Via Electronic and First-class Mail

Mr. Lawrence Mansueti
Office of Electricity Delivery and Energy Reliability
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Docket No. EO-05-01

Dear Mr. Mansueti:

For filing in the above-referenced proceeding, enclosed please find the Supplemental Comments of David K. Paylor, Director of the Commonwealth of Virginia’s Department of Environmental Quality.

Yours truly,

[Signature]

D. Mathias Roussy, Jr.
Assistant Attorney General

Enclosure

cc: Service List (via electronic mail)
I. INTRODUCTION

Pursuant to Department of Energy ("DOE") Order No. 202-06-1 issued February 17, 2006, David K. Paylor ("Director"), Director of the Virginia Department of Environmental Quality ("DEQ"), through his counsel Robert F. McDonnell, the Attorney General of Virginia, submits these comments concerning the operation of the Potomac River Generation Station Power Plant ("Potomac River Power Plant" or "Plant"), owned by Mirant Potomac River, LLC ("Mirant") and located in Alexandria, Virginia.\(^1\) The Director also hereby incorporates all of the pleadings that he and his predecessor have filed in this proceeding, including his Request for Rehearing and Clarification of Order No. 202-05-3 filed on January 19, 2006.

The impending ozone season and summer electric peaks underscore the need for a timely rehearing order that modifies DOE Order No. 202-05-3 in a manner that

\(^1\) The Plant initially shut down after receiving an August 19, 2005, letter from the Director's predecessor indicating that failure to take immediate action necessary to ensure protection of human health and the environment would result in a violation of Virginia law. See Motion of Director Robert G. Burnley, Attachment A (Oct. 12, 2005). On December 20, 2005, the Secretary of Energy entered DOE Order No. 202-05-3 requiring Mirant to resume operations to address reliability concerns raised by the District of Columbia Public Service Commission ("DC PSC").
recognizes the Commonwealth of Virginia has the authority to effectively implement
state and federal laws designed to protect the health and welfare of its citizens. Should
the Secretary of Energy ("Secretary") decline to modify his order pursuant to prior filings
made by the Director, the Secretary should nevertheless modify his order so that the
public health and welfare are preserved by all means available, including measures
discussed below.

II. COMMENTS

A. The Mandated Operation of the Potomac River Power Plant Continues to
Compromise the Public Health of Virginia Citizens.

DOE Order No. 202-06-1 specifically requests “comment concerning the
operation of the Potomac River [Power Plant] during the days in January 2006 when it
was required to operate pursuant to ordering paragraph A of Order No. 202-05-3.”

Ordering paragraph A of DOE Order No. 202-05-3 provides:

During any period in which one or both of the 230 kV lines serving
the Central D.C. area is out of service, whether planned or
unplanned, Mirant will operate the [Plant] to produce the amount
of power (up to its full capacity) needed to meet demand in the
Central D.C. area as specified by PJM for the duration of the
outage.

...

When producing electricity pursuant to this paragraph, Mirant shall
utilize pollution control equipment and measures to the maximum
extent possible to minimize the magnitude and duration of any
exceedance of the [National Ambient Air Quality Standards
("NAAQS")].

It is the Director’s belief and understanding that the Plant operated pursuant to ordering
paragraph A for approximately 21 days during January and that such operation posed a
significant health risk to Virginians. The daily pollutant emissions from the Plant’s operations exceed air quality standards the health of Virginians is placed at risk. This harm will not subside until actions are completed that satisfactorily reduce and limit the environmental hazards posed by operation of the Plant.


The recent DC PSC Order granting approval of the Potomac Electric Power Company’s ("PEPCO") application to construct two new 69 kV circuits and two new 230 kV circuits to address Central D.C. reliability concerns is welcomed as both timely and proper. Based on the current projected in-service date of July 1, 2006, it appears likely that the two new 69 kV circuits terminating at the Blue Plains Wastewater Treatment Plant ("Blue Plains") will be in service before Order No. 202-05-3 expires, is terminated by the Secretary, or is reversed by an appellate court. Assuming this is the case, certain statements made during the DC PSC evidentiary hearing about how the new 69 kV lines will function raise an additional important issue for consideration on rehearing.

---

2 See Supplement No. 5 to Mirant’s Operating Plan, Revised Exhibit D: Mirant Potomac River Schedule of Unit Operations (Feb. 16, 2006)(indicating the Plant operated pursuant to ordering paragraph A on January 7th through 19th, 21st through 28th).

3 DOE Order No. 202-06-I also requests “comments and information concerning the plant’s current operational status.” With respect to the current status of the Plant when there is not an outage of the existing 230 kV lines that supply the Central D.C. area, it is the Director’s understanding that two units equipped with trona systems are regularly operating. See Supplement No. 5 to Mirant’s Operating Plan, Revised Exhibit D: Mirant Potomac River Schedule of Unit Operations. The Director does not believe that operation of these units equipped with trona systems has resulted in NAAQS violations.


