

# One year of Trump’s “Energy Emergency” in Context and in Court

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One year into President Trump’s second term, the president’s use of emergency powers is in the news and the subject of much legal commentary. That attention has largely focused on national guard deployments and unilateral tariffs. Commentators from across the political spectrum have questioned whether the administration’s assertion of emergency powers are legitimate and called for courts to take an assertive role in reviewing the administration’s actions taken under the guise of emergency response.

President Trump’s announcement of an energy emergency has received less attention. The president declared the emergency on the first day of this term and directed agencies to prioritize energy production from fossil fuels in a range of ways. Now, one year into this term, that emergency declaration has translated into concrete agency actions and fueled legal challenges.

This paper explains the energy emergency declaration, looks at new agency policies and on-the-ground actions agencies have taken during the energy emergency’s first year, puts the declaration and agency actions in historical context, and asks how courts might review those policies and actions if challenged. This analysis shows that the Trump administration’s use of the energy emergency to justify fast-tracked environmental review for extractive energy projects and orders that override the planned retirement of coal and gas-fired electric plants differs significantly from historical practice, rests on shaky legal ground, and threatens long-term changes to energy production.

## What is the National Emergencies Act, what are its limits, and what powers does it confer?

*The Act creates a process for presidential emergency declarations. A declaration may unlock emergency powers in other statutes; while the Act has few limits, those statutes often have their own limits or conditions for use of emergency powers.*

Presidents’ emergency declarations are creatures of statute. The broadest of these statutes, the National Emergencies Act (NEA), allows the president “during the period of a national emergency” to declare an emergency by transmitting a proclamation to Congress and publishing the proclamation in the Federal Register.<sup>1</sup> For the proclamation to have legal effect, the president must specify “the provisions of law under which he proposes that he, or other officers will act.”<sup>2</sup> The emergency declaration will automatically terminate after one year unless the president publishes a notice that the emergency continues.<sup>3</sup> Congress can also end a declared emergency.<sup>4</sup> Although the NEA, as

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<sup>1</sup> 50 U.S.C. § 1621. For a table summarizing emergency framework statutes, such as the NEA, see Brennan Center, A Guide to Emergency Powers and Their Use, <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use> (last updated July 1, 2025).

<sup>2</sup> 50 U.S.C. § 1631.

<sup>3</sup> 50 U.S.C. § 1622.

<sup>4</sup> 50 U.S.C. § 1622; see also Congressional Research Process, *National Emergencies Act: Expedited Procedures in the House and Senate*, R46567 (Feb. 3, 2025) (describing the process).

originally drafted, allowed termination through a joint resolution of Congress alone, the Supreme Court held that “legislative vetoes” like the NEA’s Congressional termination provision are subject to presidential veto.<sup>5</sup> So for practical purposes, a veto-proof majority is required for Congress to take this step—a situation Justice Gorsuch recently characterized as “a one-way ratchet” of power from Congress to the president.<sup>6</sup> This one-way ratchet means that emergency declarations are nearly impossible to terminate without presidential cooperation, even if circumstances change or the emergency claim proves dubious.

Beyond certain carved-out exceptions,<sup>7</sup> the statute has no limits: it does not define “national emergency,” it does not require specific findings to support an emergency declaration, and it does not provide for judicial review. The NEA also does not grant specific emergency powers.

But a NEA declaration may unlock emergency provisions in other statutes or regulations. The Brennan Center has identified 150 such statutory provisions;<sup>8</sup> agencies have created additional provisions through regulations. Those statutes or regulations may contain their own provisions that allow president to take unilateral action, bypass ordinary processes, or waive normal requirements. While the NEA lacks bounds on what constitutes an “emergency,” these substantive statutes often require certain conditions before their provisions may be triggered.

Some statutes’ emergency provisions do not require a formal presidential emergency declaration and instead allow an agency official to determine whether circumstances exist to trigger the emergency provision. Even where a presidential declaration is not needed for these agency emergency actions, a declaration may send a clear signal that the president urges their use.

## What was President Trump’s day-one National Energy Emergency declaration?

*The declaration sent a strong signal to agencies to take steps to prioritize and expedite energy development, but exempted wind, solar, and storage projects. Other related orders gave more specific instructions to agencies and confirmed the focus on extractive energy.*

As part of a suite of inauguration day executive orders that indicated the new administration’s policy priorities, President Trump declared a “National Energy Emergency,” invoking the National Emergencies Act.<sup>9</sup> President Trump identified “high energy prices” caused by “inadequate energy supply and infrastructure” as constituting an “active threat to the American people.” The declaration also invokes national and economic security, stating that “hostile state and non-state foreign actors have targeted domestic energy infrastructure, weaponized our reliance on foreign energy, and abused their ability to cause dramatic swings within international commodity markets.” The declaration cites opportunity for the United States to produce more energy that it could sell to international allies and partner. The declaration states that the “precariously inadequate and

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<sup>5</sup> Immigration & Naturalization Service v. Chadha, 462 U.S. 919, 959 (1983).

<sup>6</sup> Transcript, Learning Resources, Inc. v. Trump, No. 24-1287, at 74:17 (argued Nov. 5, 2025), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2025/24-1287\\_b07d.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-1287_b07d.pdf).

<sup>7</sup> 50 U.S.C. § 1651.

<sup>8</sup> Brennan Center, A Guide to Emergency Powers and Their Use, <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use> (last updated July 1, 2025). Many of these statutes may be invoked only in the context of a certain type of emergency declaration.

<sup>9</sup> Exec. Order 14156 (Jan. 20, 2025).

intermittent energy supply” will “dramatically deteriorate in the near future due to a high demand for energy and natural resources to power the next generation of technology.”

The declaration directs agency heads to identify and use any available lawful emergency authorities to facilitate the “identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources.” Agencies should identify ways to give emergency treatment to projects needing approvals under certain sections of the Clean Water Act, Marine Protection Research and Sanctuaries Act, and Rivers and Harbors Act and to use emergency consultation procedures under the Endangered Species Act, among other statutes and authorities. Importantly, though, the declaration defines “energy” and “energy resources” to include extractive energy, geothermal, hydropower, biofuels, nuclear, and critical minerals, excluding wind, solar, and electricity storage.

The declaration was accompanied and followed by other related executive orders:

- In his “Unleashing American Energy” executive order of the same day, President Trump ordered agencies to “use all possible authorities, including emergency authorities, to expedite the adjudication of Federal permits.”<sup>10</sup>
- On March 20, President Trump issued an order on “Immediate Measures to Increase American Mineral Production,” directing agencies to identify priority mining projects and federal lands with mineral deposits and find ways to streamline permitting or assist with financing for mineral extraction projects.<sup>11</sup>
- On April 8, the president issued an order prioritizing the development of coal from federal lands and including coal in the minerals addressed in the “Immediate Measures” executive order.<sup>12</sup>
- That same day, President Trump issued his “Strengthening Reliability and Security of the United States Electric Grid,” among other things, directing the Secretary of Energy to develop processes for issuing emergency orders under the Federal Power Act and for identifying power plants that need to be “retained.”<sup>13</sup>
- Protecting American Energy from State Overreach,” also issued on April 8, directs the Attorney General to identify and block the enforcement of state laws that might undermine the administration’s goal of “unleash[ing] American energy.”<sup>14</sup>

Together, these orders send a strong message about the administration’s policy priorities and provide direct instructions to agencies to use emergency authorities and other tools to advance fossil fuel development while constraining renewable energy and limiting state regulatory authority.

## What steps have agencies taken in response to the energy emergency declaration and related orders?

*Agencies have implemented the president’s direction, exercising emergency authorities to favor extractive energy production and infrastructure, from new policies to on-the-ground actions. For*

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<sup>10</sup> Exec. Order 14154 (Jan. 20, 2025).

<sup>11</sup> Exec. Order 14241 (Mar. 20, 2025).

<sup>12</sup> Exec. Order 14261 (Apr. 8, 2025).

<sup>13</sup> Exec. Order 14262 (Apr. 8, 2025).

<sup>14</sup> Exec. Order 14260 (Apr. 8, 2025).

*example, the Department of Energy (DOE) has issued a string of emergency orders directing fossil fuel-fired electricity generating plants to continue running past their planned retirement dates. And the Department of the Interior (DOI) has developed fast-track environmental review processes that it has applied to several fossil fuel extraction projects.*

## **DOE's Federal Power Act orders: keeping fossil fuel-powered plants running**

The Department of Energy issued a report in July 2025 presenting a “uniform methodology to identify at-risk region(s) and guide reliability interventions.”<sup>15</sup> However, DOE has not yet published the “process” or “protocol” for identifying electricity generation plants that need to be “retained” via an emergency order under the Federal Power Act, as directed by the April electricity-focused executive order. Even so, DOE has already used that Federal Power Act emergency authority to delay the closure of oil/gas and coal-fired plants that were otherwise slated for retirement through a series of 90-day orders.

On May 23, 2025, DOE issued the first such order: an emergency order under Federal Power Act section 202(c), ordering the operator of the J.H. Campbell coal-fired power plant in West Olive, Michigan, to keep the plant operating beyond its planned retirement date of May 31, 2025.<sup>16</sup> Consumers Energy had announced the plant’s planned retirement in 2021 as part of its plan to end coal use and “lead Michigan’s clean energy transformation” by investing in solar, wind, and gas.<sup>17</sup> DOE’s order prevented that planned closure. The order stated that “an energy emergency exists . . . due to a shortage of electric energy” in the plant’s region and cited a “near-term period of highest capacity shortfall” in summer 2025 during periods of high demand or low energy output.<sup>18</sup>

That order was set to expire on August 21, 2025; on August 20, DOE issued a second order, keeping the Campbell plant running until November 19, 2025.<sup>19</sup> DOE stated that the summer season demands that led it to initially order continued operation of the Campbell plant were continuing, and that high demand would continue into other seasons. DOE also cited its July 2025 Resource Adequacy Report, which forecasted “prolific growth of data centers for the development of AI” as being part of a picture where “the emergency conditions” supporting the May order “will continue in

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<sup>15</sup> U.S. Department of Energy, Evaluating the Reliability and Security of the United States Electric Grid (July 2025), <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf>.

