



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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January 5, 2006

The Honorable Samuel W. Bodman
Secretary of Energy
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

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

Dear Secretary Bodman:

The Virginia Department of Environmental Quality (DEQ) *strongly* opposes the Potomac Electric Power Company's (PEPCO) intention to commence planned maintenance outages of the 230kV transmission lines that serve the Potomac River Substation on January 9, 2006. In addition to being in direct contravention of state and federal environmental standards, PEPCO's proposed action is in flagrant violation of Department of Energy's (DOE) Order of December 20, 2005, (the Order) requiring that planned line outages be coordinated with the operation of the Potomac River Generating Station (the plant) so that the plant utilizes "pollution control equipment and measures to the maximum extent possible to minimize the magnitude and duration of any exceedance of the" Clean Air Act's National Ambient Air Quality Standards (NAAQS).

DEQ reaffirms its contention made in previous filings in this matter that DOE does not have the legal authority to require the plant to operate in a manner that would result in modeled exceedances of the NAAQS, and nothing stated herein should be interpreted to the contrary. The Commonwealth maintains the position that it will neither approve nor sanction any operation of the plant that results in modeled NAAQS exceedances.

However, the purpose of this letter is to address an immediate threat to public health and the environment. Without waiving its right to challenge the Order, DEQ demands DOE order a postponement of PEPCO's planned maintenance of the transmission lines until such time as the plant has installed and is able to operate pollution control equipment essential to assure that emissions from the plant do not injure the health and safety of the citizens of Virginia.

FACTUAL BACKGROUND

On August 19, 2005, Mirant Potomac River, LLC (Mirant), the owner and operator of the plant, presented to DEQ a modeling analysis of the impact of “downwash” emissions from the plant on the surrounding area in Alexandria. The analysis indicated that emissions from the plant resulted in widespread modeled exceedances of all of the NAAQS for SO₂, PM-10, and NO₂, particularly within an area of one kilometer from the plant. Under worst-case conditions, the modeled exceedances of the 24-hr SO₂ NAAQS were approximately 14 times over the standard.

In an immediate response to the modeling analysis, I sent a letter to the president of Mirant on August 19 requesting Mirant to immediately undertake such action as is necessary to ensure the protection of human health in the area surrounding the plant. On August 21, Mirant informed DEQ that the plant was substantially curtailing operations as of that midnight. On August 24, the president of Mirant informed me that Mirant was shutting down the plant.

Since that time, DEQ has cooperated with Mirant to develop an interim and long-term solution that would allow the plant to operate in a manner that would not result in modeled exceedances of the NAAQS. The plant has resumed limited operation of one of the plant’s five generating units and Mirant is in the process of testing an innovative pollution control technology that has shown promise in significantly reducing SO₂ emissions. But that testing is not complete and at present the SO₂ reduction technology can only be applied to one of the plant’s five units.

PROCEDURAL BACKGROUND

On August 24, 2005, the District of Columbia Public Service Commission (DCPSC) petitioned the Federal Energy Regulatory Commission (FERC) and DOE for an emergency order to reopen the plant on the grounds that shut-down of the plant posed an unacceptable risk to the District’s electricity supply. DEQ, through the Office of the Attorney General, moved to intervene in the FERC proceeding on August 29, 2005. DEQ moved to deny the DCPSC’s petition on October 23, 2005, principally on the grounds that the relief requested by the DCPSC would require the plant to operate in violation of the Clean Air Act and prevent DEQ from discharging its obligation to protect human health. DEQ reasserted its opposition to DCPSC’s petition in correspondence to DOE on November 23, 2005.

In response to the DCPSC petition, DOE issued its Order on December 20, 2005, requiring, among other things, the following:

“During any period in which one or both of the 230kV lines serving the Central D.C. area is out of service, whether planned or unplanned, Mirant will operate the Potomac River Generating Plant to produce the amount of power (up to its full capacity) needed to meet demand in the Central D.C. area as specified by PJM for the duration of the outage.

In the event of a planned outage, Potomac River units will generate that amount of electricity specified by PJM to meet demand.

....

