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January 19, 2006

VIA ELECTRONIC MAIL

Mr. Lawrence Mansueti
Permitting, Siting, and Analysis Division
Office of Electricity Delivery and Energy Reliability
US Department of Energy
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

RE: Emergency Petition and Complaint of the District of Columbia Public Service Commission (Docket No. EO-05-01)

Dear Mr. Mansueti:

Enclosed please find the Preliminary Comments on Compliance Plan and Request for Clarification or, in the Alternative, Rehearing of the District of Columbia Public Service Commission ("DCPSC").

In addition to being served upon all parties of record in the above-referenced proceeding, this filing is being distributed to all persons who received the DCPSC's Emergency Petition and Complaint filed in this proceeding on August 24, 2005 (identified in the DCPSC's August 30, 2005 letter to you) and to all parties on the official service list compiled by the Federal Energy Regulatory Commission in Docket No. EL05-145-000. Please contact me with any questions.

Very truly yours,

/s/ Sheila S. Hollis
Sheila S. Hollis

cc: All interested parties

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

District of Columbia Public Service)
Commission)

Docket No. EO-05-01

**PRELIMINARY COMMENTS ON COMPLIANCE PLAN AND
REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE,
REHEARING OF THE DISTRICT OF COLUMBIA
PUBLIC SERVICE COMMISSION**

Pursuant to Order No. 202-05-3, issued by the Department of Energy (“DOE”) in the above-captioned docket on December 20, 2005 (“December 20 Order”), and Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 825*l*, the District of Columbia Public Service Commission (“DCPSC”) hereby submits its preliminary comments on the compliance plan (“Compliance Plan”) proposed by Mirant Potomac River, L.L.C. (“Mirant”) on December 30, 2005, and requests clarification or, in the alternative rehearing, of the December 20 Order. While the DCPSC is grateful that the DOE recognized the severity of and potential serious peril to the Nation and the District of Columbia if the shutdown of Mirant’s Potomac River Generating Plant (“Plant”) were to continue, the DCPSC feels compelled to respond to the Compliance Plan and to certain limited aspects of the December 20 Order to ensure that they are consistent with the DCPSC’s mandate and the District of Columbia’s electric reliability needs.

I. PRELIMINARY COMMENTS ON COMPLIANCE PLAN

Ordering Paragraph D of the December 20 Order directed Mirant to submit a plan detailing the steps it would take to ensure compliance with the DOE directives regarding the Plant. The DOE required the Compliance Plan to include, at a minimum, “information regarding

adequate staffing, materials, and supplies; emissions controls; and length of time necessary to start-up the Plant's generating units in the event of an unplanned or planned outage."¹

On December 30, 2005, Mirant submitted its Compliance Plan, which described three proposed phases of the Plant's operation: temporary, intermediate and long-term. During the temporary phase, whose precise duration was not specified, Mirant proposed to operate Unit 1 "unconstrained as to unit load and hours of operation."² The intermediate phase, which would follow the temporary phase, included two alternatives: Option A and Option B. Under Option A, Mirant would operate one baseload unit and two cycling units and, in the event the entire Plant is called into service, it would take approximately 28 hours to restore its operations.³ Mirant stated that Option A would not result in any modeled National Ambient Air Quality Standards ("NAAQS") exceedances.⁴ Under Option B, Mirant would operate three baseload units continuously, with 12 hours or less at a maximum load and 12 hours or more at minimum load on a daily basis, and would operate each of the cycling units one day per week (on separate days) for approximately 8 hours.⁵ According to Mirant, while Option B offers dramatically better reliability than Option A, it would result in a marginal computer-modeled exceedance of the 24-hour NAAQS for one pollutant.⁶ Finally, the long-term phase, which may involve the reconfiguration of the Plant's unit stacks, was not described in detail and contemplated additional

¹ December 20 Order, Ordering Paragraph D.

² Compliance Plan at 4.

³ *Id.* at 2 and 5.

⁴ *Id.* at 5.

⁵ *Id.* at 2 and 5.

⁶ *Id.*

modeling studies.⁷ On January 4, 2006, the DOE issued a letter order directing Mirant to immediately implement the “Option A” alternative as an interim solution.