<sup>16</sup> Federal Power Act Section 202(c): Midcontinent Independent System Operator (MISO), Order No. 202-25-3 (May 23, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-midcontinent-independent-system-operator-miso>.

<sup>17</sup> Consumers Energy Announces Plan to End Coal Use by 2025; Lead Michigan’s Clean Energy Transformation (June 23, 2021), <https://www.consumersenergy.com/news-releases/news-release-details/2021/06/23/consumers-energy-announces-plan-to-end-coal-use-by-2025-lead-michigans-clean-energy-transformation>.

<sup>18</sup> Federal Power Act Section 202(c): Midcontinent Independent System Operator (MISO), Order No. 202-25-3 (May 23, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-midcontinent-independent-system-operator-miso>.

<sup>19</sup> Federal Power Act Section 202(c): Midcontinent Independent System Operator (MISO), Order No. 202-25-7 (Aug. 20, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-midcontinent-independent-system-operator-miso-0>.

the near term and are also likely to continue in subsequent years.”<sup>20</sup> Before the August order expired, DOE issued a third 202(c) order for the Campbell plant.<sup>21</sup> That order gives very similar reasons as the August order and extends through February 17, 2026.

DOE similarly ordered the operator of the Eddystone Generating Station in Eddystone, Pennsylvania, to continue operating two oil/gas-fueled generating units beyond their planned May 31, 2025, retirement date.<sup>22</sup> As with the Campbell plant, DOE issued a second order just before the first was to expire, requiring continuing production through November 26, 2025.<sup>23</sup> It issued a third Eddystone order on November 25, 2025, keeping the units running through February 24, 2026.<sup>24</sup>

In December 2025, OE issued orders to the operators of four additional coal-fired generating plants to keep operating past their dates of planned cessation of operations that month: the single unit at TransAlta Centralia Generation in Centralia, Washington,<sup>25</sup> two units at the R.M. Schahfer Generating Station in Wheatfield, Indiana,<sup>26</sup> one unit at the F.B. Cully Generating Station in Warrick County, Indiana,<sup>27</sup> and one unit at the Craig Station in Craig, Colorado.<sup>28</sup> All of the orders extend the maximum time allowed, through March 2026. The total capacity for all of the coal-fired plants now under 202(c) orders is more than 3.5 GW.<sup>29</sup>

Although DOE does not need a presidential declaration of emergency to use Federal Power Act section 202(c)—and a presidential declaration is not sufficient to unlock section 202(c)—DOE has cited the energy emergency and related orders in its 2025 202(c) orders, including the declaration’s statements about the state of energy production and transmission in the United States.

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<sup>20</sup> Federal Power Act Section 202(c): Midcontinent Independent System Operator (MISO), Order No. 202-25-7 (Aug. 20, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-midcontinent-independent-system-operator-miso-0>.

<sup>21</sup> Federal Power Act Section 202(c): Midcontinent Independent System Operator (MISO), Order No. 202-25-9 (Nov. 18, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-midcontinent-independent-system-operator-miso-order-no-202-25>.

<sup>22</sup> Federal Power Act Section 202(c): PJM Interconnection, Order No. 202-25-4 (May 30, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-interconnection>.

<sup>23</sup> Federal Power Act Section 202(c): PJM Interconnection, Order No. 202-25-8 (Aug. 28, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-interconnection-pjm>.

<sup>24</sup> Federal Power Act Section 202(c): PJM Interconnection, Order No. 202-25-10 (Nov. 25, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-interconnection-pjm-order-no-202-25-10>.

<sup>25</sup> Federal Power Act Section 202(c): TransAlta No. 202-25-11 (Dec. 16, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-transalta-order-no-202-25-11>.

<sup>26</sup> Federal Power Act Section 202(c): Schahfer No. 202-25-12 (Dec. 23, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-schahfer-order-no-202-25-12>.

<sup>27</sup> Federal Power Act Section 202(c): Cully No. 202-25-13 (Dec. 23, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-culley-order-no-202-25-13>.

<sup>28</sup> Federal Power Act Section 202(c): Craig No. 202-25-14 (Dec. 30, 2025), <https://www.energy.gov/ceser/federal-power-act-section-202c-craig-order-no-202-25-14>.

<sup>29</sup> 1,420 MW (Campbell); 729.9 MW (Centralia); 847 MW (Schahfer); 103.7 MW (Cully); 446 MW (Craig). The oil/gas-fired Eddystone units have a total capacity of 760 MW. Capacities are sourced from the relevant 202(c) orders for these facilities.

DOE's 202(c) orders are subject to challenge, and environmental groups, consumer advocates, and states sought rehearing in processes before DOE. DOE has denied all of those requests, and several challengers have now filed petitions for review in federal court.<sup>30</sup>

DOE has no authority to allow power plant owners to recover costs of complying with an emergency order from ratepayers. DOE's recent orders are costly. The net cost of compliance with just the first 90-day Campbell Plant order was \$53 million.<sup>31</sup> For some power plant owners, existing market rules may already enable the owners to collect compliance costs from customers.<sup>32</sup> Otherwise, plant owners must file a cost-recovery proposal with federal or state regulators. Public interest organizations and consumer advocate groups have also participated in proceedings before the Federal Energy Regulatory Commission, arguing that consumers should not have to bear the costs of operating these plants under the emergency orders because they have not been shown to provide a benefit to consumers.<sup>33</sup> FERC rejected those arguments regarding the Campbell and Eddystone plants in August 2025.<sup>34</sup>

### **DOI's emergency NEPA processes: fast-tracking uranium mining, oil transport, and coal extraction**

A second example of an agency responding to the energy emergency declaration is DOI's adoption of special fast-track procedures for compliance with environmental review statutes. In April 2025, DOI announced new "emergency permitting procedures" under the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act, that it would apply to energy projects as defined in the energy emergency declaration.<sup>35</sup>

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<sup>30</sup> See State Power Project, Challenges to DOE 202(c) Orders, <https://statepowerproject.org/challenges-to-doe-202c-orders/> (collecting briefs from the various challenges). As of this writing substantive briefing is not complete in any of these cases. On January 14, 2026, public interest groups filed the most recent administrative challenge, seeking rehearing of the order preventing retirement of the Centralia plant. See Earthjustice, *Public Interest Groups Challenge Trump Administration Order to Keep Washington's Last Coal Plant Operating* (Jan. 14, 2026), <https://earthjustice.org/press/2026/public-interest-groups-challenge-trump-administration-order-to-keep-washingtons-last-coal-plant-operating>.

<sup>31</sup> See Initial Opening Brief of Public Interest Organization Petitioners, No. 25-1159, at 21, ADD\_176 (consolidated with 25-1160 & 25-1162 (D.C. Cir. filed Dec. 19, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-pios.pdf>.

<sup>32</sup> See Letter from David Mills, Chair, PJM Board of Members, to PJM Stakeholders (June 9, 2025), <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2025/20250609-pjm-board-cifp-letter-eddystone.pdf> (stating that existing rules provided a short-term cost-recovery solution but that changes would be necessary in the long term).

<sup>33</sup> See, e.g. Protest of Public Interest Organizations, No. ER25-2653-000 (FERC, filed July 7, 2025) (regarding the Eddystone plant); Comments of Environmental Law & Policy Center, et al., No. EL25-90-000 (filed June 20, 2025) (regarding the Campbell plant).

<sup>34</sup> PJM Interconnection, LLC v. Midwest Independent Transmission System Operator, 192 FERC ¶ 61,159 (2025) (regarding the Eddystone plant); Consumers Energy Co. v. Midcontinent Independent System Operator, Inc., 192 FERC ¶ 61,158 (2025) (regarding the Campbell plant); PJM Interconnection, LLC v. Midwest Independent Transmission System Operator, 193 FERC ¶ 61,229 (2025) (denying rehearing); Consumers Energy Co. v. Midcontinent Independent System Operator, 193 FERC ¶ 61,228 (2025) (denying rehearing).

<sup>35</sup> U.S. Department of the Interior, Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply (Apr. 23, 2025), <https://www.doi.gov/pressreleases/department-interior-implements-emergency-permitting-procedures-strengthen-domestic>.

These new NEPA procedures invoke a rule that allows DOI “to take urgently needed actions” either “before preparing an environmental document” or upon using “alternative arrangements” for preparation of such a document.<sup>36</sup> The section applies “only if the Responsible Official determines that an emergency exists” requiring special procedures, and “alternative arrangements” are only to be used for “actions necessary to control the immediate actions in response and related to the emergency.”<sup>37</sup>

DOI’s new emergency permitting procedures allow applicants seeking approval for energy-related projects—including leasing, siting, producing, transporting, refining, or generating energy as defined in the energy emergency declaration—to opt into a fast-tracked NEPA review process.<sup>38</sup> Where an environmental assessment—a review to determine whether a project is likely to cause significant environmental effects—ordinarily takes up to one year,<sup>39</sup> this expedited review would be completed within approximately 14 days. Expedited environmental impact statements for projects likely to have significant environmental effects would take approximately 28 days, rather than the ordinary two years.<sup>40</sup>

DOI has deployed its new “alternative arrangements” for several energy-related projects in the administration’s first year. As the following examples show, the administration is using the energy emergency declaration to dramatically shorten review times.

