

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

**District of Columbia Public Service)
Commission)**

Docket No. EO-05-01

**COMMENTS OF THE DISTRICT OF COLUMBIA
PUBLIC SERVICE COMMISSION**

Pursuant to Order No. 202-06-1, issued by the Department of Energy (“DOE”) in the above-captioned docket on February 17, 2006, the District of Columbia Public Service Commission (“DCPSC”) hereby submits these Comments to provide the DOE and all interested parties with the information regarding the DCPSC’s recent efforts to facilitate compliance with the DOE directives issued in this proceeding and to ensure that adequate supplies of electricity continue to exist to serve our Nation’s capital.

In its prior filings with the DOE, the DCPSC explained that it established an expedited process to address the October 12, 2005 emergency application by the Potomac Electric Power Company (“PEPCO”) to construct two 69 kV overhead transmission lines and two 230 kV underground transmission lines in response to the shortage created by the shutdown of the Potomac River Plant.¹ The DCPSC established a rigorous procedural schedule and conducted a series of expedited hearings on the PEPCO emergency application. On March 6, 2006, the DCPSC issued a final order, a copy of which is attached hereto, granting PEPCO a certificate of

¹ See Preliminary Comments on Compliance Plan and Request for Clarification or, in the Alternative, Rehearing of the District of Columbia Public Service Commission, Docket No. EO-05-1, at 6-7 (January 19, 2006).

public convenience and necessity to construct the proposed 69 kV lines and approving the construction of the 230 kV lines.²

The March 6 Order explains the vital role that the Potomac River Plant has played and continues to play in providing reliable electric service to the District of Columbia's residents and businesses.³ The DCPSC is certainly grateful for the action taken by the Secretary of Energy in this proceeding and, in a demonstration of the DCPSC's adherence to the DOE's initiatives, the March 6 Order acknowledges the need and the expectation for the DCPSC to take all reasonable steps to support electricity reliability and provide adequate and reliable service in the Central D.C. area.⁴ Significantly, the March 6 Order recognizes the need for a long-term solution that would allow for the continued reliability of the District of Columbia's electric system.⁵ As explained in the March 6 Order, the swift action taken by the DCPSC on the PEPCO emergency application is an important element in any such long-term solution.⁶ Upon completion of the proposed (and now approved) construction, it is expected that the District of Columbia's electric system could be restored to a comparable level of reliability for the area currently served by the

² 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 69 kV Overhead Transmission Lines and Notice of the Proposed Construction of Two Underground 230 KV Transmission Lines, Order No. 13895 (March 6, 2006) ("March 6 Order").

³ See March 6 Order at P 23.

⁴ *Id.* at P 24.

⁵ *Id.* at P 25.

⁶ *Id.*

Potomac River Plant and PEPCO would be allowed to safely and reliably perform maintenance on its facilities even if the Potomac River Plant is taken out of service.⁷

In addition to approving PEPCO's emergency application, the DCPSC is taking steps to implement the DOE's recommendation to consider demand reduction measures in the Central D.C. area.⁸ Pursuant to that recommendation, the DCPSC has issued an order today establishing a Demand Response Working Group ("Working Group") to consider the feasibility and reasonableness of instituting demand response programs in the areas served by the Potomac River Plant and associated PEPCO substation located in Alexandria, Virginia.⁹ The Working Group is comprised of the representatives of PEPCO, the District of Columbia Office of the People's Counsel, the District of Columbia Energy Office and DCPSC staff. The DCPSC has also invited the U.S. General Services Administration to participate in the Working Group and any interested person may join the group by filing a request with the DCPSC. The DCPSC order directs the Working Group to meet regularly to discuss the demand response issues related to the DOE December 20, 2005 order and requires the Working Group to report to the DCPSC regarding the feasibility of demand response programs in the affected areas.

The DCPSC believes that its approval of the PEPCO emergency proposal and the establishment of the Demand Response Working Group provides a substantial contribution to the

⁷ *Id.*

⁸ *See District of Columbia Public Service Commission, Order No. 202-05-3, Ordering Paragraph F (December 20, 2005).*

⁹ 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 69 KV Overhead Transmission Lines and Notice of the Proposed Construction of Two Underground 230 KV Transmission Lines, Order No. 13907 (March 23, 2006) ("March 23 Order"). A copy of the March 23 Order is attached hereto.

joint cooperative effort by the DOE, the FERC and other interested parties to ensure that electric service in the Nation's capital remains secure and unimpaired. Nevertheless, pending the complete implementation of a long-term solution to the reliability problems identified in the DCPSC's petition, the regulatory framework put in effect by the DOE's December 20, 2005 order is indispensable to ensuring the electric reliability in the area. The DCPSC believes that this framework has been a success and should be continued.