The instant comments represent the DCPSC’s initial reaction to the proposed Compliance Plan. The DCPSC generally shares the concerns expressed in the preliminary comments submitted by Potomac Electric Power Company (“PEPCO”) and PJM Interconnection, L.L.C. (“PJM”) in response to Mirant’s proposal.⁸ As an initial matter, the DCPSC believes that, at a minimum, the Plant should be operated at all times in conformity with the parameters set forth in Paragraphs A and B of the December 20 Order, including during any interim phase. While the DCPSC understands that the DOE might have felt it necessary to adopt Option A as an immediate solution, it is clear that this alternative cannot provide a degree of reliability required under the December 20 Order over any sustained period of time.

According to Mirant, Option A requires a 28-hour advance notice before the full output of the Plant becomes available to the grid.⁹ Such a lengthy ramp-up period is clearly unacceptable in light of the drastic consequences that may occur within the first 24 hours of a blackout in the Washington, D.C., region, as conclusively established in this proceeding. Further, Option A results in a significant capacity shortfall. In its Preliminary Comments, PJM explains that the level of daily peak load in the area can range from 350 MW to 550 MW.¹⁰

⁷ *Id.* at 8-9.

⁸ *See* “Preliminary Response of the Potomac Electric Power Co. to the Operating Plan of Mirant Potomac River, LLC as Filed December 30, 2005,” Docket No. EO-05-01 (Jan. 9, 2006); “Preliminary Response of PJM Interconnection, L.L.C. to the Operating Plan of Mirant Potomac River, LLC,” Docket No. EO-05-01 (Jan. 16, 2006) (“PJM Comments”).

⁹ *See* Compliance Plan at 4.

¹⁰ *See* PJM Comments at 4.

Operating under Option A, however, the Plant could replace only 278 MW of this peak load and its additional units would need to be called if an emergency arises to cover a very significant shortfall ranging from 73 MW to 272 MW.¹¹ This further highlights the fact that the 28-hour waiting period proposed under Option A is unacceptable because it fails to adequately protect the District of Columbia and the surrounding area from a severe blackout over an extended period of time.

Although Option B is certainly a better alternative from a reliability standpoint than Option A, it is far from being fully satisfactory. Under Option B, the load shortfall in the event of an emergency still remains substantial. According to PJM, it may range from 44 MW to 244 MW.¹² The Plant would still require at least 12 hours of start-up time for all units in order to cover this shortfall, and even this assumption, as noted by PJM, may be unduly optimistic.¹³ As a result, while Option B might serve as a short-term bridge from the Plant's current operating conditions to a more secure alternative, the DCPSC cannot accept Option B as an intermediate-term solution. Accordingly, the DCPSC requests that the DOE order Mirant to work closely with other interested parties, including the DCPSC, PJM and PEPCO, to devise an acceptable intermediate-term solution that takes into account the significant electric reliability concerns that animate this proceeding.

¹¹ *Id.*

¹² *Id.* at 5.

¹³ *Id.*

II. REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING

At the outset, the DCPSC would like to make it clear that it is gratified by the actions the DOE has taken in this proceeding. The December 20 Order vindicates the DCPSC's concerns and generally creates a workable framework that can be used to address the important issues raised in the DCPSC petition. Together with the recent decision issued by the Federal Energy Regulatory Commission ("FERC") in Docket No. EL05-145-000,¹⁴ the December 20 Order provides an effective means for addressing the difficult electric reliability challenges faced by our Nation's capital, both in the immediate future and over a longer time horizon.

As the petitioner in this case and the government agency responsible for the oversight of public utilities in the Nation's capital, the DCPSC must work closely with the DOE and FERC in crafting the appropriate solution to the issues raised in this proceeding and the parallel FERC proceeding. The DCPSC recognizes that this solution should take into account the legitimate interests of all participants and the constituencies they represent. As a result, the solution would have to consider a number of alternatives, including the Plant's continuing operation, transmission upgrades and possible demand management measures, in order to arrive at the appropriate mix that would responsibly address the electric reliability and environmental issues associated with the Plant. The DCPSC is committed to active engagement in this process and to cooperation with the affected parties and governmental agencies, including prompt resolution of issues that may fall under its jurisdiction.

