



GEORGETOWN UNIVERSITY LAW CENTER
INSTITUTE FOR PUBLIC REPRESENTATION

Hope M. Babcock
Angela J. Campbell
David C. Vladeck
Directors
Marvin Ammori
Jillian M. Cutler
Emma E. Garrison
Jennifer L. Prime*
Kristi M. Smith
Staff Attorneys

600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
Telephone: 202-662-9535
TDD: 202-662-9538
Fax: 202-662-9634

February 21, 2006

Lawrence Mansueti
Permitting, Siting, and Analysis Division
Office of Electricity and Energy Reliability
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0119

Re: Comments on Department of Energy's Emergency Order To Resume Limited Operation at Mirant's Potomac River Generating Station and Proposed Mirant Compliance Plan

Dear Mr. Mansueti:

The Institute for Public Representation, on behalf of the Potomac Riverkeeper, Inc., the Patuxent Riverkeeper, and the Anacostia Riverkeeper at Earth Conservation Corps, submits the following comments on the Department of Energy's December 20, 2005 Emergency Order 202-05-3 and on Mirant's proposed Compliance Plan filed pursuant to that Order. Dep't of Energy's Emergency Order To Resume Limited Operation at the Potomac River Generating Station, Alexandria, VA, in Response to Electricity Reliability Concerns in Washington, D.C., 71 Fed. Reg. 3279 (Jan. 20, 2006).

Potomac Riverkeeper, Inc., Patuxent Riverkeeper, and Anacostia Riverkeeper ("the Riverkeepers") are nonprofit corporations whose missions are to use action, advocacy, and enforcement to protect the Potomac, Patuxent, and Anacostia Rivers, respectively. The Institute for Public Representation ("IPR") is a public interest law firm and clinical education program established at Georgetown University Law Center in 1971. Attorneys at IPR function as counsel for groups and individuals who are unable to obtain effective legal representation on matters including those involving the environment. IPR is representing the Riverkeepers in this and other legal matters. The Riverkeepers are concerned that the emissions from the re-opening of the Potomac River

Generating Station (“PRGS”) will result in deleterious environmental and health consequences and adversely affect water quality in the surrounding areas.

On August 19, 2005, the Virginia Department of Environmental Quality (“VADEQ”) notified Mirant that operation of the PRGS “cause[s] or substantially contribute[s] to *serious* violations of the primary national ambient air quality standards or ‘NAAQS’ for sulfur dioxide (SO₂), nitrogen oxides (NO_x) [sic] and PM₁₀” and asked Mirant to “*immediately* undertake such action as is necessary to ensure protection of human health and the environment, in the area surrounding the [PRGS].” Letter from Robert G. Burnley, VADEQ, to Lisa Johnson, President, Mirant Potomac River, LLC 1 (Aug. 19, 2005) *available at* http://ci.alexandria.va.us/tes/eq/va_letter.pdf (emphasis in original). In response, Mirant chose to shut down the PRGS instead of installing pollution control technology or altering operating procedures. The same day that the PRGS shut down its generators, the D.C. Public Service Commission (“DCPSC”) filed a petition with the U.S. Department of Energy (“DOE”) and the Federal Energy Regulatory Commission (“FERC”) to find an emergency situation and “avert the impending shutdown” of the PRGS. Emergency Petition and Complaint of the District of Columbia Public Service Commission, Docket No. EL05-145-000 (Dep’t of Energy, Aug. 24, 2005). Pursuant to the DCPSC petition, on December 20, 2005, the DOE found that there was an electricity reliability emergency for the central Washington, D.C. area and issued an Emergency Order requiring the PRGS to resume electricity generation.

DOE’s Emergency Order

The Riverkeepers object to the DOE Order because it compromises Virginia’s ability to meet the National Ambient Air Quality Standards (“NAAQS”), which the U.S. Environmental Protection Agency sets at a level to protect the public health with an adequate margin of safety. Clean Air Act §109. There are very serious environmental and health consequences from long-term exposure to air pollutants, including nitrogen oxides (NO_x), sulfur dioxide (SO₂), and particulate matter (PM₁₀ and PM_{2.5}), which the PRGS has emitted at levels three to eighteen times greater than the NAAQS levels. AERO ENGINEERING SERVICES, AMBIENT AIR QUALITY ANALYSIS: POTOMAC RIVER GENERATING STATION: ALEXANDRIA, VIRGINIA, Table 3-2 (Aug. 25, 2002) *available at* http://ci.alexandria.va.us/tes/eq/aero_report.pdf. These emissions increase the occurrence of health problems of residents near the PRGS, increase health care costs for Virginia and Washington, D.C., degrade the environment, and decrease the standard of living in the area.

