

Nos. 26-3106 & 26-3179

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

EAST KENTUCKY POWER COOPERATIVE, INC. (26-3106);
OFFICE OF THE ATTORNEY GENERAL, KY (26-3179)

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent,

PJM INTERCONNECTION, L.L.C.;
CONSTELLATION ENERGY GENERATION, LLC;

Intervenors.

On Petitions for Review from the
Federal Energy Regulatory Commission

**JOINT PROOF BRIEF OF INTERVENORS
PJM INTERCONNECTION, L.L.C., AND CONSTELLATION ENERGY
GENERATION, LLC, FOR RESPONDENT**

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October 19, 2026

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Sixth Circuit Case Number: 26-3106 (consol. with 26-3179)

Case Name: East Kentucky Power Cooperative, Inc. v. FERC

Name of Counsel: Andrew T. Swers and Zachary C. Schauf

Pursuant to Rule 26.1(a) of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of the United States Court of Appeals for the Sixth Circuit, PJM Interconnection, L.L.C., and Constellation Energy Generation, LLC, make the following disclosures:

A. PJM Interconnection, L.L.C.

PJM Interconnection, L.L.C. (“PJM”) is a regional transmission organization (“RTO”) for all or portions of Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. PJM is authorized by Respondent Federal Energy Regulatory Commission (“FERC” or “Commission”) to administer an Open Access Transmission Tariff (“Tariff”), provide transmission service under the Tariff on the electric transmission facilities under PJM’s control, operate an energy and other markets, and otherwise conduct the day-to-day operations of the bulk power system of a multi-state electric control area. PJM was approved by FERC first as an independent system operator and then as a regional transmission organization. *See Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997),

reh'g denied, 92 FERC ¶ 61,282 (2000), *modified sub nom. Atl. City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

PJM has no parent companies. Under Delaware law, the members of a limited liability company have an “interest” in the limited liability company. *See* Del. Code Ann. tit. 6, § 18-701. PJM members do not purchase their interests or otherwise provide capital to obtain their interests. Rather, the PJM members’ interests are determined pursuant to a formula that considers various attributes of the member, and the interests are used only for the limited purposes of: (i) determining the amount of working capital contribution for which a member may be responsible in the event financing cannot be obtained;¹ and (ii) dividing assets in the event of liquidation. PJM is not operated to produce a profit, has never made any distributions to members, and does not intend to do so (absent dissolution). In addition, “interest” as defined above does not enter into governance of PJM and there are no individual entities that have a 10% or greater voting interest in the conduct of any PJM affairs.

¹ Under the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., the amount of capital contributions received from all PJM members combined is capped at \$5,200,000. PJM generally finances its working capital requirements.

B. Constellation Energy Generation, LLC

Constellation Energy Generation, LLC (“Constellation”) is a competitive power generator that owns generating facilities throughout the United States, including the Eddystone Generating Station. Constellation is a direct, wholly owned subsidiary of Constellation Energy Corporation. Constellation Energy Corporation is a publicly traded corporation (NASDAQ: CEG). Constellation Energy Corporation has no parent company. No other entity owns more than 10% of the common shares of Constellation Energy Corporation.

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GLOSSARY OF ABBREVIATIONS AND ACRONYMS

Allocation Order	<i>PJM Interconnection, L.L.C.</i> , 193 FERC ¶ 61,192 (2025), R. 27, JA ____ - ____, on review in these cases
Allocation Rehearing Order	<i>PJM Interconnection, L.L.C.</i> , 195 FERC ¶ 61,002 (2026), R. 34, JA ____ - ____, on review in these cases
August 2025 Eddystone Order	DOE Order No. 202-25-8 (Aug. 28, 2025)
Campbell Plant	J.H. Campbell Generating Plant
Constellation	Intervenor Constellation Energy Generation, LLC
Cooperative	Petitioner East Kentucky Power Cooperative, Inc.
Cooperative Br.	Brief of Petitioner Cooperative
DOE	Department of Energy
Eddystone	Eddystone Units 3 and 4
February 2026 Eddystone Order	DOE Order No. 202-26-17 (Feb. 23, 2026)
FERC or Commission	Respondent Federal Energy Regulatory Commission
FERC Br.	Brief of Respondent FERC
FPA	Federal Power Act
Interim Order	<i>PJM Interconnection, L.L.C.</i> , 192 FERC ¶ 61,159 (2025), JA ____ - ____
Intervenors	PJM and Constellation
Kentucky	Petitioner Attorney General of the Commonwealth of Kentucky
Kentucky Br.	Brief of Petitioner Kentucky

May 2025 Eddystone Order	DOE Order No. 202-25-4 (May 30, 2025)
MISO	Midcontinent Independent System Operator, Inc.
November 2025 Eddystone Order	DOE Order No. 202-25-10 (Nov. 25, 2025)
P	Paragraph in a FERC order
Petitioners	Collectively, the Cooperative and Kentucky
PJM	Intervenor PJM Interconnection, L.L.C.
PJM RAA	PJM Reliability Assurance Agreement Among Load Serving Entities
PJM Transmittal Ltr.	<i>PJM Interconnection, L.L.C.</i> , ER26-39-000, PJM Transmittal Ltr. (Oct. 6, 2025), R. 1, JA____ - ____
RTO	Regional Transmission Organization
Tariff	PJM Open Access Transmission Tariff

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Intervenors respectfully submit that oral argument will aid in the Court's decisional process. The case presents important issues with regard to the allocation of costs for the operation of power plants as ordered by the Department of Energy that affect the electricity market in multiple States. Oral argument is likely to aid the Court's decisional process by providing an opportunity for the Court to ask questions of counsel and to provide a more fulsome explanation of the issues.

INTRODUCTION

When the Department of Energy (“DOE”) issues an emergency order under Section 202(c) of the Federal Power Act (“FPA”) and a utility seeks to allocate the costs of compliance, the Federal Energy Regulatory Commission (“FERC” or “Commission”) has one important job. It must confirm that the method for allocating costs is reasonable and yields costs that are roughly commensurate with benefits. FERC did that job here. It reviewed the general framework that PJM Interconnection, L.L.C. (“PJM”) adopted for allocating the costs of complying with Section 202(c) orders identifying resource adequacy problems across the PJM Region. And FERC concluded that PJM had reasonably decided that regionwide orders should yield regionwide cost allocation.

FERC’s conclusion is as sensible as it sounds. As the regional grid operator for 13 states and the District of Columbia, PJM directs power to flow hundreds of miles when needed—from Pennsylvania to Kentucky, or from Illinois to Virginia. This “power pool” provides wide-ranging benefits, including by allowing load-serving entities (like local power companies) to share power reserves and avoid blackouts at less cost than any one utility could do by itself. By the same token, customers across the PJM Region enjoy the incremental resource adequacy contributions of every power plant, virtually wherever located. During the hottest hour of the hottest day of the year, or during a severe winter storm, customers may

depend on power plants dozens or hundreds of miles away to keep the lights on. So when DOE finds under Section 202(c) that an emergency exists across PJM's entire region, it can alleviate that emergency across PJM's footprint by retaining generators like Eddystone Units 3 and 4 ("Eddystone").

It was thus reasonable for FERC to find that all of PJM's customers should bear the costs of those system-wide benefits, in proportion to their contribution to PJM's total resource adequacy needs—as FERC has repeatedly concluded. These are foundational principles of cost allocation, affirmed by a mountain of judicial precedent. *E.g., Paragould Light & Water Comm'n v. FERC*, 144 F.4th 287, 294-95 (D.C. Cir. 2025). And FERC receives "great deference" on arbitrary-and-capricious review, especially in "technical area[s] like electricity rate design." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 292 (2016) (citation omitted).

Trying to dress up their arbitrary-and-capricious challenge in statutory garb, Petitioners incorrectly claim that FERC abdicated its duty under the FPA and treated DOE's determination as conclusive. FERC, however, did not do that. It followed DOE's determination on the issue that Congress by statute vested in DOE: the nature of the emergency and its location. FERC then exercised its independent judgment on the question Congress had directed FERC to resolve: whether PJM's cost-allocation approach was reasonable, given those DOE findings. In so doing, FERC respected both Section 202(c) and Section 205 of the FPA. And nothing in either

provision dictates the alternative that Petitioners press—that PJM must substitute its own analysis of where the benefits of the retained plants *really flow* without regard to the DOE-identified emergency.

