prevent Petitioners from most efficiently and affordably managing the transmission and generation system.

2. Investment-Backed Expectations

"The regulatory regime in place at the time the claimant acquires the property at issue helps to shape the reasonableness of [investment-backed] expectations." *Palazzolo v. Rhode Island*, 533 U.S. 606, 633 (2001) (O'Connor, J., concurring). Where a change in regulation dramatically disrupts the economic basis for a property owner's choices, it constitutes unreasonable interference with reasonable investment-backed expectations. *See Petworth Holdings, LLC v. Bowser*, 3d 347, 356–58 (D.C. Cir. 2018). An explicit government guarantee forms the basis of a reasonable investment-backed expectation. *See Ruckelshaus*, 467 U.S. at 1011.

The Order disrupts Petitioners' reasonable investment-backed expectations on several fronts. DOE's use of Section 202(c) authority to address long-term predicted shortages or grid reliability problems is a substantial and novel change to prior uses of Section 202(c) emergency authority.[19] The Order fundamentally alters DOE's longstanding approach in a novel, untested way that could not be predicted from DOE's actions until recently, a decade after Craig Unit 1's 2025 retirement was announced. Petitioners could not have fairly anticipated DOE's novel approach to Section 202(c) when it engaged in business planning and made investment decisions; thus, the Order upsets Petitioners' reasonable expectations.

[19] *Rolsma* (2024) at 802–09, 839–46 (discussing paucity of involuntary Section 202(c) orders since WW2).

Moreover, diverting coal from Craig Unit 1 to comply with the Order depletes Craig Unit 2 and 3's fuel reserves and hinders Petitioners' right and ability to freely use those facilities consistent with their investment-backed expectations. The Order also upsets Petitioners' delicate contractual relationships. Even if Section 202(c) provides protection from enforcement action by Colorado under "environmental" laws,[20] disruption to these longstanding relationships disturbs Petitioners' ability to manage risk, engage in long-term planning, and maintain their reputations as reliable counterparties. Notwithstanding possible regulatory action, Petitioners have made commitments to stakeholders and planned their businesses around complying with existing environmental laws, which form part of their investment-backed expectations.

Finally, the electrical generation and transmission industry operates on a long time horizon. Craig Unit 1's closure was announced a decade ago, and numerous steps, such as deferring maintenance, reducing staffing, and redirecting capital expenditures, have been undertaken since. As is best practice, Petitioners engaged in extensive long-term planning with both government and private-sector partners, and Petitioners' plan to close Craig Unit 1 is part of a long-term plan to retire Unit 1 for economic reasons. Disruption of these long-term plans through a shorter-term Order upsets Petitioners' reasonable investment-backed expectations.

[20] Section 202(c)(3) does not define "environmental law" in this context and the scope of that term is untested.

3. Character of the Taking

The character of a governmental action is defined by "the purpose and importance of the public interest underlying [the] regulatory imposition, by obligating the court to inquire into the degree of harm created by the claimant's prohibited activity, its social value and location, and the ease with which any harm stemming from it could be prevented." *Maritrans, Inc. v. United States*, 342 F.3d 1344, 1356 (Fed. Cir. 2003) (internal quotation and citation omitted). "A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 U.S. at 124 (citations omitted).

The character of the Order's action further strengthens the case for a regulatory taking. As discussed in Section (I)(A), the Order effectively commandeers Craig Unit 1, its fuel, the potential dispatch of the nearby Axial Basin facility, and related infrastructure owned by Petitioners. The Order does not merely adjust the benefits and burdens of economic life, but rather directs operational control for a public reliability aim that could—and should—be solved through other means, and by other electrical utilities.

C. Just Compensation

The Takings Clause provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. Whether compensation is "just" is measured by relation "both to an owner whose property is taken and to the public that must pay the bill[.]" *United States v. Commodities Trading Corp.*, 339

U.S. 121, 123 (1950). "The owner's loss is measured by the extent to which governmental action has deprived him of an interest in property." *Wheeler v. City of Pleasant Grove*, 833 F.2d 267, 270 (11th Cir. 1987).

There is no established process by which Petitioners will obtain government compensation for losses relating to the Order. Section 202(c) and its implementing regulations, namely 10 C.F.R. 205.376, suggest recovery through FERC rate-making processes, but nowhere does the Order guarantee Petitioners' complete recovery.[21] As one example of the complexity of this undertaking, WAPA and the Bonneville Power Administration, as Federal Power Marketing Administrations located within WECC-NW, are exempt from most FERC jurisdiction.[22] It is not immediately clear how the FERC rate-making process could be used to secure cost recovery from utilities serving areas located within the scope of the emergency but over which FERC lacks jurisdiction.