WHEREFORE, for the foregoing reasons, the DCPSC requests that the DOE accept this filing. The DCPSC also requests that the DOE make the DCPSC's March 6 Order and March 23 Order a part of the formal record in this proceeding.

Respectfully Submitted,

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ATTORNEYS FOR THE PUBLIC
SERVICE COMMISSION OF THE
DISTRICT OF COLUMBIA

DATED: March 23, 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 23rd day of March, 2006.

/s/ Sheila S. Hollis
Sheila S. Hollis

ORDER NO. 13895

MARCH 6, 2006

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

OPINION AND ORDER

March 6, 2006

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. 13895

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") grants the Emergency Application of the Potomac Electric Power Company's ("PEPCO") for a Certificate of Public Convenience and Necessity to Construct Two 69kV Overhead Transmission Lines and Notice of the Proposed Construction of Two 230kv Underground Transmission Lines ("Emergency Application") because it is the public interest.¹ The Commission also grants the Office of People's Counsel's ("OPC" or "Office") Motion for Leave to File Its Initial Post-Hearing Brief Late.²

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 ("VA DEQ"). 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

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 ("F.C. 1044")*, 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.

² *F.C. 1044, Motion of the Office People's Counsel for Leave to Late File Its Post-Hearing Brief ("OPC Motion")*, filed February 13, 2006.

Energy ("DOE") and the Federal Energy Regulatory Commission ("FERC") seeking an order directing Mirant to reopen the plant. PEPCO, the Government of the District of Columbia ("District Government"), and OPC all supported the Commission's position in their individual comments filed before one or both of those federal agencies. Several months later, DOE directed Mirant to provide all power necessary 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. DOE's order, however, did not state whether it would require Mirant to keep the plant open as a permanent solution to the District's electric reliability concerns.

3. 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 four 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.³

4. On October 21, 2005, the Commission noticed PEPCO's Emergency Application in the *D.C. Register*.⁴ In the notice, the Commission, among other things, required persons seeking intervention to file a request within 10 days of the publication of the notice in the *D.C. Register*. The Commission further requested that persons seeking intervention file initial comments on the appropriateness of waiving certain procedural requirements to expedite our consideration of PEPCO's Emergency Application.

5. Several entities intervened or noticed their participation in this proceeding: 1) the District Government; 2) the Consumer Utility Board ("CUB"); PJM Interconnection, Inc. ("PJM"); and OPC, a statutory party of right. On November 21, 2005, in compliance with Chapter 21 of the Commission's rules, PEPCO filed several exhibits: 1) final route drawings;⁵ and 2) an Environmental Impact Statement ("EIS") on the two 69kV overhead lines.⁶

³ *F.C. 1044*, PEPCO Emergency Application at 2-5.

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

⁵ *F.C. 1044*, *See The Potomac Electric Power Company*, Exhibit E, Final Route Drawings, labeled

6. After resolving a threshold issue involving the scope of our review, the Commission issued Order No. 13850, which advised the parties that the Commission would investigate the 230kV underground transmission lines as well as the two 69kV overhead lines.⁷ However, the Order made clear that the scope of the proceeding would not include or address issues regarding how costs for the project should be allocated among District ratepayers or throughout the region.

7. In addition, Order No. 13850 set forth a rigorous procedural schedule governing the submission of testimony, the close of discovery, hearing dates, and the submission of post-hearing briefs due to the emergency nature of PEPCO's filing. The projected date of a final order was March 9, 2006.⁸ On January 11, 2006, the parties filed their respective testimony, witness lists, and exhibits. On January 20, 2006, PEPCO filed three additional exhibits: 1) a proposed work plan; 2) an EIS for the two 230kV lines; and 3) a supplemental response on the two 230kV lines to complete the required filings under Chapter 21 of the Commission's rules.⁹ On February 2, 2006, the Commission convened a formal evidentiary hearing to consider this matter. On February 13, 2006, PEPCO filed its Post-Hearing Brief.¹⁰ On February 14, 2006, OPC filed its Post-Hearing Brief.¹¹ On February 16, 2006, the Commission held a community hearing at the Washington Highlands Neighborhood Library, which is in the neighborhood where PEPCO proposes to construct the 69kV overhead transmission lines.