Petitioners’ arbitrary-and-capricious argument also fails on its own terms. They would prefer a system under which load-serving entities with net surplus capacity pay less for plants retained based on Section 202(c) orders addressing regionwide emergencies. But even if this policy preference had merit (and it does not), this preference is irrelevant. Under Section 205, FERC did not need to determine the best possible rate, but merely whether a rate falls in the “zone of reasonableness”—which PJM’s proposal did. *See Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1115 (6th Cir. 2025) (citation omitted). Even as a policy matter, moreover, Petitioners’ alternative fails. Everyone on PJM’s grid benefits from regionwide resource adequacy contributions, as FERC explained, regardless of whether a load-serving entity has a net surplus of capacity.

The Court should deny the petitions for review and affirm FERC’s order.

STATEMENT OF THE CASE

I. PJM Is a Regional Grid Operator That Procures Capacity on a Regional Basis for Regional Benefit

PJM is the FERC-approved regional transmission organization that operates the grid for 13 states, the District of Columbia, and their 67 million customers. FERC, *Energy Primer, A Handbook for Energy Market Basics*, 83 (Jan. 17, 2024), <https://www.ferc.gov/media/energy-primer-handbook-energy-market-basics>.¹ PJM centrally dispatches generation and coordinates movement of wholesale electricity across its footprint through its markets for energy (real-time and day-ahead), capacity, and ancillary services. *Id.*

As the regional grid operator and reliability coordinator, PJM pools electricity across its multi-state footprint and dispatches generation to balance near-instantaneous fluctuations in supply and demand. A physical reality of the electric grid is that “any electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce,” *New York v. FERC*, 535 U.S. 1, 7 (2002), and that “the various sources of electricity cannot be differentiated once [the electricity] enters the PJM grid,” *Retail Energy Advancement League v. Brown*, 175 F.4th 551, 557 (4th Cir. 2026) (internal quotation marks omitted).

¹ <https://perma.cc/Q2MJ-QJAZ>.

PJM is a “tight power pool,” that is, one that “extensively coordinate[s] [its] planning and operations in both the long and short run, and in theory provide[s] the greatest benefits.” *Inquiry Concerning Alternative Power Pooling Insts. Under the Fed. Power Act*, 69 FERC ¶ 61,090, 59 Fed. Reg. 54,851, 54,854 (Nov. 2, 1994). Tight power pools also “establish contractual requirements with respect to generating capacity and operating reserves, together with financial penalties to enforce reserve requirements,” with “[a] long-term benefit of a tight power pool [being] joint action to enhance reliability.” *Id.*

One of PJM’s responsibilities is to administer a capacity market that procures sufficient capacity to provide “resource adequacy” within the PJM Region. In other words, PJM must obtain “a sufficient amount of electrical capacity within its system to provide reliable electricity to its consumers during periods of peak demand.” *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 82 (3d Cir. 2014). “‘Capacity’ is not electricity itself but the ability to produce it when necessary.” *Conn. Dep’t Pub. Util. Control v. FERC*, 569 F.3d 477, 479 (D.C. Cir. 2009).

PJM allocates regionwide resource adequacy costs across all load-serving entities based on their pro rata load share, or their real-time peak load over total regionwide peak load (also referred to as their load ratio share). Within PJM, “member-utilities that sell electricity to end-use consumers—known in administrative parlance as ‘load-serving entities,’ or ‘LSEs’—are ... responsible for

providing a proportionate share of the capacity target.” *N.J. Bd.*, 744 F.3d at 82. Load-serving entities can meet their resource adequacy requirements by participating in the centrally administered capacity market, referred to as the Reliability Pricing Model. Or they can “self-supply” outside of PJM’s capacity market, using, for example, PJM’s Fixed Resource Requirement process. Any load-serving entity that relies on PJM markets must be party to the Reliability Assurance Agreement Among Load Serving Entities (“PJM RAA”) and is responsible for financial obligations arising from capacity auctions. PJM Operating Agreement § 11.6(b)²; PJM RAA Arts. 2³ & 7 § 2.

In the capacity auction, the load-serving entity pays the RTO-wide market clearing price for that delivery year, equal to the load-serving entity’s capacity obligation in its zone multiplied by the zonal price to account for local transmission limits. Where import of electricity into an area in PJM is constrained due to transmission limitations, prices tend to be higher. However, load-serving entities ultimately procure enough capacity—through either the capacity auctions or by meeting the relevant requirement through the Fixed Resource Requirement

² <https://perma.cc/H6KA-C6ME>.

³ <https://perma.cc/K4WK-SRDZ>.

process—to satisfy the aggregate regionally determined demand curve plus a buffer margin, or operating reserve.

A centrally administered capacity market like PJM’s provides many benefits. It facilitates PJM’s fundamental responsibility of keeping the grid operational at a lower cost than if each load-serving entity individually were a closed system in which it procured all the capacity it would need on a stand-alone basis—because the various regions can rely upon idle capacity in other regions when needed. *See Dayton Power*, 126 F.4th at 1114-15. The converse is also true: As a fully integrated system that balances supply and demand, a shortfall in one zone of PJM, such as a failure to procure sufficient capacity, can have serious ramifications for all interconnected loads. If one zone of PJM faces a significant drop in generation or increase in load such that it causes grid instability or voltage concerns, the entire PJM grid is put at risk, leading to potentially catastrophic blackouts across the entire region. Therefore, while any one particular load-serving entity might have enough capacity to meet its projected peak load plus a reserve margin in a given year, should an unexpected emergency occur or should a capacity resource not be running due to maintenance or other outage, the load-serving entity could end up leaning on capacity in the rest of PJM to avoid a cascading series of blackouts.

Having additional, diverse capacity resources improves the reliability of the whole system, as FERC recognized when it approved PJM’s capacity auction. The

capacity auction uses a downward sloping capacity demand curve, and “[i]ncremental capacity above the [reserve margin] is likely to provide additional reliability benefits.” *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at P 76 (2006). Indeed, as FERC stated long ago, a “long-term benefit of a tight power pool is joint action to enhance reliability. A tight pool coordinates maintenance to ensure that adequate reserves are maintained, that is, units are taken out of service on a staggered basis.” *Inquiry Concerning Alternative Power Pooling Insts.* 69 FERC ¶ 61,090, 59 Fed. Reg. at 54,854. A pool, like PJM, helps mitigate capacity shortfall risks with the expectation that some load-serving entities will rely on generation from other load-serving entities even though they may have met their own obligations and may be “long” on total capacity on an annual basis, while additional capacity benefits the entire region by providing additional resources to the pool.

II. PJM Proposed and FERC Accepted a Generic Section 202(c) Cost Allocation Methodology

PJM’s proposals. DOE has issued numerous emergency Section 202(c) orders to generators across the country, renewing them every 90 days upon expiration. *See* FERC Br. 22-24. DOE issued its first Section 202(c) order with regard to Eddystone on May 30, 2025, for a period of 90 days. *See* DOE Order No. 202-25-4, JA ____ - ____ (“May 2025 Eddystone Order”). These units are two 380-megawatt generation facilities located in southeastern Pennsylvania in an unconstrained area of the PJM transmission system. *PJM Interconnection, L.L.C.*,

193 FERC ¶ 61,192 at P 2 (2025), JA____ (“Allocation Order”). Constellation Energy Generation, LLC (“Constellation”), Eddystone’s owner, complied with the original order (and all subsequent orders) to keep Eddystone operational and provide energy and other services to the entire PJM Region, and in doing so incurred costs that it is entitled to recover.

It is undisputed that PJM has the authority under its Open Access Transmission Tariff (“Tariff”) to compensate a generator for costs incurred subject to a Section 202(c) order. But because PJM operates on a revenue-neutral basis and has no shareholders, PJM had to develop a mechanism that would allow it to allocate these costs to members. And PJM recognized that its Tariff had no rule governing recovery of “costs incurred by resources that continue to operate in compliance with a DOE order issued under FPA section 202(c).” Allocation Order P 7, JA____.