On May 23, 2025, the Bureau of Land Management completed an environmental assessment and issued a record of decision approving a request to reactivate and expand the Velvet-Wood vanadium and uranium mine in Utah,<sup>41</sup> just 11 days after the Bureau announced it would use its emergency expedited procedures for the project. Although this NEPA process was both new and expedited, the mine has been around for many years but has been inactive and undergone significant reclamation since 1988. It was acquired in 2015, but firm plans to reopen the mine emerged only in 2025.<sup>42</sup> The agency did not seek public comment on its analysis nor publish a draft document. BLM gave area Tribes only one week to submit comments about the proposed project. The resulting environmental assessment describes Tribes’ concerns—about water contamination, effects on cultural resources, effects from the transportation of uranium, and the use of emergency procedures themselves—but

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<sup>36</sup> 43 C.F.R. § 46.150. Although Interior rescinded nearly all its NEPA-implementing procedures in July 2025, it retained certain provisions that allow for streamlined review.

<sup>37</sup> *Id.*

<sup>38</sup> U.S. Department of the Interior, Alternative Arrangements for NEPA Compliance (Apr. 23, 2025), [https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed\\_1.pdf](https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf).

<sup>39</sup> See 42 U.S.C. § 4336a(g)(1)(B).

<sup>40</sup> See 42 U.S.C. § 4336a(g)(1)(A).

<sup>41</sup> U.S. Department of the Interior, Velvet-Wood Mine Plan of Operations Modification Environmental Assessment (May 23, 2025), [https://eplanning.blm.gov/public\\_projects/2038403/200653122/20134556/251034536/Velvet-Wood%20Mine%20EA-FONSI-DR\\_20250523\\_Signed.pdf](https://eplanning.blm.gov/public_projects/2038403/200653122/20134556/251034536/Velvet-Wood%20Mine%20EA-FONSI-DR_20250523_Signed.pdf).

<sup>42</sup> U.S. Department of the Interior, Velvet-Wood Mine Plan of Operations Modification Environmental Assessment (May 23, 2025), [https://eplanning.blm.gov/public\\_projects/2038403/200653122/20134556/251034536/Velvet-Wood%20Mine%20EA-FONSI-DR\\_20250523\\_Signed.pdf](https://eplanning.blm.gov/public_projects/2038403/200653122/20134556/251034536/Velvet-Wood%20Mine%20EA-FONSI-DR_20250523_Signed.pdf).

does not explain if or how the agency responded to those concerns.<sup>43</sup> Environmental groups and tribes have criticized the expedited process.<sup>44</sup>

BLM used a similarly expedited process in studying and approving the expansion of a Utah facility where waxy crude oil is transferred from tanker trucks onto rail cars. That project will increase the facility's capacity from 20,000 barrels of oil to 100,000 barrels of oil daily that may be transported to Gulf Coast refineries.<sup>45</sup> BLM did not publish a draft environmental assessment nor hold a public comment period. Regarding consultation with Tribes, the environmental assessment states that "consultation is ongoing," but identifies no specifics (and, given that the agency issued a decision on the same day it published the environmental assessment, it is unclear whether that consultation could have any substantive effect).<sup>46</sup>

DOI's Office of Surface Mining and Reclamation Enforcement used the expedited procedures to prepare an environmental impact statement in just 28 days for an expansion of the Black Butte coal mine in Wyoming, which will allow the leaseholder to extract more than 9 million tons of federal coal.<sup>47</sup> The agency took scoping comments, but it did so without publishing any draft analysis to which the public could react,<sup>48</sup> and the response to these comments in the resulting EIS is brief.<sup>49</sup> The EIS reports that OSMRE consulted with local Tribes, but does not indicate whether Tribes made any comments about the project.<sup>50</sup>

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<sup>43</sup> U.S. Department of the Interior, Velvet-Wood Mine Plan of Operations Modification Environmental Assessment (May 23, 2025), at 3  
[https://eplanning.blm.gov/public\\_projects/2038403/200653122/20134556/251034536/Velvet-Wood%20Mine%20EA-FONSI-DR\\_20250523\\_Signed.pdf](https://eplanning.blm.gov/public_projects/2038403/200653122/20134556/251034536/Velvet-Wood%20Mine%20EA-FONSI-DR_20250523_Signed.pdf).

<sup>44</sup> Andrew Christiansen, Velvet-Wood Uranium Mine Construction Begins, THE SALT LAKE TRIBUNE (Nov. 7, 2025), <https://www.sltrib.com/news/2025/11/07/velvet-wood-uranium-mine/>.

<sup>45</sup> U.S. Department of the Interior Wildcat Loadout Facility Right-of-Way Amendment Environmental Assessment (July 3, 2025), [https://eplanning.blm.gov/public\\_projects/2039088/200657441/20137832/251037812/Final%20Final%20Wildcat%20EA%207.3.25.pdf](https://eplanning.blm.gov/public_projects/2039088/200657441/20137832/251037812/Final%20Final%20Wildcat%20EA%207.3.25.pdf).

<sup>46</sup> U.S. Department of the Interior Wildcat Loadout Facility Right-of-Way Amendment Environmental Assessment, a 4.1 (July 3, 2025), [https://eplanning.blm.gov/public\\_projects/2039088/200657441/20137832/251037812/Final%20Final%20Wildcat%20EA%207.3.25.pdf](https://eplanning.blm.gov/public_projects/2039088/200657441/20137832/251037812/Final%20Final%20Wildcat%20EA%207.3.25.pdf).

<sup>47</sup> Office of Surface Mining Reclamation and Enforcement, Black Butte Coal Company Federal Coal Lease WYW-6266 Mining Plan Modification, Environmental Impact Statement (Sept. 9, 2025), [https://www.osmre.gov/sites/default/files/inline-files/BlackButte\\_Emergency\\_EIS\\_9.9.25\\_signed.pdf](https://www.osmre.gov/sites/default/files/inline-files/BlackButte_Emergency_EIS_9.9.25_signed.pdf).

<sup>48</sup> U.S. Department of the Interior, Trump Administration Accelerates Review of Black Butte Mine Expansion in Bold Step for Energy Security (Aug. 12, 2025), <https://www.doi.gov/pressreleases/trump-administration-accelerates-review-black-butte-mine-expansion-bold-step-energy>.

<sup>49</sup> Office of Surface Mining Reclamation and Enforcement, Black Butte Coal Company Federal Coal Lease WYW-6266 Mining Plan Modification, Environmental Impact Statement, Appendix F (Sept. 9, 2025), [https://www.osmre.gov/sites/default/files/inline-files/BlackButte\\_Emergency\\_EIS\\_9.9.25\\_signed.pdf](https://www.osmre.gov/sites/default/files/inline-files/BlackButte_Emergency_EIS_9.9.25_signed.pdf).

<sup>50</sup> Office of Surface Mining Reclamation and Enforcement, Black Butte Coal Company Federal Coal Lease WYW-6266 Mining Plan Modification, Environmental Impact Statement, at 120 (Sept. 9, 2025), [https://www.osmre.gov/sites/default/files/inline-files/BlackButte\\_Emergency\\_EIS\\_9.9.25\\_signed.pdf](https://www.osmre.gov/sites/default/files/inline-files/BlackButte_Emergency_EIS_9.9.25_signed.pdf).

## How do the energy emergency declaration and agency actions addressing it compare to historical patterns?

*In contrast to most historical emergency declarations, there is a lack of consensus around the existence of an energy emergency, the administration has taken actions that are inconsistent with or undermine the existence of an emergency, and actions taken in purported response to the emergency either lack any natural endpoint or will deliver results only well into the future.*

### New patterns in emergency declarations

Many have observed that President Trump's use of emergency powers has been more expansive and has tested limits more than any previous president.<sup>51</sup> Whereas presidents have ordinarily used emergency declarations to address specific threats, natural disasters, or novel pathogens, and have calibrated their actions under those declarations to respond to those situations, President Trump has established a new pattern: expansive use of emergency declarations to address situations where there is a lack of consensus about whether an emergency exists.

Since Congress passed the NEA, presidents have most frequently declared emergencies that invoke the International Emergency Economic Powers Act (IEEPA), which allows the president to limit trade or impose sanctions to address foreign actors.<sup>52</sup> NEA declarations of emergency not invoking IEEPA have been rare, and, until President Trump's first term, responded to immediate events that few disputed constituted emergent threats or situations requiring immediate action. These included declarations in the aftermath of 9/11, in response to Hurricane Katrina, and to address the H1N1 influenza pandemic in 2009.<sup>53</sup> Emergency declarations in these situations—the aftermath of an attack or disaster or response to an imminent threat—are relatively uncontroversial.

President Trump's 2019 proclamation "Declaring a National Emergency Concerning the Southern Border of the United States" broke this pattern.<sup>54</sup> That order, intended to allow the executive branch to shift power to pay for a border wall that Congress refused to fund, drew widespread critique. Commentators observed that the order neither addressed an actual "emergency" as the term is commonly understood nor appeared calibrated to address even the situation that the president contended constituted one and was instead a "manufactured emergency" calibrated to subvert the

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<sup>51</sup> See, e.g., Ilya Somin, *Trump's 'Emergencies' are Pretexts for Undermining the Constitution*, LAWFARE (May 15, 2025) <https://www.lawfaremedia.org/article/trump-s-emergencies-are-pretexts-for-undermining-the-constitution>; Elizabeth Goitein, *What's at Stake in the Supreme Court Tariffs Case*, BRENNAN CENTER FOR JUSTICE (Nov. 1, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/whats-stake-supreme-court-tariffs-case>; Kat Lonsdorf, *What Trump's National Emergencies Could Mean for American Democracy*, NPR (June 9, 2025), <https://www.npr.org/2025/06/09/nx-s1-5424666/trump-national-emergencies-democracy-supreme-court-constitution>.

