

**UNITED STATES OF AMERICA
BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY**

Order No. 202-25-9

**REQUEST FOR INTERVENTION AND STAY
BY MICHIGAN ATTORNEY GENERAL DANA NESSEL**

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Consistent with 18 C.F.R. § 385.212, Michigan Attorney General Dana Nessel, on behalf of the people of the State of Michigan, requests that the Department of Energy (Department or DOE) immediately stay the effectiveness of Order No. 202-25-9 (Nov. 18, 2025).

Yesterday, the Department issued Order No. 202-25-9 (Campbell III Order), the third in a series of orders, which commanded the continued operation and dispatch of the J.H. Campbell Generating Plant (Campbell) over the period from November 19, 2025, until February 17, 2026. The Campbell III Order is unlawful, and the Michigan Office of the Attorney General will seek timely rehearing of the Campbell III Order as it has done for Orders Nos. 202-25-3 and 202-25-7 (Campbell I and Campbell II, or the Campbell Orders). The Michigan Office of the Attorney General is moving now to stay the Campbell III Order, however, because the Order is based on a patent error of fact that the Department must evaluate immediately. While the Department evaluates the erroneous basis for its Order, the Order should be stayed.

I. MOTION TO INTERVENE

The Michigan Attorney General,¹ on behalf of the people of the State of Michigan, moves to intervene in this proceeding and thereby to become a party for purposes of Section 313*l* of the Act, 16 U.S.C. § 825*l*. As with respect to the two prior

¹ See MCL 14.28 (“The attorney general . . . may, when in [her] own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.”). See also *In re Certified Question*, 465 Mich 537, 543-545; 638 NW2d 409 (2002); *Gremore v Peoples Community Hospital Authority*, 8 Mich App 56; 153 NW2d 377 (1967); *People v O'Hara*, 278 Mich 281; 270 NW2d 298 (1936).

Campbell Orders, the People of the State of Michigan have an interest in and are aggrieved by the Campbell III Order in several ways. First, households and businesses in Michigan and the State itself will pay higher electricity bills as a result of the Order. The retirement of J.H. Campbell and its replacement with more cost-effective resources were elements of a careful plan expected to save Michigan ratepayers nearly \$600 million.² By ordering the continued operation of J.H. Campbell, the Order ensures that Michigan ratepayers will pay higher costs. Although the precise amount of costs are not yet known, Consumers Energy, the operator and primary owner of the Campbell Plant, noted a “net financial impact” of \$80 million for the Campbell I Order and the period of the Campbell II Order through September 30, 2025.³

Second, the People of the State of Michigan will suffer environmental harms as a result of the Order. J.H. Campbell is a significant source of particulate matter, nitrogen oxides, sulfur oxides, and carbon dioxide,⁴ among other pollutants. By continuing to prolong the operations of J.H. Campbell, the Order will increase the amount of pollution emitted into the air and water in the State of Michigan, causing harms to the public health and welfare.

Third, the retirement of J.H. Campbell on May 31, 2025, was a critical element of a settlement agreement in Michigan Public Service Commission Case (MPSC) No.

² See Michigan Public Service Commission Case No. U-21090-0867, Reply Brief of Consumers at 1 – 2, available at <https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y0000032ZSXAA2>.

³ *Consumers Energy Company Form 10-Q For the Quarterly Period Ended September 30, 2025*, accessible at <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000201533/676cb715-625b-4823-9435-1f928f1880bd.pdf>.

⁴ See *In the Matter of the Application of Consumers Energy Co. for Approval of Its Integrated Res. Plan Pursuant to Mcl 460.6t & for Other Relief.*, No. U-21090, 2022 WL 2915368, at *73 (June 23, 2022).

U-21090, to which the Michigan Attorney General was a party. Because the Order continues to deprive the Michigan Attorney General of the benefit of her bargain under the settlement agreement, the Michigan Attorney General will suffer a discrete and separate harm as a result of the Order.

Finally, state authority over generation resources has been a bedrock principle of the Federal Power Act for nearly a century. Federal intrusion in that traditional sphere of state control is permitted only consistent with specific procedures not followed here. Michigan's sovereign interest in seeing its state laws followed and not unlawfully disturbed further warrants the Attorney General's intervention.⁵

II. MOTION FOR A STAY

A patent error of fact, obvious on the face of the Campbell III Order, undermines the basis for the Order. The Department should stay the effectiveness of the Order while it evaluates its error.