PJM first proposed and FERC approved an interim cost allocation methodology for the May 2025 Eddystone Order that allocated costs to all load-serving entities in PJM using a method that was consistent with how PJM recovered regionwide capacity costs. *PJM Interconnection, L.L.C.*, 192 FERC ¶ 61,159 at P 30 (2025), JA____ (“Interim Order”).

Following the renewal of the Section 202(c) order in August 2025, PJM proposed a generic cost allocation methodology to apply to costs incurred by generation owners under Section 202(c) orders to allocate costs across all load-

serving entities within the PJM Region. Allocation Order PP 7-8, JA____. This was the same cost allocation methodology that was proposed and accepted on an interim basis for the original May 2025 Section 202(c) order. *Id.* P 32, JA____-____ (citing Interim Order P 35, JA____). Under this generic methodology, so long as (1) a Section 202(c) order is directed at a generator to maintain operations for resource adequacy purposes for the PJM Region and is not expressly limited to resolve resource adequacy issues in a specific location delivery area or zone by the order, and (2) PJM and the owner of the generator ordered to operate pursuant to the Section 202(c) order agree to be compensated using the formula rate methodology and process based on the existing Deactivation Avoidable Cost Credit method, then that rate will be charged to each load-serving entity on a monthly basis multiplied by their pro rata share of the sum of the total Daily Unforced Capacity Obligations across all zones in the PJM Region for all days within the calendar month covered by the Section 202(c) order. Allocation Order P 31, JA____; PJM RAA Art. 7 § 2A, JA____.

This generic provision thus applies only when the DOE order at issue addresses regionwide resource adequacy concerns and does not apply when the order is limited to a zone or sub-region of PJM. Allocation Order P 34, JA____.

FERC's acceptance. In its initial order approving PJM's generic Section 202(c) cost allocation methodology, FERC found that "all [load-serving entities] in

the PJM Region will benefit from generation units retained to address regionwide resource adequacy concerns identified by DOE,” regardless of whether “a[] [load-serving entity] self-supplies all or a portion of its capacity [which] does not negate the fact that the [load-serving entity] benefits from retaining generation units that DOE has determined are necessary to maintain resource adequacy for the PJM Region as a whole, including the location delivery Area(s) or Zone(s) where the subject [load-serving entity] is located.” *Id.* FERC also found that all load-serving entities in the PJM Region benefit from the retention of generation units pursuant to a Section 202(c) order implemented to address a regionwide resource adequacy emergency. *Id.* PP 33-34, JA ____ - ____.

FERC emphasized that this approach—looking at the scope of the emergency identified by DOE and then analyzing the appropriate cost allocation based on that emergency—accorded with the statutory division of responsibility between FERC and DOE. It explained that “the determination of the need for the operation of generation units under FPA section 202(c) rests solely with DOE.” *Id.* P 33, JA ____.

FERC then exercised its statutory responsibility under FPA Section 205 in determining whether PJM’s cost allocation proposal was just and reasonable for allocating costs incurred by generation owners in response to DOE’s declaration of an emergency (and DOE’s decision of how that emergency is to be addressed). FERC explained that the first trigger for PJM’s proposal—that the DOE order must

find a regionwide emergency and not identify a more specific, localized emergency—would “ensure[] that the proposed cost allocation method will apply only to costs that a generation owner incurs to comply with a DOE order issued under FPA Section 202(c) that makes findings of an emergency in the entire PJM Region.” *Id.* P 31, JA____. And FERC explained that PJM’s proposal was just and reasonable because the “proposed regionwide cost allocation method is consistent with DOE orders addressing the overall resource adequacy needs in the PJM footprint.” *Id.* P 32, JA____. FERC also emphasized that PJM’s adoption of a generic Section 202(c) cost allocation methodology was consistent with cost causation principles, and that PJM need not “make further demonstrations of the beneficiaries of a DOE order pursuant to FPA section 202(c) . . . when the DOE order identifies a resource adequacy emergency for the entire PJM Region.” *Id.* P 33, JA____.

On rehearing, FERC considered Petitioners’ arguments and evidence regarding whether FERC exercised its independent judgment and continued to find that PJM’s proposed Tariff provision satisfies the cost causation principle because FERC articulated a plausible reason to believe that the benefits were at least roughly commensurate with the allocation of costs. *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,002 at P 25 (2026), JA____ (“Allocation Rehearing Order”).

Of the many states and load-serving entities affected, only Kentucky and the Cooperative sought judicial review of FERC’s order approving PJM’s generic cost allocation. Petitioners have not challenged the underlying Section 202(c) orders.

III. Appellate Proceedings

In February and March 2026, Kentucky and the Cooperative filed petitions for review of FERC’s Allocation Order with this Court. Dkt. 1, Cooperative Pet. Rev., No. 26-3106 (Feb. 9, 2026); Dkt. 1, Kentucky Pet. Rev., No. 26-3179 (Mar. 6, 2026). This Court consolidated those cases in April 2026. Dkt. 21 & Dkt. 17, Order, Nos. 26-3106 & 26-3179 (Apr. 30, 2026). PJM and Constellation intervened in support of FERC. Dkt. 24, Order, Nos. 26-3106 & 26-3179 (June 18, 2026).

Meanwhile, related sets of proceedings are pending in the U.S. Court of Appeals for the D.C. Circuit:

DOE Section 202(c) Campbell Orders. Several groups of petitioners sought review in the D.C. Circuit of DOE’s Section 202(c) orders concerning a different generator—Consumers Energy Company’s J.H. Campbell Generating Plant (“Campbell Plant”)—in a different region, overseen by the Midcontinent Independent System Operator, Inc. (“MISO”).⁴ In September 2026, the D.C. Circuit

⁴ *Michigan v. U.S. Dep’t of Energy*, Nos. 25-1159 et al. (D.C. Cir. filed July 24, 2025); *Sierra Club v. U.S. Dep’t of Energy*, Nos. 25-1198 et al. (D.C. Cir. filed Oct. 9, 2025); *Sierra Club v. U.S. Dep’t of Energy*, Nos. 26-1024 et al. (D.C. Cir. filed Jan. 22, 2026); *Sierra Club v. U.S. Dep’t of Energy*, Nos. 26-1115 et al. (D.C. Cir.

vacated the initial Section 202(c) order regarding the Campbell Plant. *Michigan v. U.S. Dep’t of Energy*, No. 25-1159, ---F.4th---, 2026 WL 2671756, at *2 (D.C. Cir. Sep. 11, 2026) (“*Campbell I*”). The D.C. Circuit stayed the issuance of its mandate in *Campbell I*, pending resolution of timely petitions for rehearing. Order, *Campbell I*, Nos. 25-1159 et al. (D.C. Cir. Sep. 11, 2026).

DOE Section 202(c) Eddystone Orders. Several groups of petitioners—though not Kentucky or the Cooperative—have also brought challenges in the D.C. Circuit to the lawfulness of five Section 202(c) orders concerning Eddystone.⁵ Litigation regarding the Eddystone Section 202(c) orders is stayed pending the issuance of the mandate in *Campbell I*.⁶ Order, *Eddystone I & II*, Nos. 25-1193 et al. (D.C. Cir. Aug. 26, 2026) (holding proceedings in abeyance pending issuance of mandate in *Campbell I*); Order, *Eddystone III & IV*, Nos. 26-1026 et al. (D.C. Cir.

filed May 12, 2026); *Sierra Club v. U.S. Dep’t of Energy*, Nos. 26-1233 et al. (D.C. Cir. filed Sep. 10, 2026); *Michigan v. U.S. Dep’t of Energy*, Nos. 26-1288 et al. (D.C. Cir. filed Oct. 14, 2026).

⁵ *Ill. Off. of Att’y Gen. v. U.S. Dep’t of Energy*, Nos. 25-1193 et al. (D.C. Cir. filed Sep. 25, 2025) (“*Eddystone I & II*”); *Nat. Res. Def. Council v. U.S. Dep’t of Energy*, Nos. 26-1026 et al. (D.C. Cir. filed Jan. 23, 2026) (“*Eddystone III & IV*”); *Nat. Res. Def. Council v. U.S. Dep’t of Energy*, No. 26-1242 (D.C. Cir. filed Sep. 18, 2026) (“*Eddystone V*”).