III. PRELIMINARY MATTERS, WITNESS TESTIMONY, AND POST-HEARING BRIEFS

A. Preliminary Matters

8. The parties' post-hearing briefs were due on February 13, 2006. However, OPC filed its post-hearing brief on February 14, 2006. According to OPC, it attempted to file its brief the day before but was unable to do so because it arrived just after the Commission Secretary's Office closed. OPC requests that the Commission accept its

"Proprietary," filed November 21, 2005.

⁶ *F.C. 1044*, See The Potomac Electric Power Company, Exhibit H, Environmental Impact Statement, labeled "Proprietary," filed November 21, 2005.

⁷ *F.C. 1044*, Order No. 13850, rel. December 29, 2005.

⁸ *F.C. 1044*, Order No. 13850 at 7.

⁹ *F.C. 1044*, See The Potomac Electric Power Company Confidential Exhibits B-1, F-1, and G, filed January 20, 2006.

¹⁰ *F.C. 1044*, Post Hearing Brief of the Potomac Electric Power Company ("PEPCO Brief"), filed February 13, 2006.

¹¹ *F.C. 1044*, Initial Post-Hearing Brief of the Office of the People's Counsel ("OPC Brief"), filed February 14, 2006.

filing one day late.¹² Inasmuch as OPC's brief is only one day late, and considering that its request to accept the brief out of time is unopposed, we grant OPC's motion and accept the filing for the record.

B. Witness Testimony—Formal Hearing

1. PEPCO

9. On February 2, 2006, PEPCO presented four witnesses: 1) William Gausman, Vice President of Asset Management for PEPCO ("Witness Gausman" or "Gausman"); 2) Robert Jubic, Manager of Environmental Planning for PEPCO ("Witness Jubic" or "Jubic"); 3) Dr. William Bailey, Scientist for Exponent ("Witness Bailey" or "Bailey"); and 4) Paul J. McEachen, Principal Senior Archaeologist for Richard Grubb & Associates ("Witness McEachen" or "McEachen") to testify in support of its Emergency Application.¹³

10. In his testimony, Witness Gausman states that the necessity of maintaining the Mirant Potomac River Plant was addressed extensively in Formal Case No. 945.¹⁴ Gausman avers that this plant has been designated as "must-run" for reliability by PJM during peak load periods and certain maintenance outage conditions. Because the plant was considered so vital to reliability in the District of Columbia, Gausman asserts that PEPCO and Mirant executed an agreement which requires Mirant to give PEPCO at least five years notice before retiring any or all of the generating units of the Potomac River Plant.¹⁵ Witness Gausman asserts that Mirant did not give it the necessary five-year notification of the shutdown of the Potomac River Plant. Therefore, Gausman asserts that PEPCO must now accelerate construction of transmission facilities to restore reliability that has been reduced to an unacceptable level considering the reliability risk is immediate.¹⁶

11. Witness Gausman states that construction should begin as soon as possible in order to meet a summer 2006 in-service date for the proposed 69kV transmission lines and a summer 2007 in-service date for the proposed 230kV underground transmission lines as described in the Emergency Application.¹⁷ Gausman explains that to mitigate the possibility of shedding load in the District due to the absence of generation at the Potomac River plant, PEPCO is planning to construct by summer 2006 two 69kV circuits

¹² *F.C. 1044, See OPC Motion.*

¹³ *F.C. 1044, See Formal Hearing Transcript ("Hearing Tr."), February 2, 2006.*

¹⁴ *F. C. 1044, Direct Testimony of PEPCO Witness Gausman ("Gausman"), filed January 11, 2006, p. 7.*

¹⁵ *Id.* at 8.