<sup>52</sup> In a case now pending before the Supreme Court, the Trump administration has argued that IEEPA also gives the president to levee sweeping tariffs, which no president had done under the statute until this term. *Learning Resources, Inc. v. Trump*, No. 24-1287; *Trump v. V.O.S. Selection*, No. 25-250 (S. Ct. argued Nov. 5, 2025).

<sup>53</sup> For a complete list of emergency declarations since the NEA's enactment, see Brennan Center for Justice, *Declared National Emergencies Under the National Emergencies Act* (updated Oct. 22, 2025), <https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act>.

<sup>54</sup> Proc. 9855 (Feb. 15, 2019).

political process and consolidate power in the president.<sup>55</sup> Congress twice passed joint resolutions to terminate the emergency declaration, but President Trump vetoed them.<sup>56</sup> The order also spurred calls for reform of the NEA and additional Congressional oversight.<sup>57</sup>

President Trump's emergency declaration in response to the COVID-19 pandemic was less controversial; President Biden's emergency declarations were not unusual in scope or number (specific actions under the COVID-19 declaration proved controversial, though not the declaration itself).

If the border wall emergency declaration broke a pattern of adherence to norms about what constitutes an "emergency," President Trump's second term has established a new one: use of emergency declarations to enable quick, unilateral action to accomplish the President's policy goals. President Trump has invoked emergency statutes (though not the NEA) to declare a "Crime Emergency" in Washington, DC,<sup>58</sup> despite information that contradicted claims about escalating crime rates; has used IEEPA in unprecedented ways to institute sweeping tariffs on US trading partners, citing ongoing economic conditions reframed as a crisis;<sup>59</sup> and has again declared an emergency at the southern border.<sup>60</sup>

### **Trump's energy emergency as policy tool, rather than emergency response**

The energy emergency declaration is part of this new pattern. The declaration deviates from historical emergency declarations in several ways, suggesting that it functions more as a tool for implementing the President's policy priorities rather than as a response to an actual emergency.

#### *Absence of immediate threat or crisis*

Historically, emergency declarations have addressed sudden, acute situations that required immediate response. Indeed, the point of Congress's grants of emergency power to the president is to offer a president the power to act nimbly in the face of an urgent, or perhaps shifting, situation, rather than to wait for Congress to respond. The energy emergency declaration, however, identifies conditions that have developed over years and forecasts future challenges that may, or may not, arise.

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<sup>55</sup> See, e.g., Robert Tsai, *Manufactured Emergencies*, YALE LAW JOURNAL FORUM 590 (Feb. 15, 2020); Rachel Riegelhaupt, *Manufactured Emergencies: The Crisis at the Core of the National Emergencies Act*, 23 LEGIS. & PUB. POLICY 277 (2020).

<sup>56</sup> H.R.J. Res. 46, 116th Cong. (2019) (vetoed Mar. 15, 2019); S.J. Res. 54, 116th Cong. (2019) (vetoed Oct. 15, 2019).

<sup>57</sup> See David Landau, *Rethinking the Federal Emergency Powers Regime*, 84 OHIO STATE LAW J. 603, 612 (2023).

<sup>58</sup> Exec. Order 14333: Declaring a Crime Emergency in the District of Columbia (Aug. 11, 2025) (invoking Section 740 of the District of Columbia's Self-Government and Governmental Reorganization Act (P.L. 93-198)).

<sup>59</sup> Exec. Order 14257, Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits (Apr. 2, 2025).

<sup>60</sup> Proclamation 10886, Declaring a National Emergency at the Southern Border of the United States (Jan. 20, 2025).

Assessments do not support President Trump’s assertions that the US energy sector is unreliable and under-resourced.<sup>61</sup> Commentators have observed that, even if an energy shortage is forecast, it does not constitute a true “emergency” as the term is widely understood.<sup>62</sup> Rising energy prices and energy supply and infrastructure concerns may be valid reasons for policy changes, but they do not present the severity and immediacy normally associated with emergencies.

DOE’s on-the-ground application of the administration’s energy emergency through its orders requiring continued production of energy at fossil fuel-powered plants also deviates from historical practice. While DOE has used emergency Federal Power Act section 202(c) authority many times before, its emergency orders have ordinarily responded to immediate, unusual events: Between 2020 and 2024, DOE issued eight section 202(c) orders—all responding to extreme weather events (hurricanes, heat waves, cold snaps), all lasting between one day and four days.<sup>63</sup> In each of those instances, DOE’s order came in response to a request from a power plant owner, grid operator, or transmission provider explaining the basis for the emergency and the requested response. In contrast, no outside entity formally requested that DOE issue its orders keeping the plants subject to DOE’s unusual 202(c) orders in 2025.

#### *Actions that undermine the validity of the energy emergency declaration*

Perhaps the most telling indication that the energy emergency declaration and related orders do not purport to respond to an actual emergency is the administration’s actions that contradict the stated urgency and undermine efforts to address energy supply concerns.

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<sup>61</sup> See Olivia Guarna & Michael Burger, *Demystifying President Trump’s “National Emergency” and the Scope of Emergency Authority*, CLIMATE LAW: A SABIN CENTER BLOG (Feb. 14, 2025), <https://blogs.law.columbia.edu/climatechange/2025/02/14/demystifying-president-trumps-national-energy-emergency-and-the-scope-of-emergency-authority/> (citing reports from the National Renewable Energy Laboratory, RMI, and Energy Innovation Policy & Technology); Joseph Tomain & Bryan Dunning, *A Trumped-Up Energy Emergency*, Legal Planet (Feb. 7, 2025), <https://legal-planet.org/2025/02/07/a-trumped-up-energy-emergency/> (citing analysis from the U.S. Energy Information Administration, archived at <https://www.eia.gov/outlooks/steo/archives/jan24.pdf>).

<sup>62</sup> See, e.g., Letter Re: Department of the Interior Emergency NEPA Procedures (May 16, 2025), <https://advocateswest.org/wp-content/uploads/2025/05/FINAL-Comments-DOI-Emergency-NEPA-Procedures-2025.05.16.pdf>; James Moose & Sarah Helms, *Monograph: President Trump’s Executive Order Declaring a National Energy Emergency: Legal Challenges and Related Issues*, at 27 (Apr. 2025), <https://www.law.berkeley.edu/wp-content/uploads/2025/04/President-Trump’s-Executive-Order-Declaring-a-National-Energy-Emergency-final-sent-to-CLEE-on-4-27-2025-2.pdf>.

<sup>63</sup> Federal Power Act Section 202(c): Duke Energy, Order No. 202-24-1 (Oct. 9, 2024), <https://www.energy.gov/sites/default/files/2023-09/ERCOT%20202%28c%29%20Order.pdf> (one 2024 order in response to Hurricane Milton); Federal Power Act Section 202(c): ERCOT, Order No. 202-23-1 (Sept. 7, 2023), <https://www.energy.gov/sites/default/files/2023-09/ERCOT%20202%28c%29%20Order.pdf> (one 2023, in response to a heatwave causing extreme heat and high electric demand); 2022 DOE 202(c) Orders, <https://www.energy.gov/ceser/2022-doe-202c-orders> (two September orders, plus three modifications/extensions, in response to extreme heat in and two December orders responding to extreme cold); 2021 DOE 202(c) Orders, <https://www.energy.gov/ceser/2021-doe-202c-orders>; 2020 DOE 202(c) Orders, <https://www.energy.gov/ceser/2020-doe-202c-orders> (four orders between 2020 and 2021, two responding to heatwave and drought in California, one responding to a historic cold snap in Texas, and one in the aftermath of a hurricane). For a much deeper dive into DOE’s historical use of 202(c), see Benjamin Rolsma, *New Reliability Override*, 57 CONN. L. REV. 789, 802–09 (2025).

On his first day back in office, President Trump ordered the halt of grant programs that supported the development of energy projects across the country.<sup>64</sup> His administration imposed a blanket pause on wind project authorizations<sup>65</sup> and issued stop-work orders for or outright cancelled wind installations that could have brought new power online (or were already delivering power), including a December 2025 order that halted operation and construction of five utility-scale wind projects off the East Coast.<sup>66</sup> More generally, the emergency declaration's explicit preference for energy generation other than solar and wind also belies a true emergency. If the United States truly faced an emergency-level energy shortage, one would expect an all-of-the-above approach to energy generation.

That the administration says one thing—that an energy emergency exists—and acts in another—by excluding and inhibiting certain sources of energy—raises questions about whether an emergency exists and suggests that the emergency declaration serves as justification to pursue the President's policy priorities that favor only certain types of energy development and generation.

*Lack of natural end to the emergency, and “emergency” actions with non-immediate effects*

Because emergency declarations have historically responded to urgent, but likely temporary, situations—such as a hurricane or pandemic—they tend to have a natural end point, or at least the sense that their urgency will diminish over time to a point when emergency actions are no longer needed.

The energy emergency declaration does not follow this pattern. It responds to long-developing conditions rather than a new urgent threat and so has no obvious endpoint. Instead, the declaration cites the expectation of growing energy demand as part of its justification. If growing demand, especially from artificial intelligence, is expected to continue, that condition is more “new normal” and less an “emergency.”

