UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

District of Columbia Public Service Commission	**)** **)**	**Docket No. EO-05-01**

COMMENTS AND AMENDED REQUEST FOR EXTENSION OF ORDER NO. 202-05-3 OF THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Pursuant to the public comment procedure set forth in the Special Environmental Analysis ("SEA") issued by the Department of Energy ("DOE") in the above-captioned proceeding on November 22, 2006, the District of Columbia Public Service Commission ("DCPSC") hereby submits these Comments. The DCPSC renews its request for an extension of Order No. 202-05-3,[1] at least until certain transmission upgrades currently being constructed by the Potomac Electric Power Company ("PEPCO")[2] become operational and, if necessary, until such other date when the electric power supply situation in the Nation's Capital is deemed to be secure.

The SEA confirms that the emergency measures taken by the Secretary of Energy ("Secretary") in the December 20 Order are in accord with all pertinent laws and regulations and have been crucial to ensuring a minimal acceptable level of reliability in the greater Washington,

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1 *See District of Columbia Public Service Commission*, Order No. 202-05-3, Docket No. EO-05-01 (issued Dec. 20, 2005)("December 20 Order" or "Order"). The DCPSC filed its Request for Extension of Order No. 202-05-03 in this docket on November 21, 2006, one day before the SEA was made available to the public. *See* Request for Extension of Order No. 202-05-03 of the District of Columbia Public Service Commission, Docket No. EO-05-01 (November 21, 2006)("Extension Request"). The DCPSC hereby incorporates by reference its Extension Request into this submission.

2 The upgrades are the two 230 kV transmission lines that are being constructed by PEPCO to deliver power to the Central D.C. area, referred herein as "PEPCO upgrades."

D.C., area. The SEA lends ample support to the inescapable conclusion that failure to extend these emergency measures until the PEPCO upgrades become operational would seriously jeopardize the electric reliability and security of power supply in the region.

While it is clear that the December 20 Order should be extended in the near term, it is not definitive that the emergency measures authorized by the December 20 Order (as amended) will automatically become unnecessary once the PEPCO upgrades are operational. Accordingly, prior to terminating or modifying the December 20 Order, upon completion of the PEPCO upgrades, the DOE should independently examine the need for continuation of all or some of the emergency measures set forth therein and should not prejudge the issue at this time. The DCPSC believes that only if this post-upgrade review firmly indicates that the reliability situation in the Central D.C. area is secure should the December 20 Order be terminated.[3]

I. COMMENTS

A. The SEA Confirms That Both The December 20 Order And Its Potential Extension Are In Conformity With Applicable Environmental Laws.

During the course of this proceeding,[4] the Virginia Department of Environmental Quality ("VDEQ") and certain other parties have contended that the December 20 Order is incompatible with the requirements set forth in the Clean Air Act ("CAA"), as well as the regulations promulgated under that statute.[5] Despite employing admittedly conservative assumptions that

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[3] Even if the Secretary opts to terminate the December 20 Order, he should clarify that such action by no means constrains the Federal Energy Regulatory Commission ("FERC") from ordering any long-term relief it may find appropriate under Sections 207 and 309 of the Federal Power Act ("FPA"), including similar operating requirements. *See District of Columbia Public Service Commission*, 114 FERC ¶ 61,017 (2006).

[4] The background and chronology of this proceeding is set forth on pp. 1-10 of the SEA.

[5] *See, e.g.,* Request for Rehearing and Request for Interim Clarification by David K. Paylor, Director the Commonwealth of Virginia Department of Environmental Quality, Docket No. EO-05-01, at 3-5 (January 20, 2006); City of Alexandria's Application for Rehearing, Docket No. EO-05-01, at 4-8 (January 20, 2006).

tend to overestimate the environmental impacts associated with the Potomac River Generating Station plant ("Plant"), the SEA provides no support for the VDEQ's contentions. On the contrary, the SEA supports the conclusion that the December 20 Order is consistent with all pertinent federal laws and regulations, does not exceed the DOE's authority and is the product of reasoned decision-making in a particularly complicated factual setting. In fact, the Secretary's timely action may have averted a crippling blackout in a highly sensitive area of the country, thereby potentially preventing a dangerous disruption of the Nation's critical infrastructure.