¹⁶ *Id.*

¹⁷ *Id.*

between PEPCO's substation in Prince George's County and WASA's Blue Plains Wastewater Treatment Plant substation.¹⁸ Gausman also contends that this would mean that the load required by the Blue Plains Wastewater Treatment Plant would not need to be met from the Potomac River Station, but rather could be met by the 69kV line from Livingston Road Substation to the Blue Plains Substation. Gausman avers that if one of the 230kV transmission circuits between Palmers Corner and Potomac River trips unexpectedly, generation must be running or started quickly. According to Gausman, the addition of the proposed 230kV circuits will not only allow PEPCO to maintain reliability but also safely and reliably perform maintenance on the facilities with no generation at the Potomac River Plant.¹⁹

12. In his testimony, Witness Jubic states that land use in the project vicinity consists primarily of industrial and commercial development, WASA's Blue Plains Wastewater Treatment Plant and DC Village.²⁰ Therefore, Jubic contends that no wetlands, waterways, or environmentally sensitive habitats will be crossed in the District of Columbia portion of the project.²¹

13. According to Witness Bailey, the proposed lines will be designed to meet the requirements of the National Electric Safety Code ("NESC 2002").²² Witness Bailey also asserts the operation of PEPCO's proposed 69kV lines will not cause the Electric and Magnetic Fields ("EMF") levels to exceed any applicable electrical standards.²³ Finally, Bailey states that his firm concludes that the overhead 69kV and underground 230kV lines "contribute very little to the magnetic field exposures either of pedestrians, because of their low intensity and short duration, or to occupants of buildings based on distance, and virtually no electric field exposure to persons in cars or buildings because of effective shielding surrounding conductive materials."²⁴

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 12.

²⁰ *F. C. 1044*, Direct Testimony of PEPCO Witness Jubic ("Jubic"), filed January 11, 2006, pp. 3-4.

²¹ *Id.*

²² *F. C. 1044*, Direct Testimony of PEPCO Witness Bailey ("Bailey"), filed January 11, 2006, pp. 13-14.

²³ *Id.*

²⁴ *Id.*

14. In his testimony, Witness McEachen states that his firm investigated the proposed 69kV site and the proposed 230kV site to determine whether the proposed construction has the potential to impact significant historic or prehistoric archaeological resources.²⁵ Witness McEachen asserts that his review leads him to believe that there is no potential for significant archaeological deposits to be affected by PEPCO's proposed construction.²⁶

2. PJM

15. During the hearing, PJM presented two witnesses: 1) William Whitehead, General Manager—Transmission and Interconnection Planning (“Witness Whitehead” or “Whitehead”);²⁷ and 2) Robert Hinkel, General Manager—General Manager Regional Operations (“Witness Hinkel” or “Hinkel”), to support the approval of PEPCO's Emergency Application. On cross-examination, Witness Hinkel states that PEPCO's construction of the two 230kV transmission lines would create the same level of electric reliability for the District's consumers as existed with the Potomac River Plant.²⁸ Witness Hinkel claims that PEPCO's proposed construction of the 230kV lines will provide flexibility and reliability for operations that diminish the need for the Potomac River Plant.²⁹ Finally, Witness Hinkel asserts that he is uncertain whether the Potomac River Plant will continue to operate in the future even if it is brought into full environmental compliance by Mirant.³⁰

3. OPC

16. At the hearing, OPC did not oppose PEPCO's Application but rather expressed its concern over cost allocation even though this was not an issue presently before the Commission. Specifically, OPC presented its witness, Karl Pavlovic, President of DOXA, Inc. (“Witness Pavlovic” or “Pavlovic”), to testify on PEPCO's Emergency Application.³¹ Witness Pavlovic testified in support of PEPCO's Emergency Application because he believes that it will address the emergency situation created by Mirant's shutdown of the Potomac River Station.³² According to Pavlovic, the two 69kV

²⁵ *F. C. 1044*, Direct Testimony of PEPCO Witness McEachen (“McEachen”), filed January 11, 2006, pp. 13-14; *See also*, Hearing Tr. at 124-125.

²⁶ *Id.*

²⁷ The Commission will only address Witness Hinkel's testimony because he was the only witness to testify regarding the need for the PEPCO's construction of the four lines.

²⁸ *F.C. 1044*, Hearing Tr. at 146-147.

²⁹ *Id.* at 146.

³⁰ *Id.* at 147.

³¹ *F. C. 1044*, Direct Testimony of OPC Witness Pavlovic (“Pavlovic”), filed January 11, 2006.