Moreover, even if Petitioners can and do recover some costs through this process, it is still not *just compensation* within the meaning of the Takings Clause. The duty to pay compensation for a taking runs to the government—"a takings claim requires just compensation from the government, not from a private third party." *See*

[21] Additionally, the terms of the Order could have substantive impact on Tri-State's ability to make energy sales at market-based rates through authority granted to it by FERC. *See, e.g.*, *Tri-State Generation and Transmission Ass'n,* 170 FERC ¶ 61,220, at PP 1, 22 and ordering para. (A) (2020) (generally providing Tri-State with authorization to transact at market-based rates). The circumstances are analogous for Platte River. Platte River also makes energy sales at market rates, but, as a government utility exempt under FPA Section 201(f), Platte River does not need market-based rate authority from FERC.

[22] Stating that "[n]o provision in this subchapter shall apply to, or be deemed to include, the United States." 16 U.S.C. § 824(f) (2024).

Deutsche Bank Nat'l Trust Co. v. SFR Invests. Pool 1, LLC, Case No. 2:14-cv-001131-APG-VCF, 2016 WL 1248704, at *5 (D. Nev. Mar. 28, 2016); *see also Baker v. City of McKinney*, 608 F. Supp. 3d 457, 465–67 (E.D. Tex. 2022) (plaintiff was entitled to full compensation for a taking by police even though she obtained additional money from donations). This is particularly true where, as here, at least some of Petitioners' relief will come from Tri-State's members and Platte River's ratepayers, even if FERC orders some level of cost recovery. DOE cannot simply transfer the constitutional obligation to provide just compensation onto private parties—including, here, rural communities and the residents of four small Colorado municipalities—through regulatory mandates without satisfying its own Takings Clause obligations.

II. THE ORDER DISRUPTS PETITIONERS' RELIABILITY PLAN AND FAILS TO ACCOUNT FOR VIABLE ALTERNATIVES

Separate from whether DOE must compensate Petitioners for the impact of the Order on their property and operations, the Order suffers from statutory and constitutional frailties. While Petitioners share DOE's goal of ensuring that the Northwestern United States has reliable and affordable electricity, the Order misses the mark.

First, the Order violates Petitioners' constitutional due process rights to pre-deprivation notice and a hearing. While emergencies sometimes allow the government to provide only post-deprivation process, the government must do more than reference the word "emergency"—rather, it must show that the *kind* of emergency that requires such fast-moving action has occurred. The Order's asserted

emergency is no such emergency. And the Order disrupts a considered resource planning effort.

Second, the Order does not meet the requirements of Section 202(c). It does not consider reasonable alternatives as required by Section 202(c), including Petitioners' carefully calibrated reliability planning, using both thermal and renewable resources based on findings including from objective, industry-leading forecasting methods. *Third*, the Order is inconsistent with the FPA's objectives. The Order is, therefore, contrary to law and arbitrary and capricious.[23]

A more deliberative process would, on the whole, work better to address DOE's concerns about the reliability of the electrical grid in the northwestern United States, and, in particular, the Mountain West. Petitioners stand ready to work with DOE to make their service area as reliable as possible and best serve their members and customers, doing so in a manner that is economically efficient.

A. The Order Violates Petitioners' Constitutional Due Process Rights and Disrupts Carefully Considered Reliability Planning

The Fifth Amendment's Due Process Clause guarantees that no person shall be "deprived of life, liberty or property" by the federal government "without due

[23] As DOE is aware, Petitioners have already taken and will continue to take steps to comply with the Order. This includes incurring compensable costs and expenses. Although Petitioners take the position that the Order does not comply with the requirements of Section 202(c), Petitioners are nonetheless entitled to cost recovery under Section 202(c) and as a compensable taking even if the Order is determined to be unlawful. Petitioners note that Section 202(c) is an emergency provision, and, for that reason, recovery pursuant to its terms should not turn on an ultimate determination of the lawfulness of the Order. Further, the Order provided notice to all potential ratepayers that rights to recovery would accrue to Petitioners (and the other co-owners) beginning on December 30, 2025. To bar Petitioners from recovering these already-incurred costs would be inconsistent with Section 202(c)'s purpose to respond to emergency conditions. Petitioners' position is based on currently available facts and information. Petitioners reserve all rights.

process of law." U.S. Const. amend. V. At its core, due process requires notice and an opportunity to be heard before the government takes action affecting protected interests. *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 19 (1978). This principle applies across regulatory regimes where hearings are generally required before agencies impose obligations or alter rights. Under the FPA, most Commission (*i.e.*, FERC or DOE) actions—such as rate changes or interconnection orders—cannot take effect without a prior hearing. *See generally* 16 U.S.C. §§ 824a(b), 824a(e), 824a-1(a), 824a-3(f), 824a-4, 824b(a)(4), 824c(b), 824d, 824e, 824f, 824i(b), 824j, 824j-1, 824k, 824m, 824o, & 824p.