⁶ The D.C. Circuit has yet to schedule briefing in the proceedings in *Eddystone V*, which was initiated in September 2026.

Aug. 17, 2026) (holding proceedings in abeyance pending resolution of *Eddystone I & II*).

FERC’s Interim Cost Allocation Order for Eddystone. Natural Resources Defense Council and other public interest organizations—though, again, not Kentucky or the Cooperative—have also petitioned for review of FERC’s Interim Order, which allocates Constellation’s costs of complying with DOE’s initial May 2025 Eddystone Order. *Nat. Res. Def. Council v. FERC*, No. 26-1041 (D.C. Cir. filed Feb. 20, 2026). The D.C. Circuit has also held these proceedings in abeyance pending the resolution of *Eddystone I & II*, which consider the lawfulness of DOE’s first two Section 202(c) orders concerning Eddystone. Order, *Nat. Res. Def. Council v. FERC*, No. 26-1041 (D.C. Cir. Mar. 30, 2026).

SUMMARY OF THE ARGUMENT

FERC properly concluded that PJM’s proposed generic cost allocation methodology, which will allocate the costs of generation retained pursuant to DOE Section 202(c) orders when certain conditions are satisfied, is just and reasonable under FPA Section 205. Allocation Order P 29, JA___; Allocation Rehearing Order P 25, JA___. PJM’s proposed method would allocate costs of a retained resource pro rata across all load-serving entities in the PJM Region when DOE orders that resource to “maintain operations for resource adequacy purposes for the PJM Region,” its order is “not expressly limited” to a specific zone, and the resource

owner agrees to compensation based on the PJM Tariff's Deactivation Avoidable Cost Credit. Allocation Order P 31, JA ____; Allocation Rehearing Order P 8, JA ____.

FERC independently considered PJM's proposal and found it just and reasonable based on longstanding cost-causation principles—contrary to Petitioners' arguments that FERC ignored its duty to evaluate cost causation under FPA Section 205 or improperly deferred to DOE. In doing so, FERC respected the statutory division of responsibility in FPA Section 202(c): DOE possesses exclusive power to determine the existence of an emergency and the means to address it, while FERC allocates the costs of the actions DOE has directed.

Under PJM's approach, a regionwide emergency yields regionwide cost allocation. And FERC, applying traditional cost-causation principles, reasonably determined that this approach is reasonable. Petitioners contend that a granular, resource-by-resource analysis was required. But FPA Section 205 does not require FERC to ascertain the precise degree to which any particular load-serving entity contributed to the emergency DOE identified. FERC's conclusions are based on substantial evidence and accord with extensive precedent supporting regionwide cost assignment for measures that produce regionwide benefits. This is especially true of a networked system incorporating a regional power pool like PJM. Because all load-serving entities benefit from enhanced resource adequacy provided by retention of generators to address a regionwide emergency, entities that self-supply

or are “long” on capacity should pay a share of the costs. *See* Allocation Order P 34, JA____; Allocation Rehearing Order P 29, JA____.

Accordingly, the Court should deny the petitions for review.

LEGAL STANDARDS

I. Cost Allocation Proposals Under Section 205

FERC’s evaluation of cost allocation proposals under FPA Section 205 is deferential. The question is whether a rate is “just and reasonable.” 16 U.S.C. § 824d(a); *Dayton Power*, 126 F.4th at 1115 (citing *Emera Me. v. FERC*, 854 F.3d 9, 19 (D.C. Cir. 2017)). And there is not a “single ‘just and reasonable rate’ but rather a ‘zone of reasonableness’”; hence when a public utility like PJM files a tariff amendment under Section 205 for FERC’s approval, the FERC’s review is “limited,” and FERC “is obligated” to approve reasonable rates even if an alternative might be more reasonable. *N.Y. State Pub. Serv. Comm’n v. FERC*, 104 F.4th 886, 891 (D.C. Cir. 2024) (citation omitted); *Dayton Power*, 126 F.4th at 1115.

Cost allocation adds another layer of latitude. Under Section 205’s just and reasonable standard, well-established regulatory principles permit grid costs to be allocated to the customers who benefit from them. *E.g.*, *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d 10, 13 (D.C. Cir. 2021) (FERC “has long viewed the just-and-reasonable requirement” under Section 205 “to incorporate a cost-causation principle.” (internal quotation marks and citation omitted)); *Ill. Com. Comm’n v.*

FERC, 576 F.3d 470, 476 (7th Cir. 2009). But costs need not be “allocate[d] . . . with exacting precision.” *Ill. Com. Comm’n*, 576 F.3d at 477 (quoting *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004)). Rather, they need only “be allocated in a manner that is *roughly* commensurate with the benefits received.” *City Utils. of Springfield v. FERC*, 185 F.4th 1262, 1271 (D.C. Cir. 2026) (internal quotation marks and alteration omitted). For good reason. The electric grid is extraordinarily complex, and benefits and costs often elude precise measurement. FERC thus need not “articulate a precise numerical value of benefits.” *Neb. Pub. Power Dist. v. FERC*, 957 F.3d 932, 941 (8th Cir. 2020). FERC instead has “substantial latitude to determine what technical evidence to rely on,” in making the determination that costs are roughly commensurate with benefits. *City Utils. of Springfield*, 185 F.4th at 1273.

II. Appellate Standard of Review

When FERC has found that a tariff filing satisfies Section 205’s deferential standard, reviewing courts apply another deferential standard—the Administrative Procedure Act’s arbitrary-and-capricious standard. Review is “extremely narrow.” *Appalachian Voices v. U.S. Army Corps of Eng’rs*, 134 F.4th 410, 418 (6th Cir. 2025) (citation omitted). “[N]owhere is that more true than in a technical area like electricity rate design,” where FERC receives ““great deference.”” *Elec. Power Supply Ass’n*, 577 U.S. at 292 (citation omitted). “Even when an agency explains

its decision with less than ideal clarity, a reviewing court will not upset the decision on that account if the agency's path may reasonably be discerned." *Ne. Ohio Reg'l Sewer Dist. v. U.S. EPA*, 411 F.3d 726, 731 (6th Cir. 2005) (citation omitted).

ARGUMENT

The Commission fulfilled its role in reviewing PJM's generic cost allocation proposal. First, consistent with its obligation under Section 205, the Commission independently reviewed PJM's proposal to ensure it was just and reasonable and consistent with longstanding cost-allocation principles. Second, the Commission justified its conclusion in a well-reasoned order.

I. FERC Independently Assessed PJM's Generic Proposal

Petitioners build their argument on an incorrect premise. They say that in accepting PJM's generic cost-allocation proposal, the Commission "abandon[ed]" its "independent statutory duty" under FPA Section 205, Kentucky Br. 31, improperly "deferred to the Department of Energy's emergency findings as controlling its conclusion," *id.* at 26, and "d[id] not even attempt to satisfy the cost-causation principle," Cooperative Br. 33. Via this characterization, Petitioners attempt to conjure a statutory violation to escape the deferential standards of review that in fact apply to their policy disagreement with PJM's approach. This characterization is incorrect. FERC did precisely what Section 205 requires by

analyzing whether PJM’s proposal complied with cost-causation principles. And as detailed in Part II below, FERC’s determination was reasonable.

FERC began its review by evaluating the exact contours of PJM’s generic methodology for allocating DOE Section 202(c) costs. As FERC observed, PJM’s proposal was “expressly limited” to those DOE orders “directed at a resource to maintain operations for resource adequacy purposes *for the PJM Region*[.]” not specific areas. Allocation Order P 31, JA____ (emphasis added). Based on those aspects of PJM’s proposal, FERC identified the beneficiaries—finding that “all [load-serving entities] in the PJM Region will benefit from generation units retained to address regionwide resource adequacy concerns identified by DOE.” *Id.* P 34, JA____. FERC then assessed the method for allocating costs—namely, “a pro rata basis based on each [load-serving entity’s] share of the total Daily Unforced Capacity Obligations.” *Id.* Based on its comparison of the beneficiaries and the cost allocations, FERC concluded that PJM’s proposal is “consistent with the cost causation principle[s].” *Id.* That is exactly what FERC is supposed to do. *E.g., Pub. Serv. Elec. & Gas Co.*, 989 F.3d at 13-14.