DOE's order extending operation of the Campbell coal-fired power plant illustrates the concern: what began as a purportedly limited extension to meet one season of electricity demand has morphed into an extension of potentially unlimited duration under the auspices of the energy emergency. In contrast, DOE's more ordinary orders from the last several years appear calibrated to address immediate, urgent, but limited situations. DOE's 2024 emergency lasted four days,<sup>67</sup> its 2023 emergency order lasted just more than one day.<sup>68</sup>

DOE has previously issued strings of emergency orders that have extended longer periods, but those situations had substantial differences from the 2025 orders. In 2017, DOE issued an emergency order in response to a power grid operator's request that tied its duration to a specific infrastructure project. The operator of the at the Yorktown Power Station in Virginia identified the potential for

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<sup>64</sup> Exec. Order 14154 (Jan. 20, 2025).

<sup>65</sup> See Erika Kranz, *Federal Court Vacates Wind Energy Authorization Pause*, Harvard Law School Environment & Energy Law Program (Dec. 16, 2025) <https://eelp.law.harvard.edu/federal-court-vacates-wind-energy-authorization-pause/>.

<sup>66</sup> U.S. Department of the Interior, Press release: *Trump Administration Protects U.S. National Security by Pausing Offshore Wind Leases* (Dec. 22, 2025), <https://www.doi.gov/pressreleases/trump-administration-protects-us-national-security-pausing-offshore-wind-leases>.

<sup>67</sup> Federal Power Act Section 202(c): Duke Energy, Order No. 202-24-1 (Oct. 9, 2024), <https://www.energy.gov/sites/default/files/2023-09/ERCOT%20202%28c%29%20Order.pdf>.

<sup>68</sup> Federal Power Act Section 202(c): ERCOT, Order No. 202-23-1 (Sept. 7, 2023), <https://www.energy.gov/sites/default/files/2023-09/ERCOT%20202%28c%29%20Order.pdf>.

power disruptions when demand exceeded a certain level and requested an emergency order from DOE directing the operation of two coal-fired units until a new transmission upgrade project was complete. DOE granted a 90-day emergency order in June 2017 and granted six 90-day extensions of that order, extending into March 2019.<sup>69</sup> When the transmission project was complete, the grid operator notified DOE that the emergency order was no longer needed.<sup>70</sup>

A similar situation arose in 2005, after the Virginia Department of Environmental Protection ordered the operator of the Potomac River Generating Station to curtail its air pollutant emissions, and the operator responded by reducing its electricity production at the coal-fired plant to low levels. The District of Columbia Public Service Commission requested a 202(c) emergency order to require the plant to produce additional electricity, citing concerns about blackouts in Washington, DC, if there were problems with two transmission lines. DOE issued an emergency order directing the Potomac plant to run at higher levels, but only when one of those two transmission lines was out of service. It rejected the Commission's request to order the plant to run around the clock, regardless of the transmission line status. DOE also required the Commission to take actions to create a permanent solution for reliable electricity, like constructing new transmission lines, calling the 202(c) order "a bridge between the current untenable situation and a more permanent solution that must be crafted by appropriate parties."<sup>71</sup> Indeed, although DOE issued several follow-on orders, its final order stated that it would terminate in July 2007 just after the scheduled completion of two new transmission lines that would provide reliable energy supply to DC.<sup>72</sup>

While the Yorktown and Potomac orders came at an operator's or public utility commission's request, they were tied to a specific infrastructure project or calibrated to address a particular vulnerability and terminated when that project was complete or vulnerability addressed, the Campbell, Eddystone, and other 2025 orders share none of those features. Indeed, it is unclear what change in circumstance would lead DOE to conclude that the circumstances warranting those emergency orders had resolved.

DOI's use of NEPA alternative arrangements in response to the energy emergency declaration also has extended, substantial effects well beyond those in historical emergency response. DOI's expedited consideration of the Black Butte coal mine, for instance, did result in a faster decision than would have been expected under an ordinary NEPA timeline—in which an agency would complete an EIS in two years—but it will take many months, if not years, before coal extracted from that expanded mine might result in increased energy production. Moreover, the mine is expected to produce coal through 2039, well beyond the duration of most emergency responses. The long lead time between the administration's "emergency" action and any effects that might address an energy shortage, combined with the decades-long development timeline, suggest that this action is more an

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<sup>69</sup> Federal Power Act Section 202(c) – PJM Interconnection & Dominion Energy Virginia, 2017, [https://www.energy.gov/ceser/articles/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017?nrg\\_redirect=283771](https://www.energy.gov/ceser/articles/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017?nrg_redirect=283771).

<sup>70</sup> The Yorktown orders may still be part of a trend toward use of 202(c) orders to allow operators of generating units to exceed the emissions limits that ordinarily apply. See Rolsma, *supra* note 63, at 818–20.

<sup>71</sup> Federal Power Act Section 202(c): Mirant Corporation, Order No. 202-05-3 (Dec. 20, 2005), <https://www.energy.gov/sites/prod/files/202%28c%29%20order%20202-05-3%20December%2020%2C%202005%20-%20Mirant%20Corporation.pdf>.

<sup>72</sup> Federal Power Act Section 202(c): Mirant Corporation, Order No. 202-07-2 (Jan. 31, 2005), <https://www.energy.gov/sites/default/files/202%28c%29%20order%20202-07-2%20January%2031%2C%202007%20-%20Mirant%20Corporation.pdf>.

example of the administration encouraging further entrenchment in fossil fuel development than a response to an immediate, urgent situation.

The deviations described above raise questions about the declaration's validity. But courts' historical reluctance to review emergency declarations means that legal challenges face significant hurdles. Understanding how courts might approach these challenges requires examining three levels of review: the declaration itself, agencies' interpretation of emergency authorities, and individual agency actions implementing those authorities.

## How may courts review challenges to the energy emergency declaration, new agency policies, or on-the-ground agency actions?

*Courts are unlikely to entertain head-on challenges to the energy emergency declaration itself. But courts may require the administration to show that the purported emergency satisfies conditions in the statutes or rules allowing emergency actions and that the administration is observing limits in those statutes and rules. Individual agency actions are also subject to ordinary review under the Administrative Procedure Act.*

Courts have yet to rule on whether the energy emergency or on-the-ground extensions of that declaration and related orders are lawful. A coalition of states has raised those questions in a lawsuit against the Trump administration, alleging that the energy emergency declaration gives agencies powers that exceed what is available to them by statute, and challenging two categories of agency implementation decisions.<sup>73</sup> Environmental groups and states have sued DOE regarding its Federal Power Act section 202(c) orders requiring continued operation of the Campbell coal plant.<sup>74</sup> Those cases are in early stages, so we do not yet have answers on how arguments will develop or how courts will rule.

But Courts have long grappled with whether and how to review executive uses of emergency powers, and that history can give us some clues into how courts might approach challenges to the energy emergency.<sup>75</sup> That approach will differ depending on whether a court is asked to review high-level declarations or orders, agency interpretations of their statutory powers, or on-the-ground applications of the emergency through individual actions.

### **Review of emergency declarations: avoidance**

Courts have rarely been asked to review the legality of an emergency proclamation under the NEA. Indeed, apart from its termination provisions (weakened by the Supreme Court), the Act is a broad grant of authority to the president with few, if any, standards for courts to apply if they were to review a proclamation.

Although it is widely accepted that Congress intended in passing the NEA in 1976 to rein in the president's power to declare emergencies and rejected emergency-defining language as "overly

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<sup>73</sup> *State of Washington v. Trump*, No. 2:25-cv-00869 (W.D. Wash., filed May 9, 2025).

<sup>74</sup> See *supra* note 30.

<sup>75</sup> For a comprehensive look at courts' approach to reviewing emergency actions, see Amanda L. Tyler, *Judicial Review in Times of Emergency: From the Founding through the COVID-19 Pandemic*, 109 VA. LAW R. 489 (2023).

broad,” the lack of standards, conditions, or definitions in the statute has left it without meaningful limits.<sup>76</sup> The statute’s broad language—requiring only a “period of a national emergency”<sup>77</sup>—led a court considering the Center for Biological Diversity’s challenge to President Trump’s first-term border emergency declaration to conclude that there is no role for judicial review where Congress left the judiciary “no guidance” for determining whether an “emergency” exists.<sup>78</sup> The court declined to use traditional tools of statutory interpretation to determine whether the border situation constituted an “emergency” under that term’s ordinary definition, reasoning that any effort to impose a standard would require the court to make “integral policy choices.”<sup>79</sup> That approach is indicative of courts’ avoidance of “political questions”: issues better addressed by a political branch than the judiciary.<sup>80</sup>

Courts’ avoidance of these kinds of issues may mean that a direct challenge to the declaration is unlikely to succeed. As in the Center for Biological Diversity border wall case, courts may decline to read limits into the term “emergency” in the NEA if they see such limits as requiring a policy judgment of what would constitute an energy emergency. An argument that the statements in the energy emergency declaration fail to support President Trump’s invocation of the NEA may be deemed too much of a “political question.” Even the strongest arguments of pretext, lack of support, or incoherence would be unavailable if a court decided the challenge was non-justiciable under the doctrine.<sup>81</sup>

That may be why the states that have sued the Trump administration regarding the energy emergency have not styled their complaint as a direct challenge to the declaration as outside the bounds of the NEA.<sup>82</sup> Instead, they claim that the declaration directs agencies to use their own statutory authorities in ways not validly triggered by the circumstances in the emergency declaration. This type of challenge falls into a second category.