DOE, like “[e]very tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately to modify its judgment, decree, or error.” *Gorbach v. Reno*, 219 F.3d 1087, 1102 (9th Cir. 2000) (en banc). In its regulations applicable to Section 202(c) orders, DOE has “retain[ed] the right to cancel, modify or otherwise change any order, with or without notice, hearing, or

⁵ See *Alaska v. U.S. Dep't of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) (“It is common ground that States have an interest, as sovereigns, in exercising ‘the power to create and enforce a legal code.’”) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982)).

report.” 10 C.F.R. § 205.370. DOE should exercise that right to “otherwise change” its orders to immediately stay the Campbell III Order.⁶

Section 202(c) permits DOE to renew orders for an additional 90-day period only as “necessary to meet the emergency.” 16 U.S.C. § 824a(c)(4)(A). The only portion of the Campbell III Order that speaks to grid conditions over the period of the Order (i.e., November 2025 to February 2026) states as follows:

While the 2025 – 2026 NERC Winter Reliability Assessment has not yet been released as of the date of this Order, two recent winter studies (2024 – 2025 NERC Winter Reliability Assessment and the 2023 – 2024 NERC Winter Reliability Assessment) have assessed the MISO assessment area as an elevated risk, with the “potential for insufficient operating reserves in above-normal conditions.” Specifically, the 2024 – 2025 Winter Reliability Assessment noted that “[ge]nerating capacity is 10 GW lower (-6.8%) compared to the prior winter as generators have retired, withdrawn from MISO’s capacity market, or received lower winter accredited capacity.”

Order No. 202-25-9 at 4 (footnotes omitted).

Even if it were accurate, this statement would fall short of establishing an emergency over the period in question.⁷ But in fact, this statement is false. The 2025 – 2026 NERC Winter Reliability Assessment *had* been released prior to the issuance of the November 18 Order, and it completely negates the assertions made

⁶ An agency must generally follow the same procedures to stay an already-taken action as it was required to follow to take the action. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015); *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017). But 202(c) allows the Department to act “with or without notice.” 16 U.S.C. § 824a(c). Thus, the Department may issue a stay just as it issued the Order—without notice. The general rule that an agency may stay its rules or orders subsequent to their effective dates only via notice and comment rulemaking is inapplicable here.

⁷ *See* Michigan AG Request for Rehearing of DOE Order 202-25-7 (Sept. 11, 2025) (detailing unlawfulness of Campbell II emergency finding); *id.* at 67-68 (discussing errors in DOE’s prior reliance on NERC’s Summer Reliability Assessments); Michigan AG Request for Rehearing of DOE Order 202-25-3 (June 18, 2025) (detailing unlawfulness of Campbell I emergency finding).

in the November 18 Order.⁸ The 2025–2026 NERC Winter Reliability Assessment, attached to this motion, found multiple regions of the United States to be at “elevated risk,” but MISO was not one of them.⁹ Instead, NERC assessed MISO to be at “normal risk,” the lowest risk designation it assigns.¹⁰ And, it found that anticipated and projected resources exceed the reference margin level.¹¹

The Department should have accounted for the 2025–2026 Winter Reliability Assessment in reaching its determination that an “emergency” exists in MISO during the period of the Order. The Order erroneously asserted that the Assessment had “not yet been released as of the date of this Order.”¹² But the Order was signed at 5:58 p.m. on November 18, 2025.¹³ The Winter Reliability Assessment was made public no later than 2:02 p.m.¹⁴ The Department should now correct its error and consider the 2025–2026 Assessment.

Because that assessment directly undercuts the basis for the Order—i.e., by establishing that there is *not* an “elevated risk” to reliability in MISO during the period of the Order—the Department should immediately stay the effectiveness of the Order while it considers how to address its error.

⁸ N. America Electric Reliability Corporation, 2025-2026 Winter Reliability Assessment (November 2025), https://www.nerc.com/globalassets/our-work/assessments/nerc_wra_2025.pdf, Attachment A.