Petitioners seize on FERC’s statements that the determination of the need for continued operation “rests solely with DOE,” Allocation Order P 33, JA____, and that “it is not within the Commission’s purview to address DOE findings with respect to the determination of an emergency,” Allocation Rehearing Order P 27, JA____.

Cooperative Br. 41; Kentucky Br. 31. But those statements accurately describe the roles of DOE and FERC under Section 202(c). As Kentucky correctly explains, the FPA “gives the Department of Energy the exclusive authority to declare an emergency and order responsive actions,” Kentucky Br. 30, and “[t]he Commission must take the Department’s orders as they come,” *id.* at 37. The Commission’s purview, then, is “to conduct an independent cost-allocation analysis.” *Id.* FERC respected this division of authority precisely. It declined “to address DOE findings,” Allocation Rehearing Order P 27, JA____, but independently confirmed that PJM’s proposal “allocates the costs of the retained generation in a manner that is at least roughly commensurate with the benefits,” *id.* P 29, JA____.

For this reason, the Cooperative’s cases discussing an agency’s reliance on another agency’s findings in areas of “concurrent jurisdiction” are inapposite. *E.g.*, *City of Holyoke Gas & Elec. v. SEC*, 972 F.2d 358, 363 (D.C. Cir. 1992); Cooperative Br. 42-44. Under Congress’s scheme in Section 202(c), DOE—not FERC—has the authority to determine the nature and geographic extent of an emergency. *See, e.g.*, *Sierra Club v. FERC*, 827 F.3d 36, 46 (D.C. Cir. 2016) (holding that challenges to determinations within DOE’s exclusive jurisdiction belong in a petition for review of DOE’s order, not FERC’s); *Madany v. Smith*, 696 F.2d 1008, 1011-12 (D.C. Cir. 1983) (“[D]eterminations vested by statute with one agency are not normally subject

to horizontal review by a sister entity, absent congressional authorization to that effect.”).

Nor does anything in Section 205 require FERC to “show the degree or amount by which any load-serving entity contributed to the purported emergency.” Cooperative Br. 48. Under Petitioners’ theory, for a generic resource adequacy Section 202(c) cost allocation methodology to pass muster, FERC would have to independently quantify how much each retained resource actually contributes to resource adequacy in PJM. But nothing in the FPA requires FERC to mandate such a granular, resource-by-resource approach. Quite the opposite: Petitioners’ rigid theory—under which PJM must attempt to quantify benefits flowing from specific generators to specific load-serving entities, even when DOE has found a regionwide emergency—defies the flexibility at the heart of Section 205, which requires only that PJM show that its proposed Tariff filing is just and reasonable. *See, e.g., N.Y. State Pub. Serv. Comm’n*, 104 F.4th at 891; *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (finding that the Commission properly did not consider “whether a proposed rate schedule is more or less reasonable than alternative rate designs”). Indeed, as Kentucky explains, it is “clear” that the Commission “can reasonably adopt assumptions about regionwide benefits” given the “interconnected nature of our national grid.” Kentucky Br. 44. That acknowledgment should be the

end of Petitioners’ statutory argument, leaving them with only an arbitrary-and-capricious challenge under deferential standards.

II. FERC Reasonably Approved PJM’s Generic Cost Allocation Methodology Based on the Extensive Agency Record

FERC’s Allocation Order was also reasonable and supported by substantial evidence. Taking DOE’s regionwide emergency findings as its factual starting point—consistent with Section 202(c)—FERC exercised its own independent judgment on cost allocation and reasonably concluded that the costs of retaining a resource that DOE found necessary to address a regionwide emergency should be borne regionwide, in proportion to each load-serving entity’s share of total load. FERC’s conclusion follows from settled cost-causation principles that apply where an entire region benefits from system-wide measures, comports with how PJM already allocates regionwide resource adequacy costs, and is supported by a record that Petitioners barely engage with, much less dispute.

A. PJM’s Methodology Reasonably Allocates Costs on a Regionwide Basis for Regionwide Benefits to Resource Adequacy

FERC’s Allocation Order carefully adhered to its cost allocation principles based on the scope of the emergency DOE found. The DOE Section 202(c) orders identified an emergency throughout PJM’s grid. Allocation Rehearing Order P 31, JA____; *see also, e.g.*, DOE, Order No. 202-25-8 1 (issued Aug. 27, 2025), JA____ (“August 2025 Eddystone Order”) (finding regionwide emergency in PJM); DOE,

Order No. 202-25-10 1, JA____ (“November 2025 Eddystone Order”) (same); DOE, Order No. 202-26-17 1, JA____ (“February 2026 Eddystone Order”) (same). PJM’s approach does not apply where a DOE Section 202(c) order is expressly limited to subregions. Allocation Rehearing Order P 31, JA____. Hence, as FERC explained, PJM’s approach ensures that the ex ante allocation methodology applies only when DOE “makes findings of an emergency in the entire PJM region necessitating continued operation of a resource.” Allocation Order P 31, JA____.

In turn, when a regionwide emergency can be alleviated by retaining certain generation units, PJM’s entire grid reaps the benefits—as FERC again explained. Allocation Rehearing Order P 34, JA____ - ____; Interim Order P 21, JA____ (reporting PJM’s assertion that Eddystone can deliver power across PJM). In such cases, all PJM load-serving entities “benefit from a PJM Region made more reliable by the retention of generation units” when that resource is retained “to maintain operations for resource adequacy purposes for the PJM Region and is not expressly limited to resolve resource adequacy issues in specific Locational Deliverability Areas or Zones.” Allocation Order P 34, JA____.

Courts have long “endorsed [FERC’s] approach of ‘assigning the costs of system-wide benefits to all customers on an integrated transmission grid.’” *Nat’l Ass’n of Reg. Util. Comm’rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007) (“*NARUC*”) (alteration omitted) (quoting *W. Mass. Elec. Co. v. FERC*, 165 F.3d 922,

927 (D.C. Cir. 1999)). That is because “[w]hen a system is integrated, any system enhancements are presumed to benefit the entire system.” *W. Mass.*, 165 F.3d at 927. In other words, “‘but-for’ causation isn’t dispositive,” or required, when allocating the costs of measures that benefit the system as a whole. *NARUC*, 475 F.3d at 1285. Instead, “[q]ualitative benefits such as improved . . . reliability are sufficient” to allocate costs under the cost-causation principle. *Paragould*, 144 F.4th at 295. Likewise, here, FERC reasonably concluded that benefits and costs are aligned: The entire PJM Region benefits from generators that can alleviate grid-wide emergencies. Allocation Rehearing Order P 30, JA____ (citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)).

FERC’s conclusion accords with how power pools like PJM work. In a power pool, “[p]ower generated at the various units . . . flows freely through the [p]ool’s regional transmission network The energy is dispatched to members’ customers as their power needs arise, without regard to generating source.” *New England Power Co. v. New Hampshire*, 455 U.S. 331, 334 (1982). By participating, “utilities can borrow from one another’s reserves as needed to prevent unnecessary outages without having to keep huge reserves.” *Dayton Power*, 126 F.4th at 1114; *Gainesville Utils. Dep’t v. Fla. Power Corp.*, 402 U.S. 515, 519-20 & n.3 (1971) (demonstrating the same using a hypothetical). Every customer benefits from this “enhanced reliability,” *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361,

1369-70 (D.C. Cir. 2004), regardless of where a power plant sits geographically. Indeed, the stated purpose of PJM’s Reliability Assurance Agreement is to ensure there are adequate electrical supplies “planned and made available to provide reliable service to loads within the PJM Region, to assist other Parties during Emergencies and to coordinate planning of such resources.” PJM RAA Art. 2.