### **Review of the powers allegedly unlocked by an emergency declaration: looking to textual limits and past practice**

While courts have avoided direct review of NEA declarations, they have reviewed whether agencies have properly invoked emergency authorities granted by substantive statutes.<sup>83</sup> Courts have held

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<sup>76</sup> Nathaniel Glass, *Note: Partisan Emergencies*, 111 VA. LAW R. 379, 385–86 (2025).

<sup>77</sup> 50 U.S.C. § 1621(a).

<sup>78</sup> See, e.g., *Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11, 31 (D.D.C. 2020).

<sup>79</sup> *Id.* at 33. Although the court would not consider a direct challenge to the emergency declaration, it allowed other aspects of the Center for Biological Diversity’s case to proceed. Challenges to President Trump’s and agencies’ actions related to the border wall emergency also gained traction in court in other cases. See *California v. Trump*, 379 F. Supp. 3d 928 (N.D. Cal. 2019), *aff’d*, 963 F.3d 926 (9th Cir. 2020); *Sierra Club v. Trump*, 379 F. Supp. 3d 883 (N.D. Cal. 2019), *aff’d* 963 F.3d 874. Ultimately, President Biden took office and terminated the border wall emergency declaration before the Supreme Court heard argument in cases it had agreed to hear.

<sup>80</sup> See *Baker v. Carr*, 369 U.S. 186, 210–11 (1962) (describing the contours of what might constitute a political question).

<sup>81</sup> See *id.*

<sup>82</sup> *State of Washington v. Trump*, No. 2:25-cv-00869 (W.D. Wash., filed May 9, 2025).

<sup>83</sup> In another category of cases, courts have considered whether uses of emergency power have violated constitutional safeguards, like rights to liberty, due process, or property. This body of law is particularly

that while a NEA declaration may unlock the door to applying emergency powers in other statutes, the declaration may not be sufficient to trigger them: those other statutes still control the scope of those powers and set the conditions for their use.<sup>84</sup>

Recent and pending litigation may be indicative of how courts might approach these questions in light of shifting administrative law and statutory interpretation doctrines over the last several years. For instance, the Supreme Court in two cases considered whether presidential or agency actions were valid uses of authority within the context of the COVID-19 pandemic emergency, though neither case squarely challenged the emergency declaration itself.

In 2023, the Court held that President Biden exceeded the bounds of the HEROES Act when he acted to cancel student debt for millions of borrowers in the context of the COVID-19 pandemic. The Court did not question the existence of an emergency, but held that the action exceeded the bounds of the statute's grant of authority to "waive or modify" the rules around student loan programs in an emergency.<sup>85</sup> The Court's strict reading of the statute's text—that "'waive or modify' do not mean 'completely rewrite,'"—was informed by the major questions doctrine, under which the Court looks for a "clear delegation" from Congress as to matters of deep or vast "economic and political significance."<sup>86</sup>

The Supreme Court took a similar approach when it invalidated the Occupational Health and Safety Administration's vaccination/masking rule in response to the COVID-19 pandemic. The Supreme Court held that the operative statute directed OSHA to set workplace safety standards, but did not authorize OSHA's emergency regulations imposing vaccine/masking mandates on many employers, because COVID was not, in the majority's view, a workplace hazard.<sup>87</sup> As in the student loan case, the Court reasoned that the major questions doctrine required a clear statement from Congress, cited a lack of "historical precedent" in OSHA's past practice, and also noted that because the mandate was overly broad because it was not linked to any "special danger" posed because of "particular features" of a job or workplace.<sup>88</sup> Once again, this inquiry focused on the statute at issue and not on the validity of the emergency declaration.

The tariff litigation now pending before the Supreme Court will shed more light on how courts read statutory limits in the context of an emergency declaration. The November 5, 2025, oral argument suggested that several justices are inclined to hew closely to the text of IEEPA, which does not list

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incoherent, and scholars have sought to draw a consistent through-line connecting these cases. See Tyler, *supra* note 75, at 496–524.

<sup>84</sup> Presidents have at times argued that their actions are supported by the executive's inherent authority to deal with crises, particularly in the context of war, rather than through any grant of power from Congress. Because the Trump administration agencies have thus far based their Energy-Emergency-related actions on that declaration and on the emergency powers in certain statutes, "inherent authority" arguments are beyond the scope of this analysis.

<sup>85</sup> Biden v. Nebraska, 600 U.S. 477, 494 (2023) (quoting 20 U.S.C. § 1098bb(a)(1)).

<sup>86</sup> *Id.* at 501-06 (quoting West Virginia v. EPA, 597 U.S. 697 (2022) (internal quotation marks omitted)).

<sup>87</sup> National Federation of Independent Business v. Department of Labor, 595 U.S. 109, 117 (2022).

<sup>88</sup> *Id.* at 117–19. Scholars have noted some inconsistency between the Court's treatment of this case and another decided the same day, in which the Court upheld vaccine mandates for staff at federally-funded medical facilities. See generally Mila Sohoni, *The Major Questions Quartet*, 136 HARV. L. REV. 262 (2022); Ilya Somin, *A Major Question of Power: The Vaccine Mandate Cases and the Limits of Executive Authority*, CATO SUP. CT. REV. 69, 73-74 (2022).

tariffs or taxes as among the economic tools available to the president.<sup>89</sup> Other justices seemed interested in how the major questions doctrine would add a gloss to that textual interpretation.<sup>90</sup> But the justices seemed less inclined to question whether the emergency condition in the statute had been triggered (“only . . . to deal with an unusual and extraordinary threat”<sup>91</sup>), and the Solicitor General argued that whether the cited justification for tariffs—the trafficking of opioids and uneven trade relationships—is “really an emergency” is essentially unreviewable.<sup>92</sup>

These cases offer clues on how courts might consider challenges to Energy-Emergency-related actions.

#### *Federal Power Act Section 202(c): text and practice*

Section 202(c) authorizes emergency orders where “an emergency exists by reason of” four specific circumstances: a “sudden increase in the demand for electric energy,” a “shortage of electric energy,” a shortage “of facilities for the generation or transmission of electric energy,” or a shortage of “fuel or water for generating facilities.”<sup>93</sup> A catch-all provision allows the Secretary of Energy to conclude that an emergency exists because of “other causes.”<sup>94</sup> DOE’s regulations implementing this statute likewise refer to “unexpected” and “specific inadequate power supply situation[s].”<sup>95</sup> Where the Secretary of Energy determines that an emergency exists, he or she may “require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in [her] judgment will best meet the emergency and serve the public interest.”<sup>96</sup>

Litigants may argue that this statute contains enough standards to apply that courts can determine whether circumstances exist to trigger the emergency powers conferred in it. The list of triggering conditions may help avoid the “political question” problem of NEA declarations and even potentially the broad emergency language in IEEPA.<sup>97</sup> Environmental groups and states challenging the 202(c) orders requiring continued operation of the Campbell coal plant have argued that 202(c) covers only imminent electricity shortages, and cannot be used to address long-term resource adequacy concerns.<sup>98</sup> They point to dictionary definitions of “emergency” as referring to “sudden” or

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<sup>89</sup> See, e.g., Transcript at 12:15–13:8 (Justice Sotomayor); 28:14–29:1 (Justice Barrett); 29:15–25 (Justice Kagan); 40:25–41:21 (Justice Jackson).

<sup>90</sup> Transcript at 117:09–118:01 (Justice Gorsuch); 33:25–34:19 (Chief Justice Roberts).

<sup>91</sup> 50 U.S.C. § 1701(b)

<sup>92</sup> Transcript at 96:17.

<sup>93</sup> 16 U.S.C. 824a(c)(1).

<sup>94</sup> *Id.*

<sup>95</sup> 10 C.F.R. § 205.371.

<sup>96</sup> 16 U.S.C. 824a(c)(1). For a deeper dive on Section 202(c) and related authorities, see Sharon Jacobs & Ari Peskoe, *Energy Emergencies vs. Manufactured Crises: The Limits of Federal Authority to Disrupt Power Markets*, Harvard Law School Environmental & Energy Law Program (July 3, 2019), <https://eelp.law.harvard.edu/wp-content/uploads/2024/10/Energy-Emergencies-vs-Manufactured-Crises-FINAL.pdf>.

<sup>97</sup> Even though the statute contains broad “other causes” language, the *ejusdem generis* canon counsels courts to treat a general term at the end of a list of specific words, as “embrac[ing] only objects similar in nature to those objects enumerated by the preceding term.” *Yates v. United States*, 574 U.S. 528, 545 (2015) (internal quotation marks and citation omitted).

<sup>98</sup> Initial Opening Brief of Public Interest Organization Petitioners, No. 25-1159, at 23–29 (D.C. Cir. filed Dec. 19, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-pios.pdf>; Initial Opening

“unexpectedly arising” circumstances and point out that the statute’s past-tense drafting suggests the section applies when an emergency is already occurring, not when one is predicted well into the future.<sup>99</sup> They also cite DOE’s rules implementing section 202(c), which define “emergency” as “an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities,” further pointing out that DOE explained when it adopted that definition that 202(c) was not meant to solve long-term problems.<sup>100</sup> Those arguments track the D.C. Circuit’s past view that 202(c) applies to temporary, limited circumstances, and is not a tool to address longer-term concerns.<sup>101</sup>

The textual limits of 202(c) also reflect that long-term energy supply concerns are addressed through other processes—not through emergency orders. Challengers—and more centrally other interested groups that have weighed in through amicus briefs—have argued that DOE’s expansive interpretation of its powers under section 202(c) upsets the balance between federal and state authority and regulation of electricity resources and interferes with market-based mechanisms that ordinarily ensure sufficient electricity supply.<sup>102</sup> They argue that DOE’s use of 202(c)—which does not involve considering consumer costs—for long-term planning interferes with normal processes that ensure adequate capacity while balancing consumer costs with the risk of outages.<sup>103</sup>

Litigants also question the scope of DOE’s action, even if circumstances warrant some emergency action. The statute authorizes “temporary” orders, in response to acute events, and DOE’s historical use of 202(c) reflects this scope, as nearly all orders have been short-lived and responsive to extreme weather events. The nearly two-year duration of the Yorktown and Potomac orders tested this limit (although they were not challenged in court), but those orders were tied to specific identified deficiencies and infrastructure projects with a foreseeable completion dates. The Campbell, Eddystone, and other 2025 orders depart from this pattern: no grid operator requested those orders, DOE’s justification included seasonal power demands rather than specific weather events and referenced the president’s emergency declaration and associated orders, and the orders

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Brief of Illinois, Michigan, and Minnesota, No. 25-1119, at 25–37 (D.C. Cir. filed Dec. 19, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-il-mi-mn.pdf>.