⁹ *See id.* at 17.

¹⁰ *See id.* at 6 fig.1.

¹¹ *See id.* at 42 fig. 4. The reference margin level varies by region; it is used by system planners to quantify the amount of reserve capacity in the system above the forecasted peak demand that is needed to ensure sufficient supply to meet peak loads.” *Id.* at 41. MISO’s reference margin level is substantially higher than that of any other region in North America. *See id.* at 42.

¹² Campbell III at 4.

¹³ *Id.* at 9.

¹⁴ *See* NERC, Announcement | NERC 2025-2026 Winter Reliability Assessment | Rising Demand, Evolving Resources Continue to Challenge Winter Grid Reliability, Email from NERC Communications Announcements to undisclosed recipient list (Nov. 18, 2025, 2:02 p.m.), Attachment B.

The other factors governing DOE’s decision to grant a stay point uniformly in Michigan’s favor.¹⁵

As a result of its continued operation, the J.H. Campbell plant is causing, and will continue to cause, increased air pollution, irreparably harming the People of Michigan. To produce electricity, J.H. Campbell combusts coal, which results in the emission of tons of SO₂, NO_x, and PM 2.5—all air pollutants harmful to human health.¹⁶ As a result of the Campbell III Order, J.H. Campbell will continue operations; absent the Order, it would be shuttered and would not emit any harmful pollutants. The generation resources that would make up for J.H. Campbell’s absence, by contrast, are all but certain to be cleaner than J.H. Campbell. Accordingly, the effect of the Order is to significantly pollute Michigan’s air.

The air pollution emitted by the Campbell Plant is causing, and will continue to cause, harms to public health in Michigan. According to the U.S. EPA’s COBRA tool, the harms from a year of J.H. Campbell’s continued operation include 27 to 36 excess deaths—8.1 to 13 in Michigan alone—as well as thousands of lost school and work days.¹⁷ As a rough approximation, the effects from continued use of the plant for the three-month period of the Order would be one quarter the effects of a year-long closure—i.e., increased asthma symptoms for thousands of Michigan residents, hundreds of lost school days and work days, and 2-3 Michiganders’ deaths.¹⁸ Such

¹⁵ See *Ohio v. EPA*, 603 U.S. 279, 291 (2024); *Nken v. Holder*, 556 U.S. 418, 434, 436 (2010).

¹⁶ See *id.*

¹⁷ See Michigan AG Request for Rehearing of DOE Order 202-25-7 (Sept. 11, 2025), Jester Affidavit, Attachment JJ, at ¶¶ 15-16. In total, the COBRA tool estimates that the total health effects are the equivalent of \$420M to \$700M in 2023 dollars. For Michigan alone, the COBRA model estimates effects that are the equivalent of \$130M to \$200M in harms. *Id.*

¹⁸ *Id.* at ¶ 19.

environmental harms, “by [their] nature, can seldom be adequately remedied by money damages.” *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545 (1987).

These harms are “actual,” “certain,” “imminent,” and “beyond remediation.” *See Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015). A stay of the Campbell III Order is necessary to prevent these harms.

No party would be harmed by a stay. A stay of the Campbell III Order would not harm electricity consumers because the lack of an actual emergency means that a stay would not disrupt the provision of electricity. Nor would a stay harm Consumers Energy, which, as noted above, is incurring millions of dollars in costs from the compelled operation of the Campbell Plant.

Because the Campbell III Order remedies no genuine “emergency,” it does not serve any public interest. Rather, the public interest would be served by a stay. *See League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (noting “there is a substantial public interest ‘in having governmental agencies abide by the federal ‘laws that govern their existence and operations’”) (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). A stay would also serve the public interest by protecting Michigan’s people (and the people of neighboring states) from the harm that increased air and water pollution from the Campbell Plant is causing and will continue to cause. Finally, a stay is in the public interest because it would prevent the Campbell III Order from frustrating the settlement agreement in Michigan Public Service Commission Case (MPSC) No. U-21090, to which the Michigan Attorney General, representing the People of Michigan, was a party.

III. CONCLUSION

For the foregoing reasons, the Michigan Attorney General's request for intervention and a stay should be granted.

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