³² *Id.* at 5.

overhead power lines will serve as backup supply to the Blue Plains Wastewater Treatment Plant and these power lines will serve the interest of the District's consumers.³³ Witness Pavlovic states that the two 230kV lines from Palmer's Corner will eliminate the emergency conditions caused by Mirant's shutdown of the Potomac River Plant, and will address the anticipated load growth realized by 2014. Pavlovic avers that these lines will enhance the system beyond the PJM and NERC standards.³⁴ Witness Pavlovic concludes the critical nature of the federal functions requires the enhanced reliability that these additional lines will provide and that their construction is in the best interest of the nation and the District.³⁵ Finally, Pavlovic asserts that the proposed construction should be funded by the federal government because it is in the best interest of the entire nation.³⁶

4. District Government

17. During the hearing, the District Government presented Nebiat Solomon, Chief of the Planning and Evaluation Division, District of Columbia Energy Office, ("Witness Solomon" or "Solomon") to testify.³⁷ In her testimony, Witness Solomon asserts that the District Government supports the upgrading of PEPCO's transmission capabilities as a means of expeditiously resolving the electricity reliability issue faced by the District.³⁸ Witness Solomon maintains that, at present, the operation of the Potomac River Plant is necessary to ensure the reliability of electric service to governmental agencies, hospitals, and other public safety facilities in the District, including the emergency response resources of the District Government itself.³⁹ Finally, Witness Solomon contends that continued operation of the Potomac River Plant past the expiration of the DOE order is uncertain, particularly given Mirant's bankruptcy status.⁴⁰

³³ *Id.* at 6.

³⁴ *Id.*

³⁵ *Id.* at 12-13.

³⁶ *Id.* at 13.

³⁷ *F.C. 1044*, Direct Testimony of District Government Witness Solomon ("Solomon") filed January 11, 2006. (This testimony was initially filed on behalf of Chuck Clinton; however, Witness Solomon adopted his testimony because Chuck Clinton was unable to attend the hearing).

³⁸ *Id.* at 2.

³⁹ *Id.* at 3-4.

⁴⁰ *Id.* at 4.

C. Witness Testimony—Community Hearing⁴¹

18. On February 16, 2006, approximately 13 public witnesses testified at the Commission's Community Hearing on PEPCO's Emergency Application.⁴² All but one of the 13 public witnesses supported the proposed construction of additional transmission lines for District reliability and national security interests.⁴³ Yet, the central theme of the public witness testimony supporting construction was that the Commission should ensure that the cost responsibility for the project is not borne by District ratepayers alone.⁴⁴ Specifically, the witnesses felt that the federal government and the District of Columbia Water and Sewer Authority should bear an equitable and appropriate share of the cost responsibility. In addition, many of the community members expressed concern about the disruption that this construction might cause to their community.⁴⁵ These witnesses urged the Commission to direct PEPCO to provide consumers and residents near the affected area with advance notice of the work plan schedule in order to avoid and mitigate disruption in the affected neighborhoods.⁴⁶

D. Statements Filed by Non-Parties

19. In addition, the Commission received letters from individuals representing organizations for consideration during our review of PEPCO's Emergency Application.⁴⁷

⁴¹ For purposes of judicial economy and administrative convenience, the Commission will summarize the various positions of the community without listing a summary of each witness' testimony.

⁴² *F.C. 1044*, Community Brief of D.C. Consumers on 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 230kV Underground Transmission Lines ("OPC Community Brief"), filed February 23, 2006.

⁴³ *Id.* at pp. 2-11. The 12 community members that support PEPCO's Emergency Application are: Theresa H. Jones, Commissioner of ANC 8D-07; Lenwood Johnson, Commissioner of ANC 1A-10; Absalom Jordan, Commissioner of ANC 8D-03; Eugene D. Kinlow, Ward-8 resident; Virgilena Less, President of Petey Greene Seniors Club and Ward-8 resident; Virginia Major, Ward-8 resident; Kathleen Holley; Mary Cuthbert, Chair of ANC 8C; O.V. Johnson, Chair of ANC 8D; Peter Espenschied, on behalf of Bruce Beckner, Commissioner of ANC 3C-05, and as First Vice President of the Cleveland Park Citizens Association; Richard Powell, Jr., political liaison for the Hotel Restaurant Employees Union Local 25 of Unite Here; and Lendia Johnson, Commissioner of ANC 8A-07. James Bunn, Ward-8 resident, was the sole witness that testified against the proposed project. Herbert Harris, Jr., Chairman of the D.C. Consumer Utility Board ("CUB") submitted a written statement to be read into the record indicating that CUB's testimony will be filed prior to the closing of the record.