*When producing electricity pursuant to this paragraph, Mirant **shall utilize pollution control equipment and measures to the maximum extent possible to minimize the magnitude and duration of any exceedance of the NAAQS.***

Order at page 10 (emphasis added). The Order further directs PEPCO to provide Mirant advance notice of planned outages and requires PEPCO “to ensure” that planned outages are scheduled in a way to “minimize the environmental effect of operating the Plant.” Order at page 11. The Order also told Mirant to submit a plan to DOE that set forth in detail how Mirant intended to operate in compliance with the Order. Id.

On December 29, 2005, PEPCO provided notice of its intention to take one the 230kV transmission lines feeding into the Potomac River Substation out of service on January 9, 2006, for five days of maintenance. (PEPCO revised its notice on January 4, 2006, to extend the out-of-service period on this transmission line from five to eight days.) PEPCO further provided notice on December 29, 2005, of its intention to take the other 230kV transmission line feeding into the Potomac River Substation out of service on January 23, 2006, for five days of maintenance.

Mirant filed the operating plan required by the Order on December 30, 2005 (Mirant Operating Plan). Included in Mirant’s Operating Plan is a schedule for installing pollution control equipment on each generating unit at the plant.

PEPCO’S INTENTION TO TAKE THE TRANSMISSION LINES OUT OF SERVICE FOR MAINTENANCE AS EARLY AS JANUARY 9, 2006, IS IN FLAGRANT VIOLATION OF DOE’S ORDER BECAUSE PEPCO HAS REFUSED TO TAKE AVAILABLE MEASURES TO ENSURE THAT THE OUTAGES MINIMIZE THE ENVIRONMENTAL EFFECT OF OPERATING THE PLANT

In unilaterally announcing its intention to take the transmission lines out of service for maintenance (one of them as early as January 9, 2006) and thus force the plant to operate at or near full capacity, PEPCO took no measures to coordinate with Mirant to ensure that these planned maintenance outages in any way minimized the environmental effects of the operation of the plant as required by the Order. In fact, PEPCO has chosen to ignore the pollution control installation schedule contained in Mirant’s Operating Plan. PEPCO’s behavior in this regard constitutes a flagrant violation of DOE’s Order.

Under the terms of the Order, planned outages of the 230kV transmission lines should occur no earlier than March 20, 2006, at which time Mirant projects that it will have an innovative SO₂ control technology, called the Trona system, installed and operational on all five generating units at the plant. Mirant Operating Plan at pages 3 and 5-6. Mirant predicts that the

Trona System will achieve a reduction of between 60% to 70% in SO2 emissions from the uncontrolled emission levels that existed at the plant prior to August 21, 2005. Id. at page 3. At present, however, the plant has but a single rented Trona system that can operate on only one unit at a time. Id. at page 5. Mirant plans to have two Trona systems on site and operational by January 16, 2006, three Trona systems operational by February 20, 2006, and Trona systems for all five units at the plant operational no later than March 20, 2006. Id. at pages 5-6.

If the plant is forced to resume full operation on January 9, 2006, with a Trona system on only a single generating unit, the environmental impacts in the area surrounding the plant would be substantially similar to the grossly unsafe impacts indicated in the August 19th downwash modeling analysis, which showed modeled exceedances of numerous NAAQS, in some cases exceeding the standard by 14 times. Such a result is unacceptable to the Commonwealth, especially given PEPCO's blatant disregard for the Order's requirement to schedule its outages so to minimize the environmental impacts of the plant's operation. PEPCO has failed to give any persuasive justification why the planned line outages can not wait until March 20, 2005.

CONCLUSION

For the reasons set forth above, DEQ demands DOE order a postponement of PEPCO's planned outages of the 230kV transmission lines serving the Potomac River Substation until such time as the Potomac River Generating Station has installed and is able to operate pollution control equipment essential to assure that emissions from the plant do not injure the health and safety the citizens of Virginia.

Very truly yours,

A handwritten signature in black ink, reading "Robert G. Burnley". The signature is written in a cursive style with a large, looping "y" at the end. A vertical red line is positioned to the right of the signature.

Robert G. Burnley

Cc: Lawrence Mansueti
Lisa D. Johnson
Anthony C. Wilson
Donald S. Welsh
Judith Katz
W. Tayloe Murphy, Jr.