Section 202(c) orders are unusual in that they may be issued without any prior hearing, reflecting their purpose as an emergency tool meant to address fast-moving and unexpected situations. *Indus. Park Dev. Co. v. EPA*, 604 F. Supp. 1136, 1142 (E.D. Pa. 1985) ("[A]dministrative deprivation of [a] property interest violates the Constitution's due process guarantees except in very narrowly circumscribed emergency situations."). However, "[t]here is a relation between the kind of emergency and nature of the solution." *Pa. Gas & Water Co.*, 427 F.2d at 577. Where, as here, the declared emergency does not involve immediate and concrete concerns (potentially in 2029 if new generation is not built as planned), a hearing is certainly feasible, and, absent a hearing, Petitioners are deprived of their right to due process. *See Indus. Park Dev. Co.*, 604 F. Supp. at 1145 (holding that "[u]nilateral administrative action . . . should be saved for cases of extreme emergency"); *Miller*,

945 F.2d at 353 (emergency insufficient to avoid need for pre-deprivation hearing, but concluding that sufficient hearing had occurred).

The Order's emergency does not rest on an urgent and immediate need for additional generation to address a specific incident or event, such as unusually extreme weather or another plant's sudden unplanned outage. Rather, the emergency articulated by the Order is based on broader concerns about the sufficiency of generation capacity and reliability in the WECC Northwest assessment area over time and in the future. Because the Order does not demonstrate an immediate crisis, it cannot justify dispensing with the pre-deprivation hearing requirement. Formal notice to the co-owners, moreover, was lacking. The Order's imprecision on boundaries of the region at issue,[24] not only highlights the lack of immediate crisis, but also fails to give Petitioners proper notice of the precise contours of the emergency. Petitioners were, therefore, deprived of their constitutional right to notice and a hearing before the Order came into effect.

The effect of this deprivation is significant. Petitioners have carefully planned the retirement of the Craig facility—including Craig Units 2 and 3's reliance on

[24] The Order relies on NERC's 2024 LTRA, which discusses conditions throughout the sweeping and populous WECC Northwest assessment area—an area that includes "Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming and parts of California, Nebraska, Nevada, and South Dakota[.]" *See* N. Am. Elec. Reliability Corp., 2024 Long-Term Reliability Assessment, at 127 (corrected July 11, 2025), https://www.nerc.com/globalassets/our-work/assessments/2024-ltra_corrected_july_2025.pdf. However, NERC's more recent and more targeted 2025–2026 Winter Reliability Assessment from November 2025 shows that the new WECC-Rocky Mountain region—redrawn to better reflect local conditions than the vast and heterogeneous old WECC-Northwest region—has more than enough power to meet immediate winter needs. *See* N. Am. Elec. Reliability Corp., 2025 Winter Reliability Assessment (Nov. 2025), https://www.nerc.com/globalassets/our-work/assessments/nerc_wra_2025.pdf. Craig Unit 1 and most of Petitioners' service territory is located in the WECC-Rocky Mountain region.

stockpiled coal. Petitioners have also planned and invested to bring new generation online, such as the Axial Basin facility, to ensure reliability even as Craig Unit 1 is carefully retired. If the Order proceeds and Unit 1 runs, it deprives the other units of fuel. This undermines Petitioners' planning, imposes "reliability" costs on Tri-State's members and Platte River's ratepayers a second time, and disrupts the operation and economics of the other coal resources still operating. A more deliberative process with the required pre-deprivation hearing would have allowed Petitioners to work with DOE to address concerns about reliability and shape a more workable plan.