Further, the DOE Emergency Order only states that the “DOE *understands* [D.C. Public Services Commission (“DCPSC”)] will take all reasonable actions to augment electrical reliability and reduce electrical demand in the central D.C. area.” Order 202-05-3, Ordering Paragraph F (Dep’t Energy, Dec. 20, 2005). The Riverkeepers request that DOE provide more specific directives to DCPSC to reduce the federal government’s reliance on external energy sources. For example, DOE could ensure that government facilities, such as the FBI, U.S. Department of Justice, Federal Emergency Management Agency, Department of the Interior, and the Department of Energy, have the capability to independently produce energy in an emergency. It is the Riverkeepers’ position that managing electricity reliability and demand in such a way would allow the DOE to meet its dual duties of electrical reliability and environmental protection.

Additionally, the Riverkeepers ask that the DOE's forthcoming Special Environmental Assessment consider alternative ways of managing electricity reliability and demand to address the "emergency situation" in the central Washington, D.C. area, instead of (or in addition to) simply ordering an outdated power plant that has been repeatedly cited for environmental violations to reopen. The Pepco/PJM Reliability Plan, ordered by FERC, provides one such alternative. The Reliability Plan outlined Pepco's and PJM's intention to transfer the Blue Plains waste treatment facility to the Palmers Corners substation to protect the waste treatment facility in the event of an outage at the Blue Plains switching station and to construct two 230kV transmission lines from the Palmers Corners switching station to the Blue Plains switching station. Notably, Pepco and PJM assert that these changes will enable them to provide sufficient electricity reliability to the central D.C. area without operation of the PRGS. PEPSCO, POTOMAC RIVER SUBSTATION TRANSMISSION RELIABILITY PLAN, Docket No. EL05-145 (Fed. Energy Reg. Comm'n, Feb. 8, 2006).

Mirant's Compliance Plan

The DOE Order required Mirant to submit a Compliance Plan to DOE for electricity generation pursuant to the Emergency Order. The Riverkeepers are concerned that the proposed Compliance Plan for the PRGS does not sufficiently address several environmental concerns and, therefore, urges the DOE not to approve the Plan. Specifically, the Plan does not contain any analysis of fine particulate matter (PM_{2.5}) or nitrogen oxides (NO_x), inadequately controls SO₂ emissions, and inappropriately references a long-term operating plan.

Specifically, the Riverkeepers are concerned that the Compliance Plan does not address PM_{2.5} emissions from the PRGS at all. This is troubling in part because a study commissioned by the City of Alexandria in May 2004 found that the PRGS is the largest single contributor of PM_{2.5} in Alexandria, a non-attainment area for PM_{2.5}. Jonathan Levy, *Analysis of Particulate Matter Impacts for the City of Alexandria, Virginia*, available at <http://alexandriava.gov/tes/eq/pdf/Particulate.pdf>. In addition, Mirant's proposed use of Trona Injection System may actually cause increased PM_{2.5} emissions. City of Alexandria, Application for Rehearing of DOE Order 202-05-3, Docket EO-05-01 (2006). The Riverkeepers therefore strongly recommend that DOE require PRGS to update its pollution control technology immediately, or, at the very least, before the PRGS increase electricity generation as it would like to under "Option B" of Mirant's Compliance Plan.

There is extensive evidence linking PM_{2.5} with a variety of adverse health impacts, including premature mortality, hospitalizations for respiratory or cardiovascular disease, and other respiratory problems. The study commissioned by the City of Alexandria also estimated that using Best Available Control Technology (BACT) [for particulate matter] at the five major power plants closest to Alexandria would reduce health impacts across the region by "210 deaths, 59 cardiovascular hospital admissions among the elderly, and 140 pediatric asthma emergency room visits per year." Jonathan Levy, *Analysis of Particulate Matter Impacts for the City of Alexandria, Virginia*, 21 (citing J.I. Levy JI, et al., *The Importance of Population Susceptibility for Air Pollution Risk Assessment: A Case Study of Power Plants Near Washington, DC*. 110 ENVIRONMENTAL HEALTH PERSPECTIVES 1253-1260 (2002)). These health costs that will be imposed on the Alexandria and Washington, D.C. community due to particulate matter emissions from the PRGS underscore the importance of complying with the PM_{2.5} NAAQS.