6 DC PSC FC1044.
A rehearing order should require that the new 69 kV circuits, once they are in service, be used to mitigate the public health impact of operating the Plant pursuant to ordering paragraph A of Order No. 202-05-3. The new 69 kV lines will be available to reduce reliance on the Plant to generate power and provide system reliability. They will offer additional sources of power available to Blue Plains and, thus, should be called upon before – and in order to avoid – operation of the Plant in violation of state and federal law.

The Secretary should not authorize the Potomac River Power Plant to operate at unnecessary levels if the two 69 kV circuits recently approved by the DC PSC can provide service to Blue Plains, and thereby mitigate the environmental harm caused by operation of the Plant. In the PEPCO transmission line application filed with the DC PSC, PEPCO stated that:

The construction and installation of these 69 kV circuits is needed as an immediate measure to ensure that Pepco is prepared to meet the peak load for the summer of 2006. It makes it possible to remove WASA’s Blue Plains Substation from Pepco’s Potomac River Substation and resupply it from Pepco’s Palmer’s Corner Substation in Prince George’s County. This step would be taken during the summer 2006 load period to reduce the Potomac River load to close to the 475 MVA PJM local load relief warning threshold as described in Exhibit A. It also enables Pepco to provide a reliable contingency supply to the Blue Plains Wastewater Treatment Facility in the event that the electrical supply to this critical customer is lost.7

In the DC PSC formal evidentiary hearing, however, a Company witness testified regarding the 69 kV circuits as follows:

That’s why we’re pushing to have that done by this summer so that we have those lines, we have that ability to transfer Blue [Plains] over to

---

7 Emergency Application and Notice of the Potomac Electric Power Company, DC PSC FC1044 at 8-9 (Oct. 12, 2005).
another supply in the event that something was to happen at Potomac River.⁸

... The 69 kV lines really are only focused on a specific location, Blue [Plains]. We’re providing additional support and backup to that facility alone.⁹

While comments subsequently filed in the related Federal Energy Regulatory Commission proceeding appear to anticipate the proper utilization of the 69 kV circuits, the above testimony in the DC PSC evidentiary hearing appears to contemplate using the 69 kV circuits as a “backup” source of supply, serving Blue Plains during this summer only if supply from the Potomac River Power Plant is not available.¹⁰ For this reason, the Director seeks clarification of this matter.

C. To Clarify How the New 69 kV Circuits Will Be Used Requires the Secretary to Modify the Scope of Order No. 202-05-3 With Respect to PJM and/or PEPCO.

In clarifying how the new 69 kV circuits will be used, as requested above, it is important to modify the scope of Order No. 202-05-3 to include an obligation on either PJM Interconnection LLC (“PJM”) or PEPCO so that NAAQS exceedances allowed under the order can be avoided or minimized.¹¹ When one of the existing 230 kV circuits is not operational, ordering paragraph A currently requires only that Mirant must “utilize pollution control equipment and measures to the maximum extent possible to minimize

---

⁸ Tr. at 36, II. 18-22, DC PSC FC1044 (formal hearing Feb. 2, 2006) (emphasis added).
⁹ Tr. at 55, II. 7-9, DC PSC FC1044 (formal hearing Feb. 2, 2006) (emphasis added).
¹¹ The Secretary of Energy’s FPA § 202(c) authority extends to the “generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest.” 16 U.S.C. § 824a(c)(emphasis added).
the magnitude and duration of any exceedance of the NAAQS.” Because Mirant does not own or operate the 69 kV lines, the rehearing order should clarify whose obligation it is to ensure that the 69 kV lines are used to address D.C.’s reliability concerns and reduce the need to operate the Potomac River Plant.

To the extent PEPCO lines – the new 69 kV circuits or other transmission facilities – can be used to minimize the magnitude and duration of NAAQS exceedances allowed under Order No. 202-05-3, the Director expects that obligation would fall to a party other than Mirant. PJM is the transmission system operator. Nothing in the order, however, requires PJM to consider impact on public health when conducting its security-constrained economic dispatch of generating units in the affected area. Therefore, nothing currently requires PJM to utilize the new 69 kV circuits once they are in service, even if such use would avoid or minimize NAAQS exceedances resulting from operation of the Potomac River Power Plant pursuant to ordering paragraph A. Similarly, there is no obligation on PEPCO to use its transmission facilities to avoid or mitigate NAAQS exceedances. Accordingly, the scope of the order should be modified so that PEPCO and/or PJM are required to use the new 69 kV circuits to avoid, or to minimize the magnitude and duration of, any NAAQS exceedance resulting from the Plant’s operation under the order.

III. CONCLUSION

The Director submits these comments pursuant to DOE Order No. 202-06-1. Operation of the Potomac River Power Plant that results in air pollutant emissions in excess of air quality standards, as authorized by ordering paragraph A of Order No. 202-05-3, continues to place the health of Virginians at risk. If the Secretary continues to
require the Plant to operate, the Director requests that the Secretary clarify that PEPCO’s new 69 kV circuits to the Blue Plains Wastewater Treatment Plant be utilized in the future to mitigate the harm to Virginia’s citizens and environment caused by the Potomac River Power Plant’s operation under ordering paragraph A. To that end, the Director also requests that the scope of Order No. 202-05-3 be modified to obligate PJM and/or PEPCO to use PEPCO’s new 69 kV circuits to avoid, or to minimize the magnitude and duration of, any NAAQS exceedance resulting from the Plant’s operation under the order.