⁴⁴ *Id.*

⁴⁵ *Id.* at 13-14.

⁴⁶ *Id.*

⁴⁷ *F.C. 1044*, Letter from Dr. Mary L. Gaffney, President of the Northeast Boundary Civic Association, filed February 16, 2006; Letter from George R. Clark, President of the Federation of Citizens Associations of DC, filed February 16, 2006; Letter from John E. Mebane, President of Senior Citizens Clearing House Committee of D.C. Inc., filed February 23, 2006; and Letter from the Honorable Robert F.

Primarily, these letters reiterated the sentiments of the public testimony received by the Commission at the Community Hearing. However, one letter that was sent by the Honorable Robert F. McDonnell, Attorney General of the Commonwealth of Virginia, urged the Commission to approve PEPCO's Emergency Application expeditiously so that PEPCO can maintain reliability to District residents without the necessity of a Virginia power plant operating in violation of state and federal law.⁴⁸

E. Post-Hearing Briefs

1. PEPCO

20. On February 13, 2006, PEPCO filed its Post-Hearing Brief restating its previous position on the necessity of the construction of the two 69kV overhead transmission lines and the two 230kV underground transmission lines.⁴⁹ PEPCO also states that no party in this proceeding opposes approval of its Emergency Application.⁵⁰ Finally, PEPCO asserts that the approval of its Emergency Application is in the public interest and a CPCN should be granted for the 69kV overhead transmission lines and an order should be issued approving the construction of the two 230kV underground transmission lines.⁵¹

2. OPC

21. In its Post-Hearing Brief, OPC reiterates its support of the construction of the transmission lines and its opposition to the sale of the Potomac River Plant to Mirant because OPC argues that the sale of the plant divested the Commission of direct regulatory control and oversight of those generation plants.⁵² OPC maintains its position that the District ratepayers should not bear the cost of construction and installation of the 69kV and 230kV lines.⁵³ OPC continues to assert that the federal government should provide financial support to the project, as the federal government will receive the greatest benefit from the proposed electrical lines.

McDonnell, Attorney General of the Commonwealth of Virginia ("VA. Attorney General Letter"), filed February 17, 2006.

⁴⁸ *F.C. 1044*, VA Attorney General Letter at 1-2.

⁴⁹ *F.C. 1044*, Post Hearing Brief of the Potomac Electric Power Company ("PEPCO Brief"), filed February 13, 2006.

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 11-13.

⁵² *F.C. 1044*, Initial Post-Hearing Brief of the Office of the People's Counsel ("OPC Brief"), filed February 14, 2006, pp. 1-2.

⁵³ *Id.* at 3-5.

IV. COMMISSION DECISION

22. The sole issue before the Commission in this proceeding is whether the approval of PEPCO's Emergency Application is in the public interest. For the reasons set forth below, the Commission determines that it is.

23. The Potomac River Power Plant has been vital to the electric reliability of the District residents and businesses for several decades. Several years ago, during the Commission's divestiture and electric restructuring proceeding ("Formal Case No. 945"), PJM listed this plant as "must-run" for reliability during peak load periods and certain maintenance outage conditions.⁵⁴ PEPCO has also asserted before DOE and FERC that:

[a]bsent the generating capacity of the [Potomac River] Plant, if the two 230kv transmission circuits into the [Central D.C. area] fail, there will be a blackout in much of the District of Columbia until the circuits are repaired or the Plant's generators are restarted and can operate at a level that matches load. All electric customers in Georgetown, Foggy Bottom and major portions of downtown Washington will be affected. The affected customers will also include Blue Plains [W]astewater [T]reatment [P]lant. It is PEPCO's understanding that within 24 hours of the loss of electric supply, Blue Plains will have no option but to release untreated sewage directly into the Potomac River, which would result in a significant adverse impact to human health, aquatic wildlife and other environmental resources. Affected customers will also include numerous hospitals, schools, universities, facilities will lose power, including those critical to the security, safety, and welfare of the whole country, such as the FBI, the Justice Department, the State Department, the Federal Emergency Management Agency, the Department of the Interior, and the Department of Energy to name but a few.⁵⁵

In view of PJM's designation and the importance of the plant, PEPCO had executed an agreement with Mirant requiring at least five years notice before retiring any or all generating units at the Potomac River Plant.⁵⁶ As stated previously, little or no advance notice was given to PEPCO or the Commission of Mirant's decision in August 2005 to shut the Potomac River Power Plant down.