First, the SEA concludes that as long as the Plant operates in conformity with the December 20 Order and the EPA's Administrative Compliance Order ("ACO"),[6] no actual exceedances of the National Ambient Air Quality Standards ("NAAQS") limits are likely to occur in non-line outage situations, including major air pollutants, such as sulfur dioxide (SO_2), particulate matter (PM)[7] and nitrogen dioxide (NO_x).[8] It is remarkable that this conclusion has been reached despite the conservative assumptions of the SEA modeling study, which may overestimate the Plant's pollution impact.[9] In any event, the SEA correctly notes the ACO prevents any <u>actual</u> exceedances for non-line outage situations.[10]

Second, while the SEA model indicates that there could be some SO_2 and PM_{10} NAAQS exceedances in line-outage situations, these exceedances are of no legal import as long as the Plant operates in conformity with the ACO. This is because the ACO specifically provides that

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6 Administrative Compliance Order by Consent, *In the Matter of: Mirant Potomac River LLC, Potomac River Generation Station, Alexandria*, Virginia, Docket No. CAA-03-2006-0163DA (June 1, 2006).

7 PM_{10} refers to particular matter with an aerodynamic diameter less than or equal to 10 µm; $PM_{2.5}$ refers to particular matter with an aerodynamic diameter less than or equal to 2.5 µm.

8 *See* SEA at S-10 – S-11; 68-69.

9 *See id*. at 62-64.

10 *See id*. at 68.

if the Plant is operated "in accordance with dispatch directions from PJM and the relevant terms of [the ACO Order] during a Line Outage Situation, Mirant shall not be in violations of [the ACO order]; or 9 VAC 5-20-180(I), as incorporated into Virginia SIP at 40 C.F.R. 52.2420(c); nor shall such operation be deemed to give a right for cause of action for any alleged violations of the NAAQS as a result of Mirant causing or contributing to any modeled or monitored exceedance of the NAAQS."[11] Further, the modeled exceedances remain well under the limits in effect during the pre-shutdown period.[12] As a result, neither the December 20 Order nor an extension thereof would cause or contribute to new emissions not already accounted in Virginia's State Implementation Plan ("SIP").[13] In addition, any NAAQS exceedances modeled in the SEA should be read in light of the disclaimer that the DOE's model assumptions may have resulted in overestimated predictions.[14] Finally, the SEA notes that the EPA has provided the DOE with preliminary data on monitored air quality measurements for SO_2 taken at the Plant pursuant to the ACO, and the data suggests that actual air quality impacts from operation of the Plant under daily predictive modeling are lower than impacts predicted through DOE's modeling efforts.[15] The discrepancy between monitored data and modeled concentrations raises the possibility that the modeled maximum SO_2 concentrations reported in the SEA are unrealistically high.[16]

Third, the SEA refutes the VDEQ claim that the December 20 Order is not in conformity with the Virginia SIP. The area surrounding the Plant is in non-attainment for $PM_{2.5}$ and ozone

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11 *See* ACO § IV.C.2, at 14-15.
12 *See id*. at 76.
13 *See id*.
14 *See id*. at 62-64.
15 *See id*. at 68.
16 *See id* at 70.

and, as explained in the SEA, these are the only pollutants that are relevant for the purposes of the SIP conformity analysis, which indicates that the December 20 Order conforms to the Virginia SIP.[17] Specifically, the SEA explains that the Order does not cause or contribute to new emissions not already accounted for in the SIP or interfere with limits in the SIP because it allows the Plant to operate at levels lower than the pre-shutdown level.[18] Importantly, the December 20 Order cannot interfere with $PM_{2.5}$ emissions because Virginia does not currently have SIP for $PM_{2.5}$.[19] Nor does the December 20 Order affect Virginia's SIP for ozone.[20] In fact, the December 20 Order actually decreases emissions already accounted in the SIP.[21] In any event, the SEA correctly concludes that, even if the December 20 Order does not conform to the Virginia SIP, it falls within the emergency exception of Virginia's conformity regulations.[22]

