

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY AND
FEDERAL ENERGY REGULATORY COMMISSION**

Emergency Petition and Complaint of) Docket No. EL05-145-000
District of Columbia Public Service)
Commission)

**EMERGENCY PETITION AND COMPLAINT OF
THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION**

Pursuant to Sections 202(c), 207 and 309 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824a(c), 824f and 825h, the District of Columbia Public Service Commission (“DCPSC”) hereby submits this Emergency Petition and Complaint to avert the impending shutdown of the Potomac River Generating Station power plant (“Potomac River Plant” or “Plant”) owned and operated by Mirant Corporation and its public utility subsidiaries (collectively, “Mirant”) in Alexandria, Virginia.

Due to certain air quality concerns recently reported in an environmental study performed by the Virginia Department of Environmental Quality (“VDEQ”), Mirant has publicly announced that its Potomac River Plant will be shut down at midnight on August 24, 2005.¹ The DCPSC believes that, the proposed shutdown will have a drastic and potentially immediate effect on the electric reliability in the greater Washington, D.C., area and could expose hundreds of thousands of consumers, agencies of the Federal Government and critical federal infrastructure

¹ The DCPSC has not performed any independent study of the VDEQ findings and takes no position on the correctness of the VDEQ’s findings.

to curtailments of electric service, load shedding and, potentially, blackouts. As a result, immediate action by the Secretary of Energy (“Secretary”) and the Federal Energy Regulatory Commission (“FERC” or “Commission”) is needed to avoid the potentially dangerous and security-threatening interruption of electric service to the District of Columbia that may occur as a result of the Potomac River Plant’s proposed shutdown.

Accordingly, the DCPSC requests that the Secretary issue orders pursuant to Section 202(c) of the FPA, finding that an emergency exists within the meaning of this statutory provision as a result of the proposed shutdown of the Potomac River Plant and direct Mirant to continue the operation of the Potomac River Plant until further orders are issued. The DCPSC further requests that the Commission, pursuant to its authority under Sections 207 and 309 of the FPA, institute a hearing and take immediate action preventing Mirant from ceasing operations at the Potomac River Plant to ensure that electric reliability in the area is not adversely affected.

I. NOTICE

All correspondence related to this proceeding should be addressed to:

Richard Beverly
General Counsel
Public Service Commission of the
District of Columbia
1333 H Street, N.W.
Washington, DC 20005
(202) 626-9200
(202) 626-9212

Sheila S. Hollis
Duane Morris LLP
1667 K Street N.W., Suite 700
Washington, DC 20006
(202) 776-7810
(202) 776-7801 (fax)

II. STATEMENT OF CONCERNS

The DCPSC is the agency charged with the protection of all retail electric system consumers within the District of Columbia, including matters involving the construction and operation of electric power facilities and the rates charged for electric power.²

The District of Columbia encompasses many critical aspects of the United States government. The White House, Congress, Supreme Court, and other essential Federal Courts, most cabinet level agencies including the Departments of State, Justice, Energy, Interior, Health and Human Services, Labor, and regulatory agencies, and a host of other essential entities are located in the District. In addition, large numbers of commercial and residential consumers are located in the District. A major load shedding event triggered by the shutdown of a major generating facility combined with extreme weather or other events on the grid could be catastrophic for the District and the Nation, could endanger homeland security and threaten the ability of the Nation to function worldwide and domestically. While the shutdown of the Potomac River Plant would not in and of itself immediately have these effects, the combination of other events, such as a severe weather situation, the loss of key transmission capability or other major outages, could endanger electric service to the District. The DCPSC, with the statutory responsibility to protect the consumers of electric energy in the District, including key Federal installations, is extremely concerned about the safety, reliability and availability of electric energy in the District. The shutdown of the Potomac River Plant scheduled by Mirant in response to VDEQ's studies threatens essential electric service to the District and thus to the Nation. It is in this light that the DCPSC hereby requests that the Department of Energy

² See 11 D.C. Code Ann. §§ 34-101, et seq.