24. Mirant's actions make it apparent that neither PEPCO nor the District can rely on this plant to be a part of long-range electric reliability plans because it is not in the District of Columbia; does not serve the residents of the Commonwealth of Virginia; and

⁵⁴ *F.C. 1044, Gausman at 7-8.*

⁵⁵ *See Department of Energy Docket EO-05-01, Emergency Petition and Complaint of the District of Columbia Public Service Commission Under Section 202 (c) of the Federal Power Act, Order No. 202-05-03 ("DOE Order"), rel. December 20, 2005, at 4.*

⁵⁶ *F.C. 1044, Gausman at 7-8.*

is not under the regulatory control of the Commission. Although DOE's order gave the District a reprieve, there is no certainty that DOE will require Mirant's continued operation of the plant indefinitely. In fact, DOE stated in its order 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."⁵⁷ Further, DOE stated that the Commission, having sought an emergency order to ensure the reliability of the District, should also take such actions as are within its authority to provide adequate and reliable electric service for the Central D.C. area.⁵⁸

25. The unavailability of generation from the Potomac River Plant and the undisputed ramifications of this load loss on the District and national security are matters of grave concern. The Commission believes that it is clearly and unequivocally in the public interest to avoid these consequences by creating a long-term solution which allows for the continued reliability of the District's electric system. PEPCO's Emergency Application appears to do just that. No party disputes the need for these electric lines in absence of the availability of the Potomac River Plant or the need for approval of PEPCO's Emergency Application. Indeed, PEPCO, PJM, and OPC's witnesses have all stated that, upon completion, the two overhead 69kV lines and the two underground 230kV lines will restore the District's electric system to a comparable level of reliability for the area currently served by the Potomac River Plant without the Potomac River Plant in operation.⁵⁹ Moreover, with the upgrades to PEPCO's transmission system, District residents and businesses will be ensured a level of redundancy that will allow PEPCO to safely and reliably perform maintenance on any of the facilities without regard to the status of the plant.

26. While the Commission is mindful of the concerns of the community and OPC regarding who should bear the costs of the upgrades to PEPCO's transmission system, we have previously ruled in Order No. 13850 that we would not address cost allocation issues in this proceeding.⁶⁰ The Commission will, however, ensure that, to the extent cost becomes an issue in the future, OPC and interested persons in the community will have an opportunity to present their views for our consideration. The Commission is also sensitive to the community's concern regarding the possible disruptions that occur when construction takes place in the surrounding area. The Commission considers the construction of the transmission lines in the public interest because it benefits all District residents, the District and federal governments, and District businesses. Nevertheless, we encourage PEPCO to work with the ANCs and community leaders in the affected communities to mitigate any potential disruption in their neighborhoods.

⁵⁷ DOE Order at 11.

⁵⁸ *Id.* at 9.

⁵⁹ *F.C. 1044*, See OPC Witness Pavlovic at 8; See also, PJM Comments, filed December 12, 2005, at 2; See also, PEPCO Emergency Application.

⁶⁰ *F.C. 1044*, Order No. 13850 at 6-7.

THEREFORE, IT IS ORDERED THAT:

27. The Office of People's Counsel's Motion to Late File Its Initial Post-Hearing Brief is **GRANTED**;

28. The Potomac Electric Power Company's Emergency Application for a Certificate of Public Convenience and Necessity to Construct Two 69kV Overhead Transmission Lines and Notice of the Proposed Construction of Two 230kV Underground Transmission Lines is **GRANTED** as in the public interest;

29. The Potomac Electric Power Company is **GRANTED** a Certificate of Public Convenience and Necessity to construct two 69kV overhead transmission lines;