In sum, the December 20 Order, as complemented by the ACO, responsibly addressed an emergency that arose at the intersection of federal energy and environmental law. The Secretary's action timely averted a dangerous electricity supply and reliability crisis in the Nation's capital while complying with all pertinent laws and regulations, acting in cooperation with other federal and state agencies. The SEA demonstrates that extending the December 20 Order (as modified to conform to the ACO) complies with the CAA and other environmental statutes and this extension is, in fact, required to ensure security of electricity supplies in our Nation's capital.

B. Extending The December 20 Order Until The PEPCO Upgrades Are Operational Is The Only Feasible Alternative That Would Ensure Reliability In The Near Term.

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17 *See id* at 75-76.
18 *See id* at 76.
19 *See id.*
20 *See id*.
21 *See id*.
22 *See id* at 77.

The December 20 Order, as extended, expires on February 1, 2007.[23] The SEA sets forth and assesses the implications of three potential future alternative actions the DOE might take upon expiration of the Order: 1) allow the Order to expire with no further action; 2) extend the Order as currently written until the expected June 2007 in-service date of the two new 230 kV transmission lines (or until December 2007, to account for possible delays in installation); or 3) extend the Order in modified form to include measures to mitigate impacts.[24]

1. Allowing The December 20 Order To Expire Is Not A Viable Option.

The SEA confirms that allowing the December 20 Order to expire prior to the completion of the PEPCO upgrades would likely place the Central D.C. area in risk of a blackout.[25] The Plant is a key source of electricity supply for the Central D.C. area and, without the emergency protection guaranteed by the December 20 Order, it cannot be counted on as a viable reliability resource to protect the Nation's capital from blackouts.

The SEA lists a number of significant dangers associated with blackouts. Among others, these dangers include: multiple public health problems that can lead to new or exacerbated injury or death, detrimental impacts to drinking water supplies and water safety, injury, death and damage to property resulting from fires and increased criminal activity.[26] The Central D.C. area includes hundreds of thousands of residents and workers, and many public safety and protection facilities, such as hospitals, police and fire stations, making the prominence of these dangers ever more real and potential impacts more severe. The results could harm public health and safety.

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23 *See District of Columbia Public Service Commission*, Order No. 202-07-1, Docket No. EO-05-01 (issued November 22, 2006).
24 *See* SEA at 108-114.
25 *See* SEA at S-3, S-6
26 *See id.* at 108.

The risk to hundreds of thousands of persons located in the District from loss of heating and cooling, refrigeration, elevator outages, information system outages, medical equipment operation failure and numerous other effects could impact the District dramatically.

While the SEA's discussion of the significant health and environmental impacts associated with blackouts would probably be applicable to any large metropolitan area, there are significant national security implications that may result even from a short interruption of electricity supply in the area, which are unique to Washington, D.C. The SEA's failure to assess or discuss these additional national security risks is a serious shortcoming that should be addressed by the DOE. The Central D.C. area encompasses numerous federal facilities, including the White House, the Federal Bureau of Investigation, the Justice Department, the State Department and the Federal Emergency Management Agency, which are all critically important to the Nation's security, its ability to conduct the war on terror and ensure public safety and overall welfare. A blackout occasioned by the Plant's unavailability may have a serious impact on these government entities' ability to perform their functions. Indeed, the December 20 Order explicitly acknowledged the extraordinary and potentially catastrophic national consequences associated with a blackout in the Central D.C. area, stating that critical portions of the nation's government would be so severely impacted that adverse effects would be felt on a national scale.[27] A discussion of these extraordinary impacts should be included in the SEA and they should be taken into account by the Secretary in weighing the alternatives presented in the SEA.