Here, FERC applied that well-established principle and explained that reliability “is a valuable benefit that is enjoyed by all customers interconnected to the networked PJM system.” Allocation Rehearing Order P 31 n.66, JA____ (quoting *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 at P 97 (2012)). FERC, moreover, approved that approach only because it fits the specific nature of the DOE orders that trigger the Allocation Order—contrasting such DOE orders with others that would not support regionwide cost allocation. Allocation Order P 35, JA____. For example, DOE’s Section 202(c) orders directed at the Campbell Plant have addressed resource adequacy concerns in specific subregions of MISO, the northern and central zones. FERC Br. 19, 53 (citing DOE Order No. 202-25-3 at 2 (issued May 23, 2025)). Similarly, DOE Section 202(c) orders concerning the R.M. Schahfer Generating Station and the F.B. Culley Generating Station, both in Indiana, have also responded to resource adequacy problems in sub-zones of MISO. *Id.* at 22-23, 53 (citing, *e.g.*, DOE Order No. 202-26-19 at 3, 5 (issued Mar. 23, 2026) (Schahfer) and DOE Order No. 202-26-20 at 3, 5 (issued Mar. 23, 2026) (Culley)).

For such geographically narrower orders, FERC has authorized cost recovery from subregions of MISO rather than regionwide. Allocation Order P 35, JA___ (citing *Consumers Energy Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,158, at PP 39-40 (2025)).

For these same reasons, the *Illinois Commerce* decision supports FERC, not Petitioners. *Contra* Kentucky Br. 40, 46; Cooperative Br. 34-36. In *Illinois Commerce*, PJM socialized costs of discrete transmission facilities that did not benefit the whole grid; rather, they had identifiable, locationally specific beneficiaries. 576 F.3d at 475. Here, by contrast, FERC explained that the resource adequacy problems identified by DOE are regionwide by nature, and that the resource adequacy benefits of keeping units like Eddystone online in response are realized across the region. Allocation Rehearing Order PP 32, 34, JA___, ___; Interim Order PP 35-38, JA___ - ___. FERC emphasized that DOE had ordered the retention of Eddystone and other resources for “regionwide” resource adequacy purposes rather than “localized transmission reliability needs.” Interim Order PP 9, 36, JA___, ___ (citing *PJM Interconnection, L.L.C.*, ER25-2653-000, PJM Transmittal Ltr. 4-5 (June 26, 2025)). Regionwide allocation is appropriate in precisely those circumstances. *E.g.*, *NARUC*, 475 F.3d at 1285; *see also infra* Argument Part II.C.

B. FERC Reasonably Allocated Section 202(c) Compliance Costs Proportionally to Each Load-Serving Entity Based on Its Reliability Requirement

FERC also reasonably used its independent judgment to allocate regionwide costs to each load-serving entity in proportion to its share of the region’s reliability requirement, its “pro rata” load share. Allocation Order P 4, JA____. The benefit of resource adequacy is having enough electric supply available to keep the lights on during the hottest hour of the hottest day of the year, or during a severe winter storm—and to do so even if there is an unexpected failure somewhere on the grid. *See Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 526 (D.C. Cir. 2010). FERC found that “*all* [load-serving entities] in the PJM Region will benefit from generation units retained to address regionwide resource adequacy concerns identified by DOE.” Allocation Order P 34, JA____ (emphasis added). And each load-serving entity’s load share reflects how much of the PJM Region’s peak electricity demand the entity must serve, and thus, the resource adequacy strain it adds to the system. *See Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 806 (D.C. Cir. 2007) (describing the calculation of capacity requirements).

So pro rata allocation makes sense. An entity’s share of the resource adequacy benefit is its share of the region’s demand. *See* Allocation Order P 22, JA____ (reporting PJM’s explanation that a load-serving entity’s stake in regionwide resource adequacy is “roughly apportionable to the [entity’s] pro rata share of the

total Daily Unforced Capacity Obligations”). PJM’s methodology under the Allocation Order is also consistent “with the present allocation of costs associated with the recovery of regionwide capacity costs.” Allocation Rehearing Order P 5, JA____.

By contrast, FERC reasonably rejected the Cooperative’s proposed “net capacity” alternative. Cooperative Br. 33. To begin, the Cooperative’s arguments are largely irrelevant to the question Section 205 asks. Even if the Cooperative’s preferred alternative were more reasonable than PJM’s approach (it is not), a proposed tariff need only be just and reasonable, and the Commission’s review does “not [] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.” *E.g., City of Bethany*, 727 F.2d at 1136. In supporting its generic cost-allocation proposal, PJM’s burden was only to show there is “an articulable and plausible reason to believe that the benefits are at least roughly commensurate” with costs. *Ill. Com. Comm’n*, 576 F.3d at 477.

Here, moreover, the Cooperative’s alternative violates the established beneficiary-pays principles and ignores the nature of PJM’s planning and capacity obligations. Under this alternative, PJM would have to first analyze whether a load-serving entity has procured enough capacity on its own to meet its local reliability requirement or must obtain additional capacity from outside its borders. Cooperative Br. 33. If a load-serving entity has chosen to meet its resource adequacy obligations

by relying on capacity outside its zone, the Cooperative would force that entity to bear a higher share of costs from covered DOE orders. But as FERC explained, *all* load-serving entities benefit from regionwide improvements to resource adequacy, whatever their “net” capacity positions. Allocation Order P 34, JA _____. “[T]he fact that [a load-serving entity] self-supplies all or a portion of its capacity does not negate the fact that the [load-serving entity] benefits from retaining generation units that DOE has determined are necessary to maintain resource adequacy for the PJM Region as a whole.” *Id.*

That conclusion again accords with the fundamentals of how PJM auctions work. Allocation Rehearing Order P 29, JA _____. As explained above, Statement of the Case, Part I, PJM allocates the costs of PJM’s auctions based on the load-serving entity’s load ratio share, not based on the load-serving entity’s net resource adequacy position. *N.J. Bd.*, 744 F.3d at 82-84. Load-serving entities can meet their capacity obligations by purchasing capacity through the PJM auctions or by “building or directly contracting with generation resources to meet [their] capacity obligations.” *Id.* Either way, the planning metric and requirement are the same. *See Del. Div. of Pub. Advocate v. FERC*, 3 F.4th 461, 463-64 (D.C. Cir. 2021) (describing PJM’s planning metric “intended to allow no more than one power outage every decade”). Meeting those requirements, whether through self-supply or via PJM capacity

auctions, has no bearing on the grid-wide benefits that retaining additional generation provides. *See Dayton Power*, 126 F.4th at 1114-15.

For these same reasons, too, there is no merit to Kentucky’s argument that the Allocation Order “gets incentives wrong for load-serving entities.” Kentucky Br. 43. FERC explained that regionwide allocation of emergency resource adequacy costs does not “skew[] market signals” or penalize capacity-surplus load-serving entities. Allocation Order P 34, JA _____. Instead, “all [load-serving entities] in the PJM Region will benefit from generation units retained to address regionwide resource adequacy concern[s].” *Id.* Load-serving entities that are long on capacity benefit, like everyone else, from the grid-wide resource adequacy contributions of generation units. *Id.*; Allocation Rehearing Order P 29, JA _____.

The Cooperative is also incorrect that PJM’s approach construes “silence” in the DOE orders—that DOE did not find an emergency in a particular subregion—as the “trigger[]” for cost allocation. Cooperative Br. 28-29, 41. PJM’s approach applies only when DOE has retained a generator “for resource adequacy purposes for the PJM Region”—which means an affirmative statement, not silence—and *also* the emergency “is not expressly limited” to particular subregions. Allocation Rehearing Order P 31, JA _____. FERC here also built on its previous determination—in an order that Petitioners did not contest—that DOE’s description of the emergency “support[s] a finding that the retention of the Eddystone Units benefits the PJM

Region in general.” Interim Order P 35, JA____. The Commission then found that the same cost allocation method that it used in the circumstances of the Interim Order, which allocated costs for the first Section 202(c) order directed at Eddystone, should serve as the generic methodology going forward, when the same circumstances are present. Allocation Order P 33, JA____; Allocation Rehearing Order P 33, JA____.