<sup>99</sup> Brief of States, No. 25-1119, at 25–27; Brief of Public Interest Organizations, No. 25-1159, at 24–25.

<sup>100</sup> Brief of States, No. 25-1119, at 27 (citing 10 C.F.R. § 205.371, DOE, *Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power*, 46 Fed. Reg. 39,984, 39,985 (Aug. 6, 1981)); Brief of Public Interest Organizations, No. 25-1159, at 30 (citing same).

<sup>101</sup> *Cf. Richmond Power & Light of City of Richmond, Ind. v. FERC*, 574 F.2d 610, 615 (D.C. Cir. 1978) (upholding FERC’s determination that section 202(c) was “devoid of a solution” to concerns about dependence on foreign oil, as that section is focused on temporary emergencies, “not at [situations] in which supply is adequate but a means of fueling its production is in disfavor”).

<sup>102</sup> See Brief of Energy Law Scholars *Amici Curiae* in Support of Petitioners, No. 25-1159, at 4-20 (D.C. Cir. filed Dec. 23, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-amicus-law-professors.pdf>; Brief of the Niskanen Center, Professor Paul L. Joskow & Professor Richard Schmalensee as *Amici Curiae* in Favor of Petitioners, No. 25-1159, at 18–28 (D.C. Cir. filed Dec. 23, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-amicus-niskanen.pdf>; Brief of the Institute for Policy Integrity at New York University School of Law as *Amicus Curiae* in Support of Petitioners, No. 25-1159, at 6–28 (D.C. Cir. filed Dec. 23, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-amicus-ipi.pdf>; Brief of *Amici Curiae* Consumer Advocates. No. 25-1159, at 18–31 (D.C. Cir. filed Dec. 23, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-amicus-consumer-advocates.pdf>.

<sup>103</sup> See *id.*

have lasted months with indefinite (rather than “temporary”) extensions based on future AI demand forecasts. Environmental groups and states have pointed out some of these departures from past practice in their challenges to the Campbell plant orders: the groups urge that until 2025, DOE “had consistently used Section 202(c) to address the imminent possibility of power outages due to war or natural disasters—not to address long-term planning concerns.”<sup>104</sup>

The lack of historical precedent for using 202(c) in this way and on this kind of basis might lead courts to conclude that DOE has acted outside the bounds of Congress’s delegation. Though a brief extension of a single plant may not rise to the level of “economic and political significance” inviting application of the major questions doctrine, a new agency policy, broadly applied to indefinitely extend the function of numerous electricity generating plants beyond their planned retirement may.

*NEPA emergency procedures: regulatory limits, case-by-case application*

DOI’s “alternative arrangements” for NEPA compliance could be subject to a similar analysis. NEPA itself does not contain any provision for emergency procedures, so agencies by regulation cannot waive the requirement to comply with NEPA. Instead, agencies have established alternative, streamlined means for complying with NEPA in exigent circumstances. DOI’s NEPA-implementing regulation contains a section that applies where “an emergency exists that makes it necessary to take urgently needed actions before preparing an environmental document.”<sup>105</sup> For “actions necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources,” the regulations allow the agency to act without first completing a regular NEPA process.<sup>106</sup> If the agency determines that it must take further actions beyond that first category but still in relation to the emergency and those actions “preclude preparation of an environmental document,” the agency may use “alternative arrangements for NEPA compliance for such additional responsive actions.”<sup>107</sup> If those actions may reasonably be expected to have significant effects, CEQ must first authorize the alternative arrangements.<sup>108</sup>

DOI cited these regulations as supporting its set of expedited NEPA procedures that energy-related project applicants may seek to have the agency apply to super-speed its NEPA process.<sup>109</sup> But litigants may argue that the energy emergency alternative arrangements are being applied outside the kind of “emergency” contemplated by DOI’s regulations. The regulations’ text suggests that they apply to situations where the agency needs to respond quickly to an unexpected situation and time does not allow a normal NEPA process: alternative arrangements “apply only to the proposed actions necessary to control the immediate actions in response and related to the emergency.”<sup>110</sup> Indeed, DOI applied the ordinary dictionary definition of “emergency” when it promulgated the regulation in

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<sup>104</sup> Brief of Public Interest Organizations, No. 25-1159, at 30; see also Brief of States, No. 25-1119, at 29,

<sup>105</sup> 43 C.F.R. § 46.150.

<sup>106</sup> 43 C.F.R. § 46.150(a).

<sup>107</sup> 43 C.F.R. § 46.150(c).

<sup>108</sup> 43 C.F.R. § 46.150(d).

<sup>109</sup> U.S. Department of the Interior, Alternative Arrangements for Compliance with the National Environmental Policy Act amid the National Energy Emergency (Apr. 23, 2025), [https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed\\_1.pdf](https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf).

<sup>110</sup> 43 C.F.R. § 46.150(c).

2008.<sup>111</sup> The energy emergency, however, is more forward-looking and based on expected growth demand, and any expedited energy project would likely address only future demand, not today's demand. The regulations also contemplate that DOI would develop and consult with CEQ about particular actions it would take to respond to an emergency. But DOI has developed a set of expedited procedures that it has made available to a broad set of favored energy-related projects. Further, that DOI will deploy these procedures at an applicant's request (rather than based on the agency's determination of need) also suggests that the procedures are less a response to the type of emergency contemplated in the regulations than a process meant to speed projects aligned with the president's policy goals.

Agency practice—beyond just DOI—confirms that NEPA emergency procedures have been used on a case-by-case basis, rather than as a standing alternative process for favored projects.<sup>112</sup> DOI's Bureau of Land Management cited its alternative arrangements regulations when conducting an urgent roundup of horses whose habitat had been destroyed by a wildfire.<sup>113</sup> The U.S. Forest Service cited its own emergency regulations regarding actions taken when attempting to stop a fire.<sup>114</sup> The Ninth Circuit contrasted the Navy's reliance on NEPA emergency procedures for long-planned training exercises to FEMA's immediate responses to Hurricane Katrina—a quintessential “unexpected, suddenly arising situation.”<sup>115</sup> Other emergency situations where agencies have used NEPA emergency procedures have included floods, disease outbreaks, discovery of harmful contaminants, oil spills, and military operations.<sup>116</sup>

Energy emergency projects are at best an awkward fit with the text of DOI's NEPA emergency procedure regulations and applying these procedures to an entire class of projects rather than to individual projects departs from past practice. Together, those factors may lead courts to question the validity of DOI's alternative arrangements generally. Alternatively, litigants and courts may focus on how DOI applies those procedures to individual projects, discussed below.

### **Review of on-the-ground emergency actions: genuine and reasonable explanations required**

Challenges to energy emergency procedures may also focus on their application to individual projects, urging courts to find that those agency actions are arbitrary and capricious under the Administrative Procedure Act. Courts have been willing to engage with arguments about the validity of agencies' uses of emergency power in the context of individual agency actions, ensuring that agencies stay within their emergency powers and provide reasonable explanations for their decisions.<sup>117</sup> Challenges could include arguments that the that the agency's application of

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<sup>111</sup> 73 Fed. Reg. 61292, 61301 (Oct. 15, 2008).

<sup>112</sup> See Amy L. Stein, *Domestic Emergency Pretexts*, 98 IND. L.J. 479, 500-01 (2023) (providing examples).

<sup>113</sup> *Friends of Animals v. Bureau of Land Management*, No. 2:16-cv-1670-SI, 2018 WL 1612836 (D.Or. 2018).

<sup>114</sup> *Forest Service Employees for Environmental Ethics v. U.S. Forest Service*, No: 2:16-CV-0293-TOR, 2017 WL 2962771 (E.D. Wa. 2017).

<sup>115</sup> *Natural Resources Defense Council, Inc. v. Winter*, 518 F.3d 658, 683 (9th Cir. 2008) (reversed on other grounds, 555 U.S. 7 (2008)).

<sup>116</sup> See Center for Environmental Quality, List of alternative arrangements consultations between Federal agencies and CEQ - Alternative Arrangements for Compliance with NEPA (Updated August 2025), <https://ceq.doe.gov/docs/nepa-practice/Alternative-Arrangements-Chart-August-2025.pdf>.

<sup>117</sup> See *Domestic Emergency Pretexts*, at 524.

emergency procedures to a particular project is arbitrary and capricious because invocation of emergency powers is unreasonable in the context of a project or action, the agency has failed to provide a reasonable explanation for its action, or the agency has relied on improper factors or failed to consider an important aspect of the problem in reaching its decision.<sup>118</sup> Serious apparent irregularities in an agency's process might warrant arguments that the presumption of regularity ought not apply, allowing courts to inquire more deeply into processes and motives.<sup>119</sup> Arguments could also extend beyond the emergency context—for instance, even using alternative arrangements under NEPA does not relieve an agency from complying with its obligations under the statute to describe the expected environmental effects of a project and consider reasonable alternatives.