In sum, a blackout affecting Central D.C. would severely jeopardize the safety of the residents and workers in the area, impact critical portions of the Nation's government and

[27] December 20 Order at 8.

potentially lead to adverse national security effects. Potential threats to national security is an unusual consideration not typically characteristic of most blackout scenarios. These national security effects, together with other public safety and welfare concerns, make a lapse of the December 20 Order unacceptable.

2. To The Extent Mitigation Is Deemed Necessary, It Should Not Undercut The Effectiveness Of The Emergency Measures And Should Not Exceed The Secretary's Statutory Authority.

In addition to the expiration and extension scenarios, the SEA discusses the option of extending the December 20 Order with certain "mitigation measures," which include: (1) requiring Mirant to improve Plant operations and pollution control measures; (2) requiring Mirant to reduce exposure to pollutants to workers and nearby residents; (3) managing the demand for electricity in the Central D.C. area; (4) using alternative sources of generating electricity; and (5) expediting the installation of additional transmission lines.[28] While the DCPSC reserves its judgment with respect to the first two mitigation measures, which appear to be directed at Mirant, it would like to emphasize that any such measures, if adopted, should not undermine the effectiveness of the December 20 Order.

Regarding the demand response alternative, the DCPSC is concerned with the SEA's recommendation that the DOE "[r]equire the [DCPSC]to develop a plan for reducing electrical demand in the Central D.C. area."[29] As an initial matter, the DCPSC has already taken substantive measures to address the Secretary's expectation that it "will take all reasonable actions to augment electrical reliability and to reduce electricity demand in the Central D.C.

[28] SEA at 109.
[29] *Id.* at 112.

area."[30] In its Extension Request, the DCPSC explained that a number of demand response options had been available through PJM Interconnection, L.L.C. ("PJM") and PEPCO even prior to the issuance of the December 20 Order and they remain available for all qualified participants. The DCPSC has also undertaken certain steps over the past 10 months to determine whether additional programs may be necessary and justified, and a number of these additional initiatives are being considered. The most significant of these demand response programs and initiatives are as follows:

- PJM's Demand Response Programs. PJM conducts two demand response programs that provide financial incentives for end-use customers to reduce their electricity use either during an emergency event or when locational marginal prices ("LMPs") are high on the PJM system. The Emergency Load Response Program ("Emergency Program") provides compensation to retail customers who voluntarily reduce load during emergency conditions on the PJM grid. The Economic Load Response Program ("Economic Program") provides an incentive to customers or curtailment service providers to reduce electricity consumption when PJM LMPs are high. PEPCO sponsors customer participation in both the PJM Emergency and Economic Programs. End use customers may also participate in these programs directly with PJM or through a competitive curtailment service provider. PJM's demand response programs have been in place and in use with successful results since June 1, 2002. More than 6,000 commercial and industrial facilities (with a demand greater than 100 kW) and more than 45,000 small commercial and residential sites participate in PJM's demand response programs. In 2005, PJM recorded a total load reduction of 113,392 MWh as attributable to its demand response programs.[31]

- PEPCO's Voluntary Load Reduction Program. PEPCO also offers a Voluntary Load Reduction Program. Under this program, large participating customers may agree to reduce their loads during extreme electric system conditions. Approximately 440 commercial customers through PEPCO's service territory participate in this program, more than 180 of which are located in the District of Columbia.[32]

- DCPSC's Reliable Energy Trust Fund ("RETF") Programs. Under the District of Columbia Retail Electric Competition and Consumer Protection Act of 1999, the

[30] December 20 Order, Ordering Paragraph F.
[31] *See* Extension Request at 9-11.
[32] *See id.* at 11.