B. The Order Failed to Consider Reasonable Alternatives

DOE could have taken other steps to more effectively meet the energy emergency identified in the Order. Section 202(c) requires the Secretary to exercise "judgment" and select only those measures that "will *best* meet the emergency and serve the public interest." 16 U.S.C. § 824a(c)(1) (emphasis added). Implicit in this mandate is the recognition that alternatives be considered and ruled out. DOE should have conducted and disclosed an analysis showing why the path selected is the "best" course forward, particularly in light of the potential 2029 time-horizon of the asserted emergency. This is consistent with the emergency nature of the powers contained in Section 202(c), which should not be exercised where "alternatives offered a more confined solution" to the emergency at issue. *Pa. Gas & Water Co.* 427 F.2d at 577 (considering analogous powers under the Natural Gas Act); *see also Farmers Union Cent. Exchange, Inc. v. FERC*, 734 F.2d 1486, 1511 (D.C. Cir. 1984) ("It is well established that an agency has a duty to consider reasonable alternatives to its chosen policy, and to give a reasoned explanation for its rejection of such

alternatives.") (citation and footnote omitted). The Order reflects no consideration of alternatives, let alone a case for mandating Craig Unit 1 remain active over other options, and is thus contrary to law and arbitrary and capricious.

Compelling Craig Unit 1 to remain available to operate after its planned retirement date must be the "best" measure to address this long-term reliability concern across the region described in the Order. "[R]easonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions." *Michigan v. EPA*, 576 U.S. 743, 753 (2015). This weighing process requires engagement with the factual record, as reflected in DOE regulations, which require applicants to provide extensive information related to operations and alternative courses of action.[25] These requirements reflect the understanding that Section 202(c) should only be used where unit-specific alternatives have been considered, applied, and deemed inadequate based on the facts on the ground. The record in this proceeding reflects that neither these facts nor any reasonable alternatives were considered in connection with the Order.

DOE's need to consider alternatives, based on a clear factual record, is particularly important given Craig Unit 1's status. Craig Unit 1 is an older, uneconomic unit. Due to its long-planned retirement, Craig Unit 1 has experienced years of prudently deferred maintenance, and therefore faces particularly high costs to restore and maintain operations compared to possible alternatives.

[25] *See* 10 C.F.R. § 205.373. The specified information includes "conservation or load reduction actions," "efforts . . . to obtain additional power through voluntary means," and "[a] listing of proposed sources and amounts of power necessary from each source to alleviate the emergency and a listing of any other 'entities' that may be directly affected by the requested order." 10 C.F.R. § 205.373(g)–(i).

Further, the Order fails to consider how mandating Craig Unit 1's continued operation interferes with Petitioners' ability to invest in other generation capacity and therefore undermines the very ends that it purports to advance. For instance, the Axial Basin generating facility relies on the same transmission infrastructure as the Craig units. That infrastructure is already congested; if all three Craig units are operating, Craig Unit 1's continued operation could interfere with the ability of new alternatives like Axial Basin to provide economic power to the grid.

A lawful exercise of the emergency powers contained in Section 202(c) required consideration of reasonable regulatory alternatives. For example, the Order does not explain why DOE or FERC could not proceed through the rulemaking process pursuant to section 403 of the Department of Energy Organization Act, 42 U.S.C. § 7173, to devise a plan to ensure reliability through a more fulsome, consultative process. Proceeding with a notice of proposed rulemaking for consideration and final action would have minimal short-term risks and is appropriate to the timeline of the described emergency, which, by DOE's supporting evidence, is predicted to occur no earlier than "in Summer 2029 onward" (because "the Northwest shows a shortfall of existing-certain and net firm transfers, meaning that imports may be necessary if new resources were to be significantly delayed").[26] Similarly, DOE could have evaluated whether it had authority to take proactive action to insure that "new resources" in the region are not "significantly delayed."

[26] N. Am. Elec. Reliability Corp., 2024 Long-Term Reliability Assessment, at 128 (corrected July, 11 2025), https://www.nerc.com/globalassets/our-work/assessments/2024-ltra_corrected_july_2025.pdf.

In the absence of such consideration, and the disclosure of the relevant rationale, Petitioners and the public "cannot weigh the merits of an agency decision nor compare it to other alternative actions[.]" *Rocky Mountain Wild v. Bernhardt*, 506 F. Supp. 3d 1169, 1187 (D. Utah 2020). The Order does not discuss why Craig Unit 1's continued operation was selected as the "best" solution to the described conditions, or if alternatives were considered, what those alternatives were, and why any considered alternatives were discarded. Thus, it was contrary to law and an arbitrary and capricious exercise of agency authority.