The DCPSC believes that the December 20 Order is clear on its face and takes no issues with the principal directives it contains. That being said, the DCPSC is concerned that certain

¹⁴ *District of Columbia Public Service Commission*, 114 FERC ¶ 61,017 (2006).

parties in this proceeding have sought to twist the language of the December 20 Order by suggesting that the DCPSC should be “required” to expedite consideration of specific applications or take specific demand response actions.¹⁵ It is to explain its statutory responsibilities under the District of Columbia’s public utility law and to describe the actions it has taken in the spirit of the December 20 Order that the DCPSC deems it necessary to provide the instant response. Out of an abundance of caution and in the event it has misconstrued the DOE’s intent the DCPSC also requests clarification that the December 20 Order did not intend to “require” the DCPSC to take any action that may be inconsistent with its mandate contained in its governing laws, regulations or statutory responsibilities. In the alternative, the DCPSC requests rehearing on this issue.

Under the D.C. Code, the DCPSC has broad authority over its jurisdictional utilities’ transmission system and DCPSC approval is required before any such utility can construct electric plant (including transmission improvements).¹⁶ On October 12, 2005, PEPCO filed an application with the DCPSC in Formal Case No. 1044, requesting approval for its plan to construct two 69 kV overhead electric transmission lines and providing notice of its intent to construct two 230 kV underground lines. The PEPCO proposal was submitted on an emergency basis, with a view to addressing the electric reliability issues stemming from the shut-down of the Plant.

¹⁵ See Letter from John B. Britton, Attorney, Schnader Harrison Segal and Lewis LLP & Ignacio B. Pessoa, City Attorney, City of Alexandria, to The Honorable Samuel W. Bodman, Secretary of Energy, U.S. Department of Energy at 1, Docket No. EO-05-01 (Dec. 22, 2005); Letter from Congressman James P. Moran, U.S. Representative, to The Honorable Samuel W. Bodman, Secretary of Energy, U.S. Department of Energy at 2, Docket No. EO-05-01 (Dec. 27, 2005) (“Moran Letter”).

¹⁶ See D.C. Code §§ 34-301 and 34-302.

On December 29, 2005, the DCPSC issued an initial order addressing PEPCO's application.¹⁷ In its order, the DCPSC acknowledged the need for the expeditious handling of PEPCO's request in light of the December 20 Order and stated that "it is incumbent on this Commission to do all that we can as quickly as we can to ensure that we have alternative means of supplying power to affected areas."¹⁸ Consequently, the DCPSC waived a number regulatory requirements (including a lengthy notice period) that are normally applicable to the proceedings such as that initiated by PEPCO and scheduled a limited public hearing to be conducted on February 2, 2006. Under the adopted schedule, the DCPSC's decision is to be issued on March 9, 2006. The DCPSC believes that these actions are fully responsive to the DOE "expectation" set forth in Ordering Paragraph F of the December 20 Order.

With respect to demand response, 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 can be either voluntary or pursuant to federal statutes or regulations that the DCPSC is not charged with administering. The DCPSC shares Representative Moran's view that it would be helpful if the DOE continued to take "the lead in getting federal agencies in the District of Columbia to operate new cleaner sources of electricity and reduce their peak demand

¹⁷ *Formal Case No. 1044, In the Matter of the Emergency Application of the Potomac Electric Power Co. for a Certificate of Public Convenience and Necessity*, Order No. 13850 (Dec. 29, 2005). A copy of the DCPSC order is attached hereto at Exhibit A.

¹⁸ Order No. 13850, at P 15.

of electricity.”¹⁹ Some of these steps, as well as other necessary measures, can be taken pursuant to the DOE’s Federal Energy Management Program.²⁰

Where the DCPSC has the authority, it has already instituted a number of demand response measures. Thus, both residential and commercial customers in the District of Columbia are subject to time-of-use rates. In addition, the DCPSC is in the process of initiating a “smart metering” pilot program pursuant to the PEPCO/Conectiv merger settlement agreement. Finally, the DCPSC fully supports customers’ participation in PJM’s demand response programs and is committed to further exploring the demand response potential for the District of Columbia. Accordingly, the DCPSC believes that its actions have been in full compliance with the expectations set forth in the December 20 Order and it requests that the DOE so clarify.