(“DOE”), the FERC, and the Department of Homeland Security take all appropriate and immediate steps to prevent the shutdown of the Potomac River Plant and to protect the Nation and the District of Columbia.

The DCPSC recognizes the complexity of the situation. The Potomac River Plant is owned by Mirant Corporation, a bankrupt enterprise with concerns regarding its potential liabilities under all scenarios with the Potomac River Plant operation or non-operation. (Mirant's proposed reorganization is pending before the FERC, and the DCPSC is an intervenor in that case and the DCPSC's Petition and Complaint are not intended to impact that proceeding.)

The Potomac River Plant is located in Virginia, which receives no power from it. Virginia has legitimate interest in the environmental impacts of the Potomac River Plant. And, distribution service in the District is provided by PEPCO, regulated by the DCPSC. Yet, there is no escaping the fact that the Potomac River Plant is for now and the foreseeable future, an essential element in the provision of electric service to the District of Columbia.³ Without the power generated by it, catastrophe could be very near. The DCPSC asks that the DOE and FERC immediately step in, pursuant to their jurisdiction under the Federal Power Act to protect the public and national interest and such other authority that exists, to prevent this extraordinary step from being taken by Mirant. The DCPSC also requests that its Petition and Complaint be referred to the Department of Homeland Security if the FERC and the DOE believe it is necessary.

³ See Washington Post Article of August 23, 2005 attached.

III. FACTUAL BACKGROUND

1. On August 22, 2005, Mirant Corporation announced that it had taken action to address concerns raised by a just-completed VDEQ environmental study of air quality in the vicinity of the Potomac River Plant.⁴

2. Mirant said that, as its initial response to the study, it had already reduced output of all five units at the Plant to their lowest feasible levels.

3. Mirant said it expects to meet soon with the VDEQ to discuss both short and long-term plans to address air quality issues. If no acceptable short-term solutions can be found, Mirant will shut down all five units at the power Plant no later than midnight **Wednesday, August 24, 2005** until a solution can be identified and implemented. It is DCPSC's understanding that no solution has been found as of the time of this filing.

4. On August 23, 2005, the DCPSC issued an order in Case No. 1023, directing PEPCO to review Mirant's August 22, 2005 press release and advise the DCPSC, in writing, of the extent to which Mirant's actions may negatively impact the local system and District of Columbia consumers. A copy of this Order is attached hereto.⁵

5. The coal-fired power Plant, which began operation in 1949, produces 482 megawatts of electricity for Washington, D.C. and surrounding communities. It is located in Alexandria, Va. The Plant has been identified as a critical component for the reliability of the electric grid in the Washington, D.C. area.

⁴ Mirant Press Release of August 22, 2005 attached.

⁵ See DCPSC's Order No. 13748 issued August 23, 2005.

6. The Plant has been designated by PJM Interconnection, the entity responsible for the reliability of the transmission system from the Mid-Atlantic States and some portions of some Midwestern states, as a facility critical to electric system reliability in the Washington, D.C. area. PJM's designation means that removing the Potomac River Plant could result in a severe strain on the transmission system and potential electrical outages if other key generation and transmission facilities become unavailable during high demand periods.

7. Because of the advance notice required to be given to PJM and the complex and lengthy physical process to shut down large coal-fired steam boilers, Mirant has continued to operate the Plant at a reduced level until midnight tonight.

8. If all of the units are shut down at Potomac River Plant, PEPCO has two 230 KV underground cables and two 69 KV lines through Blue Plains that may be available to supply the load that Potomac River Plant supplies. In addition, it is the DCPSC's understanding that PEPCO has developed as a second scenario, which assumes that if the Potomac River Plant is shut down and one of the two 230 KV lines were to go down, that there may nonetheless be sufficient transmission capability to supply the load provided by the Potomac River Plant. DCPSC considers such a scenario to be highly precarious, given the variables and the nature of the load in the District.