DCPSC was required to establish a universal service program to assist low-income customers in the District with their energy bills, as well as programs to promote energy efficiency and the use of energy from renewable resources. Pursuant to this mandate, the DCPSC established the RETF effective January 1, 2001, and approved a number of specific low-income, energy efficiency and renewable programs for funding through the RETF, which facilitate energy load reduction through end-use management and are designed to lower D.C. residents' energy consumption.[33]

- PEPCO's Smart Metering Pilot Program. On June 1, 2006, PEPCO filed an application with the DCPSC on behalf of the Smart Metering Pilot Program, Inc. ("SMPPI") requesting approval to implement a D.C. smart meter project. SMPPI designed the proposed smart meter program, known as SmartPowerDC, to be a two-year pilot program, whereby selected District of Columbia residents from all eight wards would be provided with an opportunity to receive time differentiated pricing signals and demand response enabling technologies. Under the proposal, participating customers would receive a free special "smart meter" installation for their home, which would measure the customer's electricity use at 15-minute intervals and transmit it to PEPCO every day via a wireless communication link. PEPCO proposes using a solid-state meter called the "iCon." On September 21, 2006, the DCPSC approved the "iCon" as the "smart meter" for the SmartPowerDC program and is currently considering PEPCO's tariff application.[34]

- Demand Response Working Group. On March 23, 2006, the DCPSC issued an order establishing a Demand Response Working Group ("Working Group") to consider the feasibility and reasonableness of instituting additional demand response programs in the areas served by the Plant. The Working Group consisted of: PEPCO, the District of Columbia Office of the People's Counsel, U.S. Government Accountability Office, U.S. General Services Administration ("GSA"), PEPCO Energy Services, Constellation NewEnergy, Inc.; EnerNOC, Inc.; ConsumerPowerline; Converge, Inc.; the World Bank; the District of Columbia Office of the Attorney General; District of Columbia Energy Office; the Architect of the Capitol; the U.S. Department of Energy Federal Energy Management Program; and DCPSC staff. On May 8, 2006, the Working Group submitted its Report in response to the DCPSC's March 23, 2006 order. Based on the Working Group's report, and following a notice and comment period, the DCPSC issued an order, finding that, with the on-going demand response initiatives already in place and transmission upgrades underway, an additional short-term demand response program would be unnecessary and not cost-effective.[35]

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[33] *See id.* at 11-12.
[34] *See id.* at 12-14.
[35] *See id.* at 14-18.

- Implementation of the Energy Policy Act of 2005 ("EPAct"). On July 31, 2006, the DCPSC issued Order No. 14016, soliciting comments on whether, and to what extent, the DCPSC should initiate proceedings or modify existing proceedings to meet the requirements of the EPAct.[36] Although the DCPSC had already instituted a smart metering initiative, it sought comments on whether further actions should be required in order to comply with the EPAct directives. Through this on-going proceeding, the DCPSC is allowing interested parties to raise any other demand response issues and/or alternatives that have not been addressed through the DCPSC's various proceedings thus far.[37]

Over the past several months, the DCPSC has held several meetings with representatives from the DOE, GSA, PJM and PEPCO to discuss opportunities for federal facilities to participate in demand response programs in the District. The DCPSC remains committed to this on-going effort.

While the DCPSC is willing to take any steps necessary to address the demand response issues in Central D.C., it should be noted that both the DOE and the DCPSC are constrained by their respective jurisdictional boundaries. Section 202(c) of the FPA authorizes the Secretary, when he determines that an emergency exists, to issue an order requiring "generation, delivery, interchange or transmission of electric energy as in [his] judgment will best meet the emergency and serve the public interest." [38] Nothing in this language permits the Secretary to "require" the DCPSC to develop a plan for reducing electrical demand in the Central D.C. area. Indeed, the DOE regulations promulgated under Section 202(c) of the FPA make it plain that the Secretary's authority applies to "any entity which owns or operates electric power generation transmission or

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[36] Among other things, EPAct 2005 amended the Public Utility Regulatory Policies Act of 1978 to include five new standards to address conservation and efficiency needs in the electric industry, and accordingly requires states to consider and establish net and smart metering standards. *See* EPAct 2005, Pub. L. 109-58, title XII, §§ 1251, 1252, 1253, 1254.