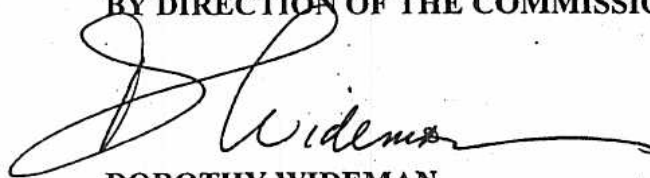
30. The Commission **APPROVES** Potomac Electric Power Company's construction of two 230kV underground transmission lines; and

31. The Potomac Electric Power Company is encouraged to work with the Advisory Neighborhood Commissions and community leaders in the affected communities to mitigate any potential disruption in their neighborhoods.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK



**DOROTHY WIDEMAN
COMMISSION SECRETARY**

ORDER NO. 13907

MARCH 23, 2006

AB

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET N.W., 2ND FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

March 23, 2006

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 230kv UNDERGROUND TRANSMISSION LINES, Order No. 13907

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") establishes a Demand Response Working Group ("Working Group"). The Commission directs the Working Group to consider the feasibility and reasonableness of instituting demand response programs in the areas served by the Mirant Corporation's electric generating plant and associated Potomac Electric Power Company ("PEPCO") substation located in Alexandria, Virginia. In order to facilitate the process, the Commission has set forth a number of questions for the Working Group to address.

II. BACKGROUND

2. With almost no notice, Mirant shut down the Potomac River Plant on August 24, 2005. Inasmuch as the 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 ("FERC") seeking an order directing Mirant to reopen the plant. Several months later, the DOE ordered Mirant to reopen the plant and provide all power necessary to meet demand in the Central D.C. area.¹ However, the order to reopen the plant was not permanent in nature and the DOE stated that it expects the Commission to explore the feasibility of using demand response programs to reduce electricity demand in the areas served by the plant.²

¹ See Department of Energy Docket EO-05-01, *Emergency Petition and Complaint of the District of Columbia Public Service Commission Under Section 202 (c) of the Federal Power Act*, Order No. 202-05-03 ("DOE Order"), rel. December 20, 2005.

² *Id.* at 11.

III. DISCUSSION

3. In order to ensure that all stakeholders have an opportunity to participate in this inquiry, the Commission establishes a Demand Response Working Group composed of PEPCO, the Office of the People's Counsel ("OPC"), the District of Columbia Energy Office ("DCEO"), and Commission staff. The Commission also invites the United States General Services Administration ("GSA") to participate in the Working Group. However, any interested person may join the group by filing a request with the Commission within 10 days of the date of this Order. The Working Group shall meet regularly to discuss demand response issues related to the DOE order and shall file a report with the Commission within 45-60 days of the date of this Order expressing the Group's views regarding the feasibility of demand response programs in the affected area. In addition, the Working Group's report shall specifically address the following questions:

1) PEPCO represented in FC 1044, that the total peak load in the target area is 550 Mw for 2005. How much of this load can potentially be reduced by demand response programs?

2) How much of the 550 Mw load for the target area is for:

- a) Federal government;
- b) DC Government;
- c) Large commercial customers (other than federal and local government); and
- d) Residential and small commercial customers (less than 25 Kw).

3) Based on the unbundled rates settlement agreement of FC 945, the Commission ceased requiring PEPCO to offer commercial EUM programs (e.g. Curtailable Load). The only remaining EUM program is the Time-Of-Use Program. The federal government currently participates in time-of-use. Would requiring PEPCO to offer a Commercial Curtailable Load Program for customers like the federal government lead to any significant reduction in peak demand for the target area?

4) Are there any new demand response programs that would lead to significant reductions in the target area? If

so, what are they and why do you believe they would be cost-effective?

5) In the event that the Working Group sees a significant potential for load reduction in the target area through demand response programs, please consider the following:

a) Should PEPCO explore working with a demand response provider to develop a large-scale targeted curtailment program with a short lead-time, as has been successfully implemented in Connecticut?

b) What types of programs should be implemented to inform customers about the benefits of using demand response measures?

THEREFORE, IT IS ORDERED THAT:

4. The Commission establishes a Demand Response Working Group;

5. The Demand Response Working Group is **DIRECTED** to file a report with the Commission that addresses demand response issues related to the Department of Energy's December 20, 2005, Order and the issues identified in paragraph three of this Order; and

6. The Demand Response Working Group shall file its report within three (3) months of the date of this Order.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK

**DOROTHY WIDEMAN
COMMISSION SECRETARY**