Indeed, the Cooperative’s approach also amounts to a direct challenge to the scope of the emergency found by DOE, contrary to Petitioners’ claims that they are not challenging the underlying DOE Section 202(c) orders. Kentucky Br. 31, 33. That approach would invite FERC to find that there was no need for additional resources, and hence no benefit, in parts of PJM where DOE had found an emergency. FERC, however, properly recognized that the existence of an emergency, its scope, and the facilities required to address it are beyond FERC’s domain. Allocation Rehearing Order P 26, JA____ - ____.

C. FERC’s Order Was Supported by Substantial Evidence

1. FERC’s Approval of PJM’s Generic Cost Allocation Methodology Was Supported by Substantial Evidence

FERC’s order was also supported by substantial evidence. *See Smith v. U.S. SEC*, 178 F.4th 312, 320 (6th Cir. 2026) (“Substantial evidence . . . is that which a reasonable mind would find sufficient to support the factual finding.” (internal quotation marks and citation omitted)). As explained above, FERC reasonably

found that Section 202(c) orders addressing resource adequacy for the PJM Region as a whole benefit all load-serving entities across the region, and provide these global benefits regardless of whether and how a load-serving entity has met its capacity obligation. Allocation Order PP 10, 32, 34, JA____, ____, __; *supra* Argument Part II.A-B.

Petitioners largely do not engage with that finding, instead arguing that regionwide allocation was inappropriate as applied to Eddystone in particular. *E.g.*, Cooperative Br. 17, 28, 37-41; Kentucky Br. 40. That, to begin, is the wrong question. The Allocation Order approved a generic methodology, under which the costs of emergency measures implemented to address regionwide problems are allocated on a regionwide basis to those that benefit. Allocation Order PP 23, 32 JA____, _____. The specific application to the Eddystone Section 202(c) extension orders is irrelevant to whether the Allocation Order is lawful.

Petitioners' arguments also fail on their own terms: The Allocation Order could reasonably apply to the Eddystone Section 202(c) extension orders, *see id.* PP 7-10, 32-33, JA____-____, ____-____, based on record evidence Petitioners do not challenge. The Eddystone Section 202(c) extension orders meet the two requirements for regionwide cost allocation under the Allocation Order—namely: (1) those orders were directed at resource adequacy issues in the PJM Region as a whole and were not limited to a specific subregion, and (2) PJM and Constellation

agreed to compensation using the Deactivation Avoidable Cost Credit method. *Infra* Argument Part II.C.2; FERC Br. 48-66.

The record also shows that when resources are retained to support regionwide resource adequacy, they provide benefits across the region—and that Eddystone is equipped to do so. Eddystone sits in a part of the grid “from which generation resources may serve resource adequacy needs throughout the PJM Region.” Interim Order P 21, JA____ (citing PJM’s tariff filing). DOE also found that “[i]t is indisputable that the Eddystone Units are well positioned, as has been demonstrated by their dispatch during the summer heatwave, to address the ‘potential shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes’ in the PJM region.” DOE Order No. 202-25-08B, P 58, JA____ (Mar. 5, 2026) (on rehearing) (quoting August 2025 Eddystone Order 1, JA____). Petitioners do not contest this finding. And the Interim Order—which was cited extensively in the Allocation Order and approved an “identical” cost allocation methodology, Allocation Order PP 23-24 & nn.62-64, 32, JA____, ____—found that “the retention of the Eddystone Units benefits the PJM Region in general” in light of DOE’s finding that “the retirement of the Eddystone Units would ‘further decrease available dispatchable generation within PJM’s service territory.’” Interim Order P 35, JA____ (quoting May 2025 Eddystone Order 2, JA____). Petitioners again do not challenge the Interim Order or its factual findings. *See* Kentucky Br. 17; Cooperative Br. 18.

FERC has likewise explained that, in June 2025, PJM issued an emergency alert “for the entire PJM region” and Eddystone “ran on each day of the heatwave to support systemwide resource adequacy” in response. Interim Order P 22, JA____. DOE has made multiple similar findings. August 2025 Eddystone Order 2, JA____ (“[O]ver a period of hot weather from June 23 to June 26, [Eddystone] Unit 3 ran for a total of 65 hours and Unit 4 ran for a total of 59 hours”); February 2026 Eddystone Order 3-4, JA____ (reporting PJM authorization of all generating units in PJM Region to run at maximum output in response to extreme cold in January 2026). Load-serving entities across PJM benefitted from the resource adequacy contributions from Eddystone during these extreme weather episodes. *See Coal. of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1019 (D.C. Cir. 2022) (“When it comes to evaluating compliance with the cost-causation principle, it is the distribution of benefits, . . . that matters.”). Meanwhile, the record also showed that Constellation had incurred substantial costs complying with the Section 202(c) extension orders directed at Eddystone. *PJM Interconnection, L.L.C.*, Docket No. ER26-39-000, PJM Transmittal Ltr. 13 (Oct. 6, 2025), JA____ (“PJM Transmittal Ltr.”).

2. FERC Reasonably Rejected Incorrect and Irrelevant Evidentiary Arguments Submitted by Petitioners

Petitioners implausibly contend that DOE’s Section 202(c) extension orders directed at Eddystone do not support a regionwide resource adequacy finding in

PJM, pointing to language in the initial May 2025 Eddystone Order that refers to emergency conditions in “portions” of PJM. Cooperative Br. 38 (quoting May 2025 Eddystone Order 1, JA___); Kentucky Br. 27. But as FERC’s brief ably explains, Petitioners make too much of too little. To start, the initial Section 202(c) order *did* find a regionwide emergency in PJM, as FERC explained in the Interim Order, which Petitioners have not challenged. Interim Order P 36 & n.88, JA___ (quoting May 2025 Eddystone Order’s finding that “[t]he potential shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes *in the region* support the need for the Eddystone Units to contribute to system reliability”).

The Section 202(c) extension orders, moreover, drop the “portions” language that Petitioners rely on, as the Cooperative concedes. Cooperative Br. 39; August 2025 Eddystone Order 1, JA___; November 2025 Eddystone Order 1, JA___; February 2026 Eddystone Order 1, JA___. And the Allocation Order covers the Section 202(c) extension orders, *not* the initial May 2025 Eddystone Order. Allocation Order P 7, JA___ (explaining as much). So Petitioners’ argument is again beside the point. And each Section 202(c) extension order directed at Eddystone has clearly found an emergency throughout PJM, cataloging abundant evidence of *regionwide* resource adequacy concerns, rather than issues limited to pockets. *E.g.*, August 2025 Eddystone Order 1, 4, JA___, ___ (reporting “rapid” retirements of dispatchable generation and “extreme” unanticipated load growth in PJM);

November 2025 Eddystone Order 1, 4-5, JA____, ____ (noting finding of “elevated” reliability risk in PJM); February 2026 Eddystone Order 1, 3, JA____, ____ (reporting PJM emergency alerts for heatwaves in summer 2025 and extreme cold in winter 2026).

FERC also adequately addressed Petitioners’ evidence. The Cooperative argues FERC failed to consider an affidavit purporting to show that the Cooperative had met its peak demand and reserve obligations, Cooperative Br. 49, but FERC *did* note this evidence, Allocation Order P 17 n.33, JA____, then explained why it was irrelevant: “[A]ll [load-serving entities] in the PJM region will benefit from generation units retained to address regionwide resource adequacy concerns,” *id.* P 34, JA____. “[T]he fact that [a load-serving entity] self-supplies all or a portion of its capacity does not negate the fact that the [load-serving entity] benefits from retaining [such] generation units.” *Id.*

FERC’s conclusion is plainly correct for reasons recognized by courts, the Commission, and market participants. A load-serving entity that self-supplies its capacity obligation still depends on PJM’s shared reserves, coordinated planning, and regionwide capacity commitments, which all allow the load-serving entity to have a smaller reserve margin than it could do alone. *Dayton Power*, 126 F.4th at 1114-15; *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080 at P 186, *modified in*

part, 189 FERC ¶ 61,043 (2024); PJM RAA Preamble.⁷ The Cooperative’s assertions of having met its peak demand and reserve obligations thus are irrelevant; *all* load-serving entities share that capacity obligation. Neither DOE nor the Cooperative claims that any particular load-serving entity was short of capacity during the duration of the Section 202(c) orders. No further engagement with the Cooperative’s evidentiary submission was required. *Oakbrook Land Holdings, LLC v. Commissioner*, 28 F.4th 700, 714 (6th Cir. 2022) (agencies need only respond to “significant,” “relevant” comments).