Finally, the DCPSC requests that the DOE modify its December 20 Order in one limited respect in order to enhance cooperation among all affected parties. In recognition of its dual status as the petitioner in this proceeding and the governmental agency with statutory responsibility over electric utility matters in the District of Columbia, the DCPSC requests that the DOE order all participants to provide any filings or proposals required to be made pursuant to the December 20 Order or any subsequent orders to the DCPSC sufficiently in advance of their submission to the DOE. This would allow the DCPSC to better coordinate its actions on PEPCO’s matters before it that are relevant to this proceeding, including PEPCO’s application in Formal Case No. 1044, and provide meaningful preliminary input to Mirant and other parties in order to enhance cooperation in this proceeding.

¹⁹ Moran Letter at 2.

²⁰ See 10 C.F.R. § 436.1, *et seq.*

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the DCPSC requests that the Department of Energy accept this filing and grant the relief requested herein.

Respectfully Submitted,

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ATTORNEYS FOR THE PUBLIC
SERVICE COMMISSION OF THE
DISTRICT OF COLUMBIA

DATED: January 19, 2006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on all parties of record in this proceeding.

Dated at Washington, D.C. this 19th day of January, 2006.

/s/ Sheila S. Hollis
Sheila S. Hollis

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EXHIBIT A

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, NW, SUITE 200, WEST TOWER
WASHINGTON, DC 20005

ORDER

December 29, 2005

FORMAL CASE NO. 1044, IN THE MATTER OF THE EMERGENCY APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT TWO 69KV OVERHEAD TRANSMISSION LINES AND NOTICE OF THE PROPOSED CONSTRUCTION OF TWO UNDERGROUND 230 KV TRANSMISSION LINES, ORDER No. 13850

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") convenes a public hearing on February 2, 2006 at 10:00 a.m. in the Commission's Hearing Room at 1333 H Street, NW, Seventh Floor, East Tower, to consider the Potomac Electric Power Company's ("Pepco") Emergency Application to Construct Two 69kV Overhead Transmission Lines and Two 230kv Underground Transmission Lines ("Emergency Application").¹

II. BACKGROUND

2. The facts of this case are rooted in a related matter involving the closure of the Mirant Corporation's electric generating plant located in Alexandria, Virginia. With almost no notice, Mirant shut down the Potomac River plant at midnight on August 24, 2005, ostensibly in response to air quality concerns raised by the Virginia Department of Environmental Quality. Because the Potomac River plant constitutes a currently irreplaceable component for electric reliability in the District, the Commission, on August 24, 2005, filed an emergency petition before the United States Department of Energy ("DOE") and the Federal Energy Regulatory Commission seeking an order directing Mirant to reopen the plant. Pepco, the District Government, and the Office of the People's Counsel all supported the Commission's position in their individual comments filed before one or both of those federal agencies.

¹ *Formal Case No. 1044, In the Matter of Emergency Application of the Potomac Electric Power Company for a Certificate of Public Convenience and Necessity to Construct Two 69kV Overhead Transmission Lines and Notice of the Proposed Construction of Two Underground 230kV Underground Transmission Lines, Emergency Application of the Potomac Electric Power Company for a Certificate of Public Convenience and Necessity to Construct Two 69kV Overhead Transmission Lines and Notice of the Proposed Construction of Two Underground 230kV Underground Transmission Lines ("PEPCO Emergency Application")*, filed October 12, 2005.

3. In its filing before FERC, Pepco explained that, if the two existing 230 kV lines should fail for any reason and the generating capacity of the Mirant plant is unavailable, it will result in a power loss to electric customers in Georgetown, Foggy Bottom and much of downtown D.C., including federal facilities critical to the security, safety, and welfare of the entire country. Additionally, if the power loss lasts for more than 24 hours, the Blue Plains wastewater treatment plant will have no choice but to discharge raw sewage into the Potomac River, with disastrous environmental consequences.