Respectfully submitted,
DAVID K. PAYLOR, DIRECTOR
VIRGINIA DEPARTMENT OF
ENVIRONMENTAL QUALITY

[Signature]
Counsel

Robert F. McDonnell
Attorney General of Virginia

Maureen Riley Matsen
Deputy Attorney General

C. Meade Browder, Jr.
Roger Chaffe
Carl Josephson
Senior Attorneys General

D. Mathias Roussy, Jr.
Assistant Attorney General

COMMONWEALTH OF VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
900 East Main Street
Richmond, Virginia 23219
(804) 786-2071

March 23, 2006
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was on this day served by electronic mail on the persons listed below.

Dated at Richmond, Virginia, this 23rd day of March, 2006.

Samuel W. Bodman
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585
202-586-6210 – phone
202-586-4403 – fax
The.secretary@hq.doe.gov

Kevin Kolevar, Director
Office of Electricity Delivery
And Energy Reliability
U.S. Department of Energy
1000 Independence Ave., S.W.
Route Symbol: OE-1
Washington, D.C. 20585
202-586-1411 – phone
202-586-1472 – fax
Kevin.kolevar@hq.doe.gov

Lawrence Mansueti
Permitting, Siting, and Analysis Division
Office of Electricity Delivery and Energy Reliability
Routing Symbol: OE-20
1000 Independence Ave., S.W.
Washington, D.C. 20585
202-586-5860 – fax
Lawrence.Mansueti@hq.doe.gov

David R. Hill
General Counsel
U.S. Department of Energy
Room 6A – 245
1000 Independence Ave., S.W.
Washington, D.C. 20585
202-586-1499 – fax
202-586-5281 – phone
David.r.hill@hq.doe.gov

Mr. Richard Beverly
General Counsel
D. C. Public Service Commission
1333 H Street, NW
2nd Floor, West Tower
Washington, D.C. 20005
rbeverly@dcpsc.org
202-626-9212 – fax
202-626-9200 – phone

Sheila Slocum Hollis
Partner
Duane Morris, LLP
1667 K Street, N.W.
Suite 700
Washington, D.C. 20006
SSHollis@duanemorris.com
202-776-7810 – phone
202-776-7801 – fax
John Moot  
General Counsel  
Federal Energy Regulatory Commission  
888 First Street, N.W.  
Washington, D.C. 20426  
202-502-6000 – phone  
202-208-2115 – fax  
john.moot@ferc.gov

Debra Raggio Bolton  
Vice President  
Federal Affairs and  
Assistant General Counsel  
Mirant Corporation  
601 13th Street, N.W.  
Suite 580 North  
Washington, D.C. 20005  
Debra.bolton@mirant.com

Vincent Paul Duane  
Deputy General Counsel  
PJM Interconnection, L.L.C.  
955 Jefferson Avenue  
Norristown, PA 19403  
duanev@pjm.com

David J. Reich  
Director, Federal Regulatory  
Mirant Corporation  
601 13th Street, N.W.  
Suite 580N  
Washington, D.C. 20005  
David.reich@mirant.com

Ann R. Klee  
General Counsel  
U.S. Environmental Protection  
Agency  
1200 Pennsylvania Ave., N.W.,  
(2310A)  
Washington, D.C. 20460  
202-564-8040 – phone  
202-564-1778 – fax  
klee.ann@epa.gov

Kirk J. Emge, General Counsel  
Deborah M. Royster  
Deputy General Counsel  
Paul H. Harrington  
Associate General Counsel  
Anthony C. Wilson  
Assistant General Counsel  
Potomac Electric Power Company  
701 Ninth Street, N.W., Suite 1100  
Washington, D.C. 20068  
Tel: (202) 872-2890  
Fax: (202) 872-3281  
kjemge@pepcoholdings.com  
acwilson@pepcoholdings.com

F. William Brownell  
Patrick J. McCormick III  
Hunton & Williams LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
Telephone: (202) 955-1500  
Fax: (202) 778-2201  
bbrownell@hunton.com  
pmccormick@hunton.com

Ignacio B. Pessoa  
City Attorney  
City of Alexandria  
301 King Street, Suite 1300  
Alexandria, Virginia 22314  
Telephone (703) 838-4433  
Faesimile (703) 838-4810  
Ignacio.pessoa@alexandriava.gov

John B. Britton  
Neil Thomas Proto  
Schnader Harrison Segal & Lewis LLP  
2001 Pennsylvania Avenue, N.W.  
Suite 300  
Washington, D.C. 20006-1825  
Telephone (202) 419-4200  
Faesimile (202) 419-3454  
jbritton@schnader.com