[37] *See* Extension Request at 18.

[38] *See* 16 U.S.C. § 824a(c).

distribution facilities."[39] The DCPSC is, of course, a regulatory agency and does not "own or operate" such facilities. Accordingly, the DOE should so clarify in its order issued on the SEA.

Further, the DCPSC notes that a significant portion of the load in the District of Columbia involves agencies and instrumentalities of the Federal Government. The DCPSC has no jurisdiction over these entities and any demand management efforts with respect to them may be either voluntary or pursuant to federal statues or regulations that the DCPSC is not charged with administering. As a result, the DOE should continue to take the lead in getting federal agencies in the District of Columbia to reduce their peak demand of electricity. Some of these steps, as well as other necessary measures, can be taken pursuant to the DOE's Federal Energy Management Program.[40] While the DCPSC remains committed to further exploring available demand response alternatives, together with the DOE and other interested entities, this effort is necessarily subject to the jurisdictional limitations that neither the DCPSC nor any other agency is free to ignore.[41]

Finally, the remaining mitigation measures, which pertain to alternative generation sources and "expediting" the installation additional transmission lines, appear to be outside of the DCPSC's purview. The DCPSC notes, however, that the SEA indicates that these alternatives may not be feasible, at least in the near term.[42]

C. The DOE Should Not Prejudge At This Time The Need For Further Extensions Of The Emergency Measures Authorized By The December 20 Order.

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39 *See* 10 C.F.R. § 205.370.

40 *See* 10 C.F.R. § 436.1, *et seq.*

41 As noted *supra*, an informal dialogue among interested parties, including the DOE, the DCPSC and the GSA, may provide a workable solution to the demand reduction problem.

42 *See* SEA at 113-14.

The DCPSC believes that the December 20 Order, as amended to comport with the ACO, should be extended. The SEA amply supports such an extension.

Nonetheless, the SEA appears to suggest that the need for the emergency measures authorized by the December 20 Order will be eliminated after the PEPCO upgrades become operational. While this assumption might eventually prove to be correct, it is not definitive that some or all of the emergency measures provided for in the December 20 Order would automatically become unnecessary once the 230 kV lines have been constructed.

When issuing an extension order, the DOE should not preempt the issue of whether reliability in Central D.C. has sufficiently improved due to PEPCO's upgrades, so as to warrant termination of the emergency measures. Any such determination can be made only based on a comprehensive review of the reliability situation in the region after the PEPCO upgrades have become a working part of the regional transmission grid. Until such review is performed, the DOE should keep its options open. Accordingly, the DCPSC requests that, upon extension of the December 20 Order, the Secretary provide that the reliability situation in the District will be reevaluated after the PEPCO upgrades become operational and the emergency measures set forth in the December 20 Order will not be terminated or curtailed without such an evaluation.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, the District of Columbia Public Service Commission respectfully requests that: (1) the instant Comments be considered by the Department of Energy in its decisonmaking in the above-captioned docket; (2) the Secretary's Order issued in this docket on December 20, 2005, and all of the terms and conditions thereof, as amended, be extended until the date PEPCO's proposed upgrades become operational, or such time that the DOE, PJM, PEPCO, and the DCPSC have determined that reliability of electric energy supply and safety and security issues are clarified and satisfactorily resolved; and (3) the

Secretary's extension order provide that the reliability situation in the District will be reevaluated after the PEPCO upgrades become operational and the emergency measures set forth in the December 20 Order will not be terminated or curtailed without such an evaluation.

Respectfully Submitted,

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ATTORNEYS FOR THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

DATED: January 8, 2007

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on all parties of record in this proceeding and in accordance with 10 C.F.R. § 205.372.

Dated at Washington, D.C. this 8th day of January, 2007.

/s/ Sheila S. Hollis
Sheila S. Hollis

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