In addition to severe public health impacts, fine particulate matter also adversely affects water quality. Particulate matter that settles into surface water can make rivers acidic; change the nutrient balance in coastal waters and large river basins, such as the Potomac, Patuxent, and Anacostia Rivers; deplete nutrients in the soil; damage sensitive riparian areas; and affect the biodiversity of river ecosystems. The particulate matter study, cited above, also found that the majority of fine particulate matter from the PRGS falls within four miles of the facility, which is entirely within the Potomac River basin. Jonathan Levy, *Analysis of Particulate Matter Impacts for the City of Alexandria, Virginia*, Executive Summary available at <http://alexandriava.gov/tes/eq/pdf/Particulate.pdf>. Therefore, the Riverkeepers request that DOE require Mirant to include provisions in the Compliance Plan to meet the NAAQS for fine particulate matter.

The Riverkeepers are also concerned about NO_x emissions from the PRGS. There is good cause for this concern, as the PRGS was cited with violation of the NO_x NAAQS in 2004, and Mirant's 2004 emissions modeling study showed exceedances of NO_x NAAQS. The U.S. Environmental Protection Agency ("EPA") has identified creation of smog, acid rain, water quality deterioration, global warming, and visibility impairment as environmental effects of NO_x emissions. In addition, NO_x reacts with other components in the air to form secondary particulate matter and other toxic chemicals, some of which can cause biological mutations. Again, the Riverkeepers request that DOE require Mirant to amend its Compliance Plan to address these illegal emissions. At a minimum, any Compliance Plan should require the PRGS to comply with all NAAQS for NO_x and continue meeting NO_x emission control requirements set forth in a 2004 Consent Decree with VADEQ and EPA. Consent Decree, *United States v. Mirant Potomac River*, 11 (E.D. Va. 2004) available at <http://www.epa.gov/compliance/resources/decrees/civil/caa/mirantcd.pdf>.

Additionally, the Riverkeepers assert that DOE should not approve "Option B" as contained in the Compliance Plan because it will result in violations of the NAAQS for SO₂ and is unnecessary to provide sufficient electricity reliability at this time. Mirant admits that "Option B" will result in "marginal" exceedances of the 24-hour NAAQS for SO₂. However, as the City of Alexandria pointed out in its Application for Rehearing, Mirant's own modeling study showed that SO₂ would actually exceed the standard by 140%. City of Alexandria, Application for Rehearing of DOE Order 202-05-3, Docket EO-05-01 (2006). Furthermore, increasing electricity generation at the PRGS is not necessary to provide adequate electricity reliability to the central Washington, D.C. area, as the PRGS is currently operating under "Option A" and Pepco/PJM have demonstrated that they can assure electricity reliability to the central Washington, D.C. area without the PRGS. Therefore, it is the Riverkeepers' position that approving "Option B," which would increase electricity generation at the PRGS, is inappropriate and unnecessary to ameliorate any emergency situation at this time.

Finally, it is the Riverkeepers' position that any approval of a long-term operating plan for the PRGS is unacceptable. DOE recognized that the Federal Power Act only allows DOE to order temporary electricity generation in its Emergency Order when it stated, "Indeed, DOE views this order not as a permanent solution to the Central D.C. area's reliability issues, but rather as a bridge between the current untenable situation and a more permanent solution." The provision granting the DOE authority to order electricity generation is titled "*Temporary* connection and exchange of facilities during emergency" and specifically provides that "the Commission shall have authority . . . to

Mr. Mansueti
February 21, 2006
Page 5 of 5

require . . . *temporary* connections.” Federal Power Act § 202(c), 16 U.S.C. 824-a(c) (emphasis added). However, Mirant’s Compliance Plan includes reference to a long-term plan to reconfigure the smokestacks at the plant in order to increase the “buoyancy” of its emissions. While it is possible that Mirant will be able to reach an acceptable arrangement with the VADEQ in the future, that would terminate the “emergency situation.” Thus, at that time there would be no reason for the PRGS to continue operation under DOE’s Emergency Order. The Riverkeepers accordingly requests that DOE strike any long-term proposal from the Compliance Plan.

Thank you for accepting these comments on the DOE’s Emergency Order 202-05-3 and Mirant’s proposed Compliance Plan. The Riverkeepers respectfully request that DOE consider these comments when writing the Special Environmental Assessment and determining whether to approve the Compliance Plan. Please feel free to contact us, if you have any questions about the comments contained in this letter.

Sincerely,

/s/

Hope Babcock, Director/Senior Attorney
Emma Garrison, Staff Attorney
Anne Snyder, Law Student Intern
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
202-662-9535

Counsel for

Potomac Riverkeeper, Inc.
P.O. Box 1164
Rockville, MD 20849

Patuxent Riverkeeper
Historic Queen Anne
18600 Queen Anne Road
Upper Marlboro, MD 20774

and

Anacostia Riverkeeper at Earth Conservation Corps
2000 Half Street, SW
Washington, D.C. 20024