C. The Order is Inconsistent with the FPA's Statutory Objectives

Courts reject agency action as arbitrary and capricious if it is "inconsistent with the statutory mandate" or "frustrate[s] the policy that Congress sought to implement." *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981). The FPA was passed to advance a variety of policy goals, including protecting consumers from "excessive rates and charges," *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016) (citation omitted)); "maintaining competition to the maximum extent possible[,]" *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973); and encouraging the "orderly development of plentiful supplies of electricity . . . at reasonable prices." *NAACP v. FPC*, 425 U.S. 662, 670 (1976).[27]

[27] "Recognizing the careful balance that the FPA strikes between federal and state regulation" FERC recently found that "states retain exclusive authority over . . . the generation mix." *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61217, at P165 (Dec. 18, 2025). Long-term economic and planning decisions regarding Tri-State's resource mix had been approved by the State of Colorado through the 2020 and 2023 Energy Resource Plans. This jurisdictional division of responsibility and federal respect for state policymaking is also a policy of the FPA. *See Sierra Club v. FERC*, 145 F.4th 74, 81 (D.C. Cir. 2024) (respecting the role of state regulators); *NextEra Energy Resources, LLC v. FERC*, 118 F.4th 361, 365 (D.C. Cir. 2024) ("[FERC] may regulate the transmission, but not the generation, of electricity[.]").

The Order, by compelling an uneconomic unit to remain operational on the eve of its retirement, upends Petitioners' ability to plan their systems in an orderly fashion and to act with confidence in a competitive marketplace. Because the Order is at odds with the statutory objectives of the FPA, it is arbitrary and capricious.

CONCLUSION

Tri-State is a not-for-profit, member-owned cooperative and Platte River is a not-for-profit municipally owned joint action agency. Both utilities aim to work with government at all levels to best serve the communities to which they provide reliable and affordable energy. In that light, Tri-State has taken the steps necessary to plan for a reliable system that would have a planning reserve margin of at least 22% even with the retirement of Craig Unit 1, for which its Utility Members have paid. Platte River has likewise proactively developed resources that more than replace Craig Unit 1's energy and capacity to reliably serve its owner communities and meet the planning reserve margins SPP requires for its expanded western footprint (19% for summer; 40% for winter), and for which its owner communities have already paid.

The Order effects an uncompensated taking of Petitioners' property, denies them due process, and fails to meet Section 202(c)'s statutory requirement that DOE's chosen policy rationally "best address[es]" the stated emergency. Requiring Petitioners—not all of whom are located in the WECC Northwest region described by the Order—to suffer additional costs *and* uncertainty because of potential conditions created by utilities outside Petitioners' service area, is fundamentally unfair and harms affordability. Petitioners urge DOE to reconsider the Order.

Respectfully submitted,

/s/ Jennifer Quinn-Barabanov

Jennifer Quinn-Barabanov
Michelle S. Kallen
David Marcou
Alexander Langer
Micaela Hyams
STEPTOE LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
Tel: (202) 429-3000
Fax: (202) 429-3902
Attorneys for Tri-State Generation and Transmission Association, Inc.

/s/ Sarah Leonard

Jennifer Hammitt,
Director of Legal Affairs
Sarah Leonard,
General Counsel
2000 E. Horsetooth Road
Fort Collins, CO 80526
Tel: (970) 226-4000
Attorneys for Platte River Power Authority

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties below. Dated at Washington, D.C., this 29th day of January 2026.

1. Salt River Project
    a. Michael.OConnor@srpnet.com
2. PacifiCorp
    a. marie.durrant@pacificorp.com
3. Xcel Energy
    a. mlarson@wbklaw.com
    b. Matt.b.harris@xcelenergy.com
    c. Tyler.n.smith@xcelenergy.com
4. Western Area Power Administration (WAPA)
    a. SOCChiefComplianceOffice @wapa.gov
    b. Klinefelter@wapa.gov
5. Rocky Mountain Region and Southwest Power Pool (SPP) West
    a. psuskie@spp.org
    b. tkentner@spp.org
    c. cnolen@spp.org
6. Intervenors - Public Interest Organizations:
    a. rrigonan@earthjustice.org
    b. mlenoff@earthjustice.org
    c. lcoleman@earthjustice.org
    d. mhiatt@earthjustice.org
    e. matt.gerhart@sierraclub.org
    f. greg.wannier@sierraclub.org
    g. tcarbonell@edf.org
    h. tekelly@edf.org
7. Intervenors - State of Colorado
    a. carrie.noteboom@coag.gov
    b. gabby.falcon@coag.gov
    c. robyn.wille@coag.gov
    d. jessica.lowrey@coag.gov
    e. sarah.quigley@coag.gov
    f. Phalen.Kohlruss@coag.gov
    g. Patrick.Witterschein@ coag.gov

/s/ Micaela Hyams
Micaela Hyams
Steptoe LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036