

**STATEMENT OF
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U.S. DEPARTMENT OF ENERGY
BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Whitfield and Ranking Member Rush, thank you for the opportunity to appear before you today to discuss the Department's emergency authority under section 202(c) of the Federal Power Act and the proposed legislation intended to address the use of this authority and potential conflicts with other Federal, state and local laws and regulations.

FEDERAL POWER ACT 202(c) AUTHORITY

Under section 202(c) of the Federal Power Act (FPA), as currently enacted, upon determination that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, the Secretary of Energy may require by order temporary connection of facilities and such generation, delivery, interchange, or transmission of electricity as will best meet the emergency and serve the public interest.¹ The Secretary, to ensure that the lights stay on or are restored more quickly in cases of emergency, may order a generator to operate or a grid connection to be made when, for example, outages occur due to weather events or equipment failures, or when there is or may be insufficient electricity supply available that has the potential to cause a blackout.

The Department views the issuance of 202(c) orders as a measure of last resort to be used only during or in the face of imminent emergencies. Historically, such orders have been issued sparingly by the Secretary who exercised emergency authority for only six events since DOE

¹ 16 U.S.C. § 824a(c).

was formed in 1978.² Past 202(c) orders were issued to address circumstances such as inadequate supply of electricity during the 1999-2001 California electricity crisis, in response to the 2003 blackout, to address reliability issues resulting from the devastation caused by hurricanes Rita and Katrina in 2005 and Ike in 2008, and to ensure compliance with reliability standards to prevent potential blackouts, in the case of the Potomac River Generating Station.

The Department is aware of only one instance where there was a potential conflict between a request for an emergency order issued under FPA section 202(c) and environmental statutes: the 2005 Potomac River Generating Station Order. On August 21, 2005, Mirant Corporation, now GenOn Energy, Inc., ceased operation of the Potomac River Generating Station (Plant) in response to a letter from the Virginia Department of Environmental Quality requesting that Mirant undertake such action as necessary to ensure protection of human health and the environment in the area surrounding the Plant. On August 24, 2005, in response to Mirant's decision, the District of Columbia Public Service Commission requested that the Secretary of Energy issue a section 202(c) emergency order requiring the operation of the Plant in order to ensure compliance with reliability standards for the central D.C. area. After due consideration of the emergency petition and investigation of the effects of the Plant shutdown on reliability in the central D.C. area, the Secretary made a determination that without the operation of the Plant there was a reasonable possibility an outage would occur that would cause a blackout in the central D.C. area. This process took several months and included close consultation and coordination with the U.S. Environmental Protection Agency (EPA), and the Virginia Department of Environmental Quality.

Therefore, on December 20, 2005, a section 202(c) emergency order was issued requiring Mirant to operate the Plant in a manner to reduce the risk of a blackout but not at the price of unnecessary exceedances of air quality standards. The order was extended several times pending efforts to address the reliability issue in the central D.C. area and completion by DOE of a special environmental impact statement. On June 6, 2006, EPA issued an Administrative Consent Order (ACO) to Mirant regarding the operation of the generating station. The ACO

² FPA § 202(c) orders issued by the Department of Energy are available on the DOE website: <http://energy.gov/oe/does-use-federal-power-act-emergency-authority>. We are aware as well that, prior to 1978, the Federal Power Commission, DOE's predecessor, also exercised this authority on occasion.

provided that during a situation in which the station was required to run due to outages of other facilities, Mirant would operate the station to produce the amount of power needed to meet the load demand in the central D.C. area, as specified by PJM and in accordance with the DOE Order. The ACO also provided that during such operations, Mirant would take all reasonable steps to limit the emissions of PM-10, NO_x and SO₂ from each boiler, including operating only the number of units necessary to meet PJM's directive and optimizing its use of Trona injection to minimize SO₂ emissions. In a June 2, 2006, letter order to Mirant, DOE directed Mirant to operate the Plant in accordance with the ACO, and on January 31, 2007, DOE's 202(c) emergency order was conformed to align the terms of the order with the ACO. That order expired July 1, 2007, as several new transmission lines were installed and energized resolving the reliability issue. This demonstrates that DOE and EPA worked closely with each other to achieve both electricity reliability and protection of the environment.

Section 202(c) orders are not intended to provide a long-term alternative to environmental compliance. Pursuant to applicable DOE regulations, orders issued under FPA section 202(c) are available only under limited emergency situations and are temporary solutions to imminent reliability threats.³ Actions issued under this authority are envisioned as meeting a specific situation, such as those for which orders have been issued historically.⁴ Potential reliability issues must be verified by DOE before an order is issued, with appropriate conditions. While extended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities" may also constitute an "emergency" under this authority, in such cases, the affected entity is expected to take the necessary steps to resolve the problem to avoid the need for a continuing emergency order. The duration of issued orders range from a few days to a few months, generally. On some occasions, when necessary, orders may be extended when the emergency is not yet resolved at the expiration of the previous order.⁵ As the Mirant example

³ DOE's Federal Power Act authority under section 202(c) is implemented in accordance with its regulation at 10 C.F.R. §§ 205.370-379 (1981). Under these regulations, an "emergency" is defined as "an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power." 10 C.F.R. § 205.371. Emergencies may, for example, arise from natural conditions (e.g., weather) or "unforeseen occurrences not reasonably within the power of the affected entity to prevent." *Id.* Further, sudden increases in consumer demand, inadequate generation supply, or regulatory action prohibiting the use of certain facilities may also result in emergencies.

⁴ *Id.*

⁵ *Id.*

demonstrates, entities subject to a 202(c) emergency order will be required to operate in compliance with all other applicable laws to the extent possible, and after the reliability threat has been eliminated, the affected generator is still subject to all relevant environmental statutes.

The Administration works to ensure that current statutory authorities work together, especially in the context of DOE's 202(c) authority. Under circumstances of potential statutory conflicts, it is the responsibility of the executive branch to administer all statutes in a manner that carefully balances any conflicts that may arise. As demonstrated by the Potomac River Generating Station Order, DOE recognizes the importance of working closely with environmental authorities to achieve the necessary balance between meeting the electricity emergency and achieving environmental protection. With the Order, DOE, in consultation with EPA and the Virginia Department of Environmental Quality, crafted the terms of the final 202(c) order which maximized environmental compliance while achieving the necessary reliability standards. This approach is a valuable example and will be a model to follow should similar situations arise in the future.

PROPOSED LEGISLATION

Regarding the proposed changes to section 202(c) of the Federal Power Act, at this time, the Administration has not taken a position on HR 4273. However, as written, we do have some concerns. Electricity generation owners must start planning and working with their grid operators, and if need be EPA, early on to identify and resolve any reliability issue arising in connection with EPA rules. DOE anticipates most if not all generators are engaged with the regional electric reliability organizations to anticipate and address reliability issues that may emerge. As proposed, the amendment to FPA section 202(c) could potentially create a disincentive for some electricity generators to utilize the options for compliance that EPA has provided. Again, DOE's 202(c) emergency authority is one of last resort and should not be viewed as an alternative to working with EPA on achieving environmental compliance and, if need be, with grid operators on any potential reliability issues.

CONCLUSION

The Administration works to ensure that statutory authorities to work together to enable both the reliable operation of the electricity system and environmental protection. That said, the availability of the section 202(c) emergency authority is one of last resort and will be considered only when necessary and not as an alternative to environmental compliance, even on a temporary basis. DOE will continue to work through potential conflicts to ensure reliability is met and the public interest is served when exercising its 202(c) authority.

This concludes my statement, Mr. Chairman. I look forward to answering any questions that you and your colleagues may have. Thank you.