4. Given the threat posed by the closure of the Potomac River plant and the possibility that it may not be available in the future, Pepco proposed to construct additional transmission lines. Specifically, on October 12, 2005, Pepco filed an Emergency Application requesting approval of its plan to construct two 69kV overhead electric transmission lines and providing notice of its intent to construct two 230 kV underground electric transmission lines in the District. Pepco asserts the emergency conditions described in the application warrant that the Commission establish an expedited review process, which includes: 1) issuing an Order, not later than December 31, 2005, granting Pepco a Certificate of Public Convenience and Necessity ("CPCN") for the construction of two overhead 69kV transmission lines; 2) incorporating and consolidating into the Commission's community hearing process the Community Advisory Group process anticipated by Rule 2107 for the overhead 69kV lines; 3) waiving the six-month prior to construct notice filing requirement for the two underground 230kV transmission lines; 4) reducing the 90-day intervention period in Rule 2111.4 to 10 or fewer days for the 230kV lines; and 5) issuing an Order notifying Pepco that the Commission shall not take any action to initiate a formal investigation of Pepco's proposed construction of the two underground 230kV lines.

5. Chapter 21 of the Commission's rules, 15 DCMR §2100.1 *et seq.*, govern the construction of overhead and underground transmission lines in excess of 69kV. With regard to proposed overhead transmission lines, the rules establish a comprehensive review process that includes public participation. On the other hand, if the proposed transmission lines are underground, the electric company only has to notify the Commission of the details of its plans six months prior to construction.² However, any interested person, within 90 days of the date of the notice, may petition the Commission to investigate the reasonableness, safety and need for an underground line.³

6. On October 21, 2005, the Commission solicited public comment regarding Pepco's application.⁴ The Office of the People's Counsel ("OPC"), which is a statutory party of right, filed comments on October 31, 2005.⁵ In its comments, OPC objects to

² 15 DCMR 2111 *et. seq.* (1998).

³ 15 DCMR 2111.4 (1998).

⁴ 52 *D.C. Register*, rel. October 21, 2005, pp. 9497-9498.

⁵ *F.C. 1044*, Initial Comments of the Office of the People's Counsel ("OPC Comments"), rel. October 31, 2005.

waiving any rules under Chapter 21 for overhead transmission lines if it comes at the expense of meaningful public participation.⁶ With regard to underground lines, OPC argues that, notwithstanding the Commission's rules, Pepco must comply with the requirements of D.C. Code §34-1101(b), which requires a public utility to apply for a certificate of public convenience and necessity ("CPCN") before providing facilities and requires the Commission to hold a hearing before approving such an application.⁷ Although the District Government and ANC Commissioner Jordan intervened in this proceeding, neither of them filed substantive comments on Pepco's proposal.⁸

7. Subsequently, at the request of the Commission, Pepco and the District government responded to OPC's arguments regarding §34-1101(b). According to Pepco, the requirement under §34-1101(b) is inapplicable to this case because Pepco is deemed to have been granted a CPCN under §34-1101(c).⁹ The District Government agrees with Pepco on this point.¹⁰

III. DISCUSSION

8. D.C. Code §34-1101 provides, in pertinent part:

(b) No public utility shall furnish a service or facility, directly or indirectly, without first proceeding and proving to the satisfaction of the Public Service Commission ("Commission") that the present and future public convenience and necessity requires that the service be provided or the facility be offered. Upon application of a public utility for a certificate of present and future public convenience and necessity pursuant to this subsection, the Commission, upon a hearing and notice to the public, shall issue an order granting or denying the application, in whole or in part, stating the reasons for the action . . .

(c) Every public utility that was regulated by the Commission and that furnished a service or facility within the District of Columbia as of June 27, 1989 is deemed to have been granted a certificate of public convenience and necessity.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

⁸ *F.C. 1044*, Order No. 13814, rel. November 9, 2005.

⁹ *F.C. 1044*, See generally, Response of the Potomac Electric Power Company's to Commission Order No. 13814 and to the Comments of the Office of the People's Counsel ("PEPCO Response"), filed November 16, 2005.

¹⁰ *F.C. 1044*, See Reply Comments of the District of Columbia Government ("District Reply"), filed December 12, 2005.

9. There is no question that §34-1101(c) grants certain public utilities a CPCN. What is unclear is how the CPCN operates. Pepco and the District Government argue that a CPCN under §34-1101(c) is a blanket exemption from the requirements of §34-1101(b) for all utility companies operating as of June 27, 1989, and effectively "grandfathers" all of their services and facilities whether or not those services and facilities existed as of June 27, 1989. Implicit in Pepco's and the District Government's argument is the assumption that §34-1101(b) was not intended to apply to utility companies operating as of June 27, 1989, but rather to new utilities seeking to operate after that date. OPC, however, has a different view. In OPC's opinion, the CPCN under §34-1101(c) is applicable only to services and facilities offered by utility companies as of June 27, 1989, and all future services and facilities are subject to the requirements of §34-1101(b).