D. FERC’s Approval of a Generic, Prospective Methodology for Cost Allocation Was Also Reasonable

FERC also permissibly approved a *generic* methodology. As FERC explained, it routinely approves *ex ante* cost-allocation methodologies. Allocation Rehearing Order P 32 & n.73, JA___ (collecting FERC precedent); *e.g.*, *MISO Transmission Owners v. FERC*, 860 F.3d 837, 842 (6th Cir. 2017) (noting MISO’s tariff “allocates the costs for [some] projects up front”); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 48-49 (D.C. Cir. 2014) (*per curiam*) (affirming FERC Order No. 1000’s requirement that PJM and other regional transmission organizations establish *ex ante* cost allocation for new regional transmission projects).

⁷ <https://perma.cc/9EG9-8ZWB>.

A standardized ex ante method has significant virtues. DOE has issued many Section 202(c) orders in PJM, albeit, thus far, only concerning Eddystone. *E.g.*, August 2025 Eddystone Order, JA____; November 2025 Eddystone Order, JA____; February 2026 Eddystone Order, JA____. Establishing a consistent, generic method “will help promote administrative efficiency” in assigning and recovering costs as new orders arise. Allocation Order P 31, JA____. A general cost allocation methodology will also “provide all stakeholders with certainty regarding cost recovery going forward.” Allocation Order P 14, JA____ (discussing Constellation’s comments). Indeed, PJM’s cost allocation proposal ultimately “received overwhelming stakeholder support” within PJM. PJM Transmittal Ltr. 10, JA____; Allocation Rehearing Order P 24, JA____.

The Cooperative’s challenges lack merit. It asserts that the Allocation Order is too broad because it applies whenever “a given DOE order does not expressly limit its findings to specific PJM zones.” Cooperative Br. 28-29. But as explained, resource adequacy in PJM is planned and procured on a regionwide basis. FERC Br. 16-17; *supra* Statement of the Case Part I. Accordingly, a DOE order to retain a resource “for resource adequacy purposes for the PJM Region” that is not limited to specific subregions *is* a regionwide resource adequacy finding. Allocation Order P 31, JA____. Nor did FERC treat administrative efficiency as a substitute for cost allocation analysis, *contra* Cooperative Br. 35, for all the reasons already explained,

supra Argument Part II.A-B. The Allocation Order applies only when DOE finds a resource adequacy emergency across the PJM Region and retains a resource to address those regionwide needs, in keeping with FERC’s cost-causation principles for measures providing system-wide benefits.

III. FERC’s Authority to Adopt a Prospective Cost-Allocation Methodology for Section 202(c) Orders Does Not Depend on the Ultimate Lawfulness of DOE’s Orders

The lawfulness of DOE’s Eddystone Section 202(c) orders is not before this Court, and that question is irrelevant to the issue that is before this Court. Petitioners have not challenged those orders, in this Court or anywhere. And although the D.C. Circuit recently vacated an unrelated order concerning the Campbell Plant in MISO, *Campbell I*, 2026 WL 2671756, at *2, the court has not ruled on any petition concerning Eddystone. More fundamentally, no matter how the litigation regarding the Eddystone Section 202(c) orders is resolved, it has no bearing on the question here: whether PJM’s generic, prospective methodology for allocating the costs of Section 202(c) orders is just and reasonable.

The Cooperative in a supplemental letter states that the Allocation Order “applies to PJM members whenever DOE does issue a valid 202(c) order,” Dkt. 32, Cooperative Ltr. 1 (Sep. 21, 2026)—implying that PJM has no need to allocate costs if a court eventually determines on judicial review that a DOE order was infirm. But whether or not an order is ultimately vacated, it still spurs real compliance costs

while in force. And Section 202(c) itself contemplates that “the parties affected” will receive “compensation or reimbursement” for their costs “in carrying out such order”—providing for such compensation or reimbursement in a separate sentence from the provision authorizing DOE to issue such orders. 16 U.S.C. § 824a(c)(1). While this case does not present the question of how to treat the costs of a Section 202(c) order that is later vacated, the Court should not endorse the Cooperative’s unsupported suggestion.

IV. If the Court Finds Any Fault in the Allocation Order, Any Error Warrants Remand Without Vacatur

If the Court finds any defect in the Allocation Order—which it should not—the equities favor remand without vacatur. This Court asks two questions when considering whether to vacate. *Sierra Club v. U.S. EPA*, 60 F.4th 1008, 1022-23 (6th Cir. 2023); *accord XO Energy MA, LP v. FERC*, 77 F.4th 710, 719 (D.C. Cir. 2023); *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng’rs*, 781 F.3d 1271, 1290 (11th Cir. 2015) (collecting cases). First, “how likely it is the agency will be able to justify its decision on remand.” *Sierra Club*, 60 F.4th at 1022 (internal quotation marks and citation omitted). Second, whether vacatur would have “disruptive consequences.” *Id.* at 1023 (citation omitted). Both prongs would support remanding without vacatur.

First, Petitioners do not genuinely contend that it would be unlawful for FERC to approve regionwide cost allocation. Quite the opposite: Kentucky concedes that

“the Commission can reasonably adopt assumptions about regionwide benefits, and it does so often thanks to the interconnected nature of our national grid.” Kentucky Br. 44. Petitioners claim, at most, that FERC needed to show more analytical work. *Id.* at 23, 44; Cooperative Br. 27, 50-51. Explanation-based defects are the paradigm case for remand without vacatur. *E.g., Sierra Club*, 60 F.4th at 1022 (“When an agency may be able readily to cure a defect in its explanation of a decision, the first factor . . . counsels remand without vacatur.” (citation omitted)). Indeed, it need only be “possible that, on remand, [FERC] may ‘be able to offer better reasoning.’” *Id.* (quoting *Pollinator Stewardship Council v. U.S. EPA*, 806 F.3d 520, 532 (9th Cir. 2015)). FERC would easily clear that bar here.

Second, vacatur would also be highly disruptive, and for no good reason. Constellation is entitled to compensation for the emergency services that Eddystone has provided in lieu of retirement. *E.g.*, February 2026 Eddystone Order 3, JA____ (reporting Eddystone “generated 26,971 [megawatt-hours] between June 2025 and December 2025”). Constellation’s ability to collect that compensation, however, depends on some approved mechanism for cost allocation. Allocation Order P 7, JA____ (“[T]here is no Tariff-prescribed rule that allows PJM to recover costs incurred by resources that continue to operate in compliance with a DOE order issued under FPA section 202(c),” aside from a time-limited methodology exclusively applicable to the May 2025 Eddystone Order). Vacatur could thus

undermine Constellation’s ability to receive timely compensation for costs it has already incurred, which would both injure the company and undermine the entire industry’s confidence that it will receive timely compensation for the costs of complying with DOE’s emergency orders. Meanwhile, if FERC were to approve a different cost allocation methodology on remand, any over-recovery could be handled via refunds. *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952-53 (D.C. Cir. 2016).

Accordingly, if the Court determines that the Allocation Order is unlawful, it should remand without vacatur to avoid these harmful consequences while FERC provides additional explanation. *XO Energy*, 77 F.4th at 719 (remanding without vacatur FERC authorization of PJM’s Section 205 tariff amendment because vacatur “would unduly disrupt PJM’s markets” and the reliance interests of market participants); *City of Oberlin v. FERC*, 937 F.3d 599, 611 (D.C. Cir. 2019) (remanding without vacatur FERC’s authorization of an already-operational pipeline because vacatur “would be quite disruptive”).

CONCLUSION

For the reasons presented here and in FERC's brief, the petitions for review should be denied on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and a copy of the foregoing was served on all counsel of record via the CM/ECF system.

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