Courts may even be willing to engage with pretext arguments when conducting APA review. In *Department of Commerce v. New York*, the Supreme Court invalidated a proposed change to the national census, holding that the agency lacked a reasoned explanation for its decision and indeed the sole stated reason “seems to have been contrived.”<sup>120</sup> Although the case did not arise in an emergency context, it has salience: the Court noted that administrations may have strong policy preferences, but those preferences cannot override the APA's requirement for reasoned decision making.<sup>121</sup> Thus where “an explanation for agency action [] is incongruent with what the record reveals about the agency's priorities and decisionmaking process,” that decision is arbitrary and capricious.<sup>122</sup> More recently, a court considering a challenge to President Trump's border emergency declined to consider arguments about pretext in the context of a challenge to the order itself, while noting that APA challenges might allow an avenue for those kinds of arguments.<sup>123</sup>

#### *Federal Power Act Section 202(c) orders: insufficient explanations, failure to show public interest*

DOE's unusual use of Federal Power Act section 202(c) has already triggered challenges raising arguments that DOE's Campbell plant orders were arbitrary and capricious.<sup>124</sup> Beyond arguing that DOE's use of section 202(c) is beyond the statute's scope (discussed above), environmental groups have also argued that DOE's May Campbell plant order lacked support for a claimed near-term electricity shortfall. The groups argue that DOE's order contradicts the grid operator's assessment that it would retain sufficient energy capacity after the Campbell plant retirement, that DOE misunderstood the operator's characterization of the level of risk of energy inadequacy over summer 2025, and that DOE's order otherwise fails to support the existence of a near-term emergency

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<sup>118</sup> See generally *Motor Vehicle Manufacturers Assoc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>119</sup> See Erika Kranz, *When Government Gets It Right: A Framework for Assessing When Agencies Deserve a Presumption of Regularity*, Harvard Law School Environment & Energy Law Program (July 23, 2025), <https://eelp.law.harvard.edu/when-government-gets-it-right-a-framework-for-assessing-when-agencies-deserve-a-presumption-of-regularity/>.

<sup>120</sup> *Department of Commerce v. New York*, 588 U.S. 752, 784 (2019).

<sup>121</sup> *Id.* at 783–84.

<sup>122</sup> *Id.* at 785.

<sup>123</sup> *Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11, 33 (D.D.C. 2020); see also Glass, *supra* note 76, at 398 (discussing now *Department of Commerce* has been discussed—or not discussed—in emergency cases).

<sup>124</sup> See *supra* note 30.

requiring federal intervention.<sup>125</sup> The groups further argue that even if DOE had established a sound basis for some emergency action, it had not shown that preventing the coal plant from retiring was the best choice and in the public interest, as the statute requires.<sup>126</sup> In addition to these types of arguments, litigants to future orders may point to DOE's shifting justification—from summer reliability concerns to indefinite extensions based on multi-year AI forecasts—to suggest that the stated rationale may not be the actual basis for the decision, or litigants may argue that DOE failed to consider important information when making its decision.

#### *NEPA emergency procedures: insufficient analysis, failure to consider all required environmental effects*

Energy emergency litigants may also argue that an agency's process is inadequate for reasons that do not rest on the use of emergency procedures. For example, a litigant challenging a NEPA analysis conducted under DOI's alternative arrangements may argue that the agency has failed to complete a fulsome analysis that constitutes the "hard look" required by that statute,<sup>127</sup> that its expedited or absent public engagement process meant that it "failed to consider an important part of the problem,"<sup>128</sup> or that it reached conclusions about the project's environmental effects that are not supported by the record.<sup>129</sup> These challenges may not be different in scope from an ordinary NEPA challenge, but the agency's expedited process—potentially exacerbated by limited availability of agency expertise<sup>130</sup>—may have resulted in a process and resulting decision that do not comply with the APA or NEPA.

Challenges involving individual projects or orders may provide the broadest path for litigants to make arguments that go to the heart of the justification for the energy emergency, while also making more traditional statutory and administrative process arguments. We expect more challenges of these types if the Trump administration continues invoking emergency powers to address the energy emergency.

## What's next for the energy emergency?

Because the declared energy emergency lacks features ordinarily associated with emergencies declared under the NEA, the administration has taken actions that appear to undermine the same crisis that it insists exists, and the administration has taken actions in apparent response to the emergency that do not seem responsive to it, the declaration appears to function more as an announcement of and mechanism to advance the administration's policy priorities than as a true emergency response tool. These orders and the actions they have spurred are consistent with the

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<sup>125</sup> Initial Opening Brief of Public Interest Organization Petitioners, No. 25-1159, at 33–41 (consolidated with 25-1160 & 25-1162 (D.C. Cir. filed Dec. 19, 2025), <https://statepowerproject.org/wp-content/uploads/2025/12/202c-dc-cir-pios.pdf>).

<sup>126</sup> *Id.* at 42–46.

<sup>127</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350–51 (1989).

<sup>128</sup> See *Montana Wildlife Fed. V. Haaland*, 127 F.4th 1, 43 (9th Cir. 2025).

<sup>129</sup> See *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 378 (1989).

<sup>130</sup> See Erika Kranz, *When is Expertise-Based Deference Warranted?*, Harvard Law School Environmental & Energy Law Program (Oct. 3, 2025), <https://eelp.law.harvard.edu/when-is-expertise-based-deference-warranted/>.

administration's broader set of policies and actions that furthered reliance on fossil fuels while hindering renewable energy projects and investment.

As we enter the second year of President Trump's second term, the energy emergency is poised to see its first tests in court. Briefing in challenges to DOE's 202(c) orders is underway. New challenges to DOI's orders pausing construction or operation of five utility-scale offshore wind projects have just been filed, all raising arguments that the administration's national security arguments in those cases are pretextual and part of the administration's more general anti-wind policy, exemplified by the energy emergency declaration.<sup>131</sup> The state lawsuit challenging the energy emergency may proceed to briefing this year. And we may see additional agency actions citing the energy emergency as justification, fueling additional challenges.

As those cases move forward, we will be watching to see if courts take a more robust approach to place limits on presidents' declarations of emergencies and use of emergency powers. Courts have treated emergency declarations and extensions as unreviewable. But some may start to grapple with the risk of unchecked emergency authority giving the executive branch an incentive to misuse emergencies to increase its power.<sup>132</sup> Courts could use their interpretive powers to give meaning to even the limited terms Congress included in the NEA, assessing whether a declaration fairly falls within the ordinary meaning of "emergency." Even a highly deferential standard of review that allowed courts to consider evidence of pretext could add a layer of accountability that ensures executive flexibility in times of true—or even fairly debatable—emergency while restraining illegitimate uses of these powers. And courts could require that executive uses of emergency powers are tailored to address a compelling government interest, reviewing—even deferentially—the government's basis for the emergency and actions in response.

The issue of overuse of emergency powers has salience across the political spectrum and has spurred much debate.<sup>133</sup> The outcome of individual cases may have repercussions well beyond those projects. If the administration prevails in challenges to its unprecedented use of emergency powers, it may be emboldened to take further actions that depart from historical practice and exceed the

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<sup>131</sup> *Virginia Elec. & Power Co. v. U.S. Dep't of the Interior*, No. 2:25-cv-00830 (E.D. Va. filed Dec. 23, 2025); *Revolution Wind, LLC v. Burgum*, No. 1:25-cv-02999 (D.D.C. amended complaint filed Jan. 2, 2026); *Empire Leaseholder LLC v. Burgum*, No. 1:26-cv-00004 (D.D.C. filed Jan 2, 2026); *Sunrise Wind LLC v. Burgum*, No. 1:26-cv-00028 (D.D.C. filed Jan. 6, 2026).

<sup>132</sup> Tyler, *supra* note 75, at 565 (citing 2 The Records of the Federal Convention of 1787, at 540–41 (M. Farrand ed., 1911) (statement of James Madison) ("The president would necessarily derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace."); Glass, *supra* note 76, at 407.

<sup>133</sup> See, e.g., Ilya Somin, *Using Emergency Powers to Seize Property and Build the Wall Would Set a Horrible Precedent*, CATO INSTITUTE (Jan. 9, 2019), <https://www.cato.org/commentary/using-emergency-powers-seize-property-build-wall-would-set-horrible-precedent>; Katherine Mangu-Ward, *The Government Shutdown Isn't Stopping Trump from Amassing 'Emergency' Powers*, REASON (Oct. 25, 2025), <https://reason.com/2025/10/25/how-to-ruin-a-shutdown/>; Amicus Brief of the Chamber of Commerce of the United States of America and the Consumer Technology Association, *Trump v. V.O.S. Selections*, No. 25-250 (filed Oct. 24, 2025) (arguing against an expansive interpretation of emergency powers under IEEPA; "This threat transcends administrations and the politics of the moment."); Elizabeth Goitein, *Emergency Powers: A System Vulnerable to Executive Abuse*, DEMOCRACY JOURNAL (Winter 2024, No. 71), <https://democracyjournal.org/magazine/71/emergency-powers-a-system-vulnerable-to-executive-abuse/> (discussing Congressional conservatives' support for terminating the border wall emergency and their concern that a Democratic president might use emergency powers to pursue progressive policies without Congressional support).

limits of statutes and rules, favoring fossil fuel production over wind and solar through actions with long-duration effects.