10. The language of the statute can support either interpretation and is, therefore, ambiguous. Pepco, however, has directed our attention to the legislative history of this particular provision as a means of resolving the ambiguity. According to the legislative history, the Commission itself was the architect for D.C. Code §34-1101 and submitted it to the Council as emergency legislation. In her testimony before the Council, then Commission Chairman Worthy stated:

This legislation will not affect the regulated operations of existing public utilities, such as the Washington Gas Light Company, the Potomac Electric Power Company and the Chesapeake and Potomac Telephone Company (now known as Verizon). The legislation contains a grandfather clause which exempts public utilities operating in the District of Columbia and regulated by the Public Service Commission as of the effective date of the Public Utility Emergency Act of 1989.

Chairman Worthy went on to explain that the Commission sought to create a CPCN requirement primarily to address an influx of alternative telecommunications carriers that enter a newly competitive market, presumably as public utilities, and may, if left completely outside the purview of the Commission, adversely impact District consumers.

11. Ultimately, the Committee on Public Services considered the Commission's proposed legislation as Bill 8-321. The Committee recommended approval of the Bill and attached Chairman Worthy's statement to it. In discussing the impact on existing law, the Committee did a section-by-section analysis of the Bill and stated that Section 2, which initially became §§43-501(b) and (c) and later §§34-1101 (a) and (c):

Establishes certification authority for the District of Columbia Public Service Commission and exempts existing public utilities regulated by the Commission from applying for certificates of public convenience and necessity.

12. Chairman Worthy's statement and the Committee report are not conclusive of the interpretation. However, they are certainly in accord with a reasonable interpretation that can be drawn from the language of the act itself.¹¹ Therefore, in the absence of any interpretive aids from OPC that would support a contrary interpretation, we find Chairman Worthy's statement and the Committee report probative of the legislature's intent and conclude that Pepco is not required to seek a CPCN under §34-1101(b) in order to provide services and facilities.

13. The fact that Pepco is exempt from §34-1101 does not mean that it may construct transmission lines without Commission approval. Pursuant to D.C. Code §34-301, the Commission continues to have broad authority with regard to Pepco's transmission system and pursuant to D.C. Code §34-302, Pepco is required to obtain Commission approval before constructing an electric plant.¹² Although we are not required to hold a hearing under D.C. Code §34-302, we are not precluded from doing so. Inasmuch as Pepco's proposed transmission solution to the Potomac River situation will have long-term consequences for the District, we believe a hearing on the underground transmission lines would serve the public interest. Therefore, Pepco's request that we not initiate a formal investigation of its proposal to construct the two underground 230kV lines is denied. We turn now to consider Pepco's request for waiver of various rules under Chapter 21.

14. Our consideration of the request for waiver is colored, in part, by the recent decision from DOE. As stated previously, the Commission filed an emergency petition with the DOE and FERC seeking an order directing Mirant to reopen its Potomac River plant. On December 20, 2005, DOE directed Mirant to provide all power necessary (up to its full capacity) to meet demand in the Central D.C. area whenever one or both of the existing 230kV lines is out of service, regardless as to whether the outage is planned or unplanned.¹³ However, DOE also made clear that this is not a permanent solution but rather a bridge between the current untenable situation and a more permanent solution. The permanent solution, according to DOE, is one that may include "the installation of new transmission lines, the installation of new pollution control equipment at the Mirant plant, or other means."¹⁴ The DOE order expires on October 1, 2006 and DOE stated that it will periodically reexamine the need for the order, in part, to determine whether this Commission "is taking all reasonable actions available to it to support electricity reliability in the Central D.C. area."¹⁵

¹¹ The Supreme Court itself has recognized that a committee report can, if not contrary to the language of the statute, illuminate the intent of the legislature. *See Connecticut RY. & Lighting Co. v. Palmer* 305 U.S. 493 (1939).

¹² D.C. Code §34-206 defines "electric plant" as "the material, equipment, and property owned and used, by the electric company for or in connection with the transmission or distribution of electricity in the District of Columbia to a retail electric customer."