9. The VDEQ has been advised previously by the PJM of the impact of the shutdown of the Potomac River Plant. (See Attached letter from Craig Glazer, PJM Vice President, Government Policy, to VDEQ, dated April 14, 2004). In the PJM letter, a description of the technical aspects of the impact of the shutdown is set forth. We believe that the letter establishes the extremely serious nature of the immediate and long term impact of the Potomac River Plant shutdown.

IV. LEGAL BASIS FOR PETITION AND COMPLAINT

A. Secretary's Authority Under Section 202(c) of the FPA

Section 202(c) of the FPA states as follows:

Temporary connection and exchange of facilities during emergency. During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.⁶

Under this provision, the Secretary is empowered “whenever [he] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy or of fuel or water for generating facilities, or other causes . . . to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest.” The Secretary recently used this authority both during the 2000-2001 California crisis and the August 2003 Northeast blackout.⁷ As explained above and in the attached evidence, the proposed shutdown of the Potomac River Plant at midnight on August 24, 2005, creates a potential for similar

⁶ 16 U.S.C. § 824a(c).

⁷ *See, e.g.*, Order pursuant to Section 202(c) of the Federal Power Act” (December 14, 2000); “Order pursuant to Section 202(c) of the Federal Power Act” (January 11, 2001); Order No. 202-03-1 (August 14, 2003).

blackouts to occur in the greater Washington, DC, area and may have a serious adverse effect on hundreds of thousands of consumers and the Federal Government and its agencies. The DCPSC, therefore, requests that the Secretary use its emergency authority under Section 202(c) of the FPA to order Mirant to continue operating is Potomac River Plant until further orders are issued by the Secretary or the Commission in the instant proceeding.

B. FERC's Authority Under Sections 207 and 309 of the FPA

Section 207 of the FPA provides as follows:

Whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished, and shall fix the same by its order, rule, or regulation: Provided, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel the public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.⁸

This Emergency Petition and Complaint satisfies the requirements of this provision.

The DCPSC is a "State commission" within the meaning of Section 207 of the FPA. The Potomac River Plant provides "interstate service" by supplying electricity into Washington, DC, Maryland and across the entire PJM region. Mirant is a jurisdictional public utility under the FPA. The evidence attached hereto indicates that failure to avert the proposed shutdown of the Potomac River Plant will render this interstate service inadequate or insufficient. Further, no enlargement of the existing facilities is required and continuation of the Plant's operation will ensure that adequate service is rendered to Mirant's customers.

While Section 207 appears to require a hearing, the Commission is empowered, under Section 309 of the FPA, "to perform any and all acts, and to prescribe, issue, make, amend,

⁸ 16 U.S.C. 824f

and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of [the FPA].” The immediate relief requested in this Emergency Petition and Complaint comes squarely within this enforcement authority and is clearly in the national and public interest.

V. WAIVERS OF REGULATIONS AND SERVICE

Due to the emergency nature of the instant submission and the speed with which events have developed over the past 48 hours, the DCPSC requests a waiver of all DOE and FERC filing and other regulations that may be otherwise applicable to this submission including the regulations set forth at 10 C.F.R. § 205.370, et seq. The DCPSC is serving this Emergency Petition and complaint on all entities designated to receive service under 10 C.F.R. § 205.372. Granting this waiver is in the public interest.

VI. CONCLUSION

WHEREFORE, for the above stated reasons, the DCPSC requests that the Secretary and the FERC grant immediate relief as described herein.

Respectfully Submitted,

Richard A. Beverly
General Counsel
Public Service Commission of the
District of Columbia
1333 H Street, N.W.
Washington, DC 20005
Phone: (202) 626-9200
Fax: (202) 626-9212

/s/ Sheila S. Hollis
Sheila S. Hollis
Ilia Levitine
Duane Morris LLP
1667 K Street, NW, Suite 700
Washington, D.C. 20006
Phone: (202) 776-7810
Fax: (202) 776-7801

ATTORNEYS FOR THE PUBLIC
SERVICE COMMISSION OF THE
DISTRICT OF COLUMBIA

DATED: August 24, 2005