¹³ DOE Order at 10.

¹⁴ DOE Order at 9.

¹⁵ DOE Order at 11.

15. We are also mindful of Pepco's representation that construction time for the additional transmission lines is lengthy: six months for the 69kV lines and eighteen months for the two 230kV lines. Once completed, Pepco states that these new lines would provide sufficient reliability for the District even in the absence of the Potomac River plant. Although DOE has ordered Mirant to restart the plant, the plant's future is by no means certain. Therefore, it is incumbent on this Commission to do all that we can as quickly as we can to ensure that we have alternative means of supplying power to affected areas.

16. Under these circumstances, we: 1) grant Pepco's request to waive that portion of 15 DCMR 2111.1 requiring Pepco to give six months notice prior to constructing an underground transmission line; 2) determine that, inasmuch as we have already determined that we will investigate the underground lines, 15 DCMR 2111.4 (allowing interested persons to petition the Commission to investigate the proposal to construct an underground line) is moot; 3) grant Pepco's request to waive the requirement for a community advisory group public meeting under 15 DCMR 2107.5 for the 69kV lines¹⁶ and, instead, fold this part of the process into a commission-sponsored community hearing to be held in ANC 8-D. There being no other requests for waiver, we expect that Pepco will comply with all remaining rules under Chapter 21.

17. We take administrative notice of the DOE decision ordering Mirant to restart the Potomac River plant and of the circumstances that necessitated the order. No further testimony on this point is necessary. Moreover, inasmuch as all parties to this proceeding recognize the need to act expeditiously, we are, pursuant to 15 DCMR.146.1, waiving the normal procedure under Chapter 1 of our rules.¹⁷

18. There will be no pre-filed testimony on uncontested facts or issues. Uncontested matters shall be addressed and filed separately as stipulated facts, if at all. The scope of the hearing shall be limited to whether upgrading the transmission lines, as proposed by Pepco, is in the best interest of District ratepayers. At this time, we will not entertain issues regarding how costs for the project are allocated among District

¹⁶ Rule 2107 does not apply to underground lines.

¹⁷ See 15 DCMR § § 146.1 and 2112.1 (1998). 15 DCMR § 146.1 provides, "[t]he Commission may, in its discretion, waive any of the provisions of Chapters 1 and 2 of this title in any proceeding after duly advising the parties of its intention to do so."

ratepayers or throughout the region. Discovery, if any, must be concluded before the hearing. The procedural schedule is set forth below:

Pre-Filed Testimony, Witness List and Exhibit List Due ¹⁸	January 11, 2006
Discovery Closes	January 25, 2006
Evidentiary Hearing	February 2, 2006
Post-Hearing Briefs	February 9, 2006
Community Hearing in ANC 8D	TBD ¹⁹
Commission Decision	March 9, 2006

THEREFORE, IT IS ORDERED THAT:

19. Our procedural rules under both Chapters 1 and 21 are waived in accordance with this Order;

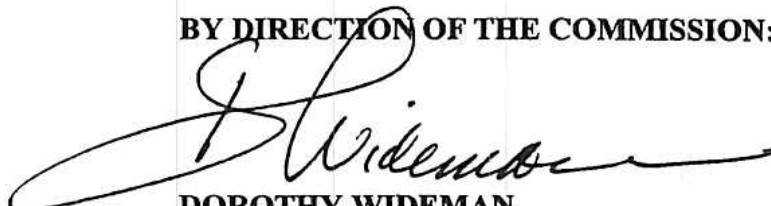
20. The Procedural Schedule listed in paragraph 18 is **ADOPTED**;

21. A public hearing shall be held in the above-captioned proceeding on February 2, 2006 at 10:00 a.m. in the Commission's Hearing Room at 1333 H Street, NW, Seventh Floor, East Tower.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK


DOROTHY WIDEMAN
COMMISSION SECRETARY

¹⁸ Each party's Witness List must identify the name, professional qualifications, expertise, and summary of the substance the testimony of each witness expected to be called.

¹⁹ The Commission will issue an announcement on the location and date of a Community Hearing in Advisory Neighborhood Commission 8D so that members of the community can come and present testimony on Pepco's Emergency Application.