

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

District of Columbia Public Service Commission Docket No. EL05-145-000

ORDER ON PETITION AND COMPLAINT

(Issued January 9, 2006)

1. In this order, the Commission addresses the August 24, 2005 petition and complaint filed by the District of Columbia Public Service Commission (DC Commission) requesting that because of serious reliability concerns in the greater Washington, D.C. area, the Commission prevent Mirant Potomac River, LLC (Mirant) from shutting down its Potomac River Generating Station power plant (Plant). The DC Commission also filed the same petition with the U.S. Department of Energy (Department of Energy or Secretary of Energy), and requested immediate action under section 202(c) of the Federal Power Act (FPA).¹ On December 20, 2005, the Secretary of Energy entered an order finding that an emergency exists under section 202(c), and ordered the Plant to generate electricity.² The December 20 Order found that an emergency situation exists in the Washington, D.C. area, due to shortages in electric

¹ 16 U.S.C. § 824(a) (2000).

² U.S. Department of Energy, Order No. 202-05-2 (December 20, 2005) (December 20 Order). Authority under section 202(c) was transferred to the Secretary of Energy in 1980 by the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101). *Public Utility District No. 2 of Grant County, Washington*, 95 FERC ¶ 61,338 at n. 49 (2001). Here, we will therefore substitute “Secretary of Energy” for references to the Commission. Section 202(c) states that “[d]uring the continuance of any war in which the United States is engaged, or whenever the [Secretary of Energy] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the [Secretary of Energy] shall have the authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest.”

energy, facilities for the generation of electric energy, and facilities for the transmission of electric energy, as well as other causes. The Secretary of Energy directed Mirant to operate in a manner that provides reasonable electric reliability but that also minimizes any environmental harm from operation of the Plant.

2. The Secretary of Energy's December 20 Order, which is in effect through September 6, 2006, addresses only the short-term reliability issues raised in this proceeding from shutdown of the Plant. This order supplements the Department of Energy's actions by focusing on a more permanent and comprehensive solution, to be provided by the transmission entities. Accordingly, we are issuing this order under section 207 of the FPA³ to require PJM Interconnection, L.L.C. (PJM)⁴ and Potomac Electric Power Company (PEPCO)⁵ to file a long-term plan to maintain adequate reliability in the Washington D.C. area and surrounding region, and a plan to provide adequate reliability pending implementation of this long-term plan. This order also directs PJM and PEPCO to file monthly progress reports on these plans.

I. Background

3. On August 19, 2005, Mirant delivered to the Virginia Department of Environmental Quality (Virginia DEQ) results of a computerized modeling study of the Plant, as a requirement of the consent order signed with the Virginia DEQ in 2004 (Consent Order).⁶ Mirant states that the study indicated that the downwash effects of emissions from the Plant contribute to violations of Air Quality Standards⁷ for ambient

³ 16 U.S.C. § 824(f) (2000).

⁴ As the regional transmission organization (RTO) and reliability coordinator for the Washington, D.C. area, PJM is responsible for operating the transmission system and ensuring reliability in the area.

⁵ PEPCO is the owner of the local transmission system serving the Washington, D.C. area. PEPCO is responsible for transmission maintenance and construction of transmission facilities in the Washington, D.C. area. PEPCO also owns the distribution system serving the Washington, D.C. area.

⁶ The Consent Order was issued by the Virginia State Air Pollution Control Board to Mirant on September 23, 2004 and required Mirant to perform certain actions to determine whether the Plant's emissions were in compliance with National Ambient Air Quality Standards (Air Quality Standards).

⁷ Air Quality Standards are established by the U.S. Environmental Protection Agency (EPA) at concentrations necessary to protect human health, under the Clean Air Act (CAA).

sulfur dioxide (SO₂), nitrogen oxides (NO_x), and certain particulates (particulates).⁸ On the same day, Virginia DEQ issued a letter requesting Mirant to “immediately undertake such action as necessary to ensure protection of human health and the environment, in the area surrounding the [Plant], including the potential reduction of levels of operation, or potential shut down of the [Plant].”⁹ The letter told Mirant to provide a summary of actions being taken no later than 2:00 PM on August 24, 2005.¹⁰

4. Mirant states that at midnight on August 21, 2005, it reduced the output of all generating units at the Plant to their minimum load levels. Mirant announced that it would be shutting down all units at the Plant at midnight on August 24, 2005 because it could not satisfy the Virginia DEQ’s concerns at any level of output. At midnight on August 24, 2005, Mirant shut down all units at the Plant.¹¹ In a letter to the Virginia DEQ on September 20, 2005, Mirant stated that it would resume operations at a reduced level, and that based on its projections under a revised modeling analysis, it would meet the required Air Quality Standards at that level.¹² Mirant stated that it would operate one generating unit (Unit 1) up to sixteen hours a day, with about eight hours at maximum load of 88 megawatts (MW), about eight hours at minimum load of 35 MW, and eight hours of shutdown. On September 21, 2005, Mirant resumed operation at the Plant at a reduced level,¹³ and it is our understanding that Mirant continues to operate the Plant pursuant to the Department of Energy order.

⁸ Mirant Comments at 3.

⁹ Additionally, the August 19, 2004 letter from Virginia DEQ to Mirant states that “[u]nder worst case conditions, the [State Air Pollution Control Board] may order that the owner shut down the facility, if there is no other method of operation to avoid a violation of the primary ambient air quality standard.”

¹⁰ Mirant Comments at 4.

¹¹ Mirant asserts that it is not seeking to retire or mothball any of the units at the Plant. In *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053 at P 123 (2005), the Commission noted that the term mothballing was not defined, but that we understood it to mean removing the unit from operations for the present but maintaining the unit in a physical state such that it could become operational again.

¹² Virginia DEQ Motion to Deny Relief at 2.

¹³ *Id.*

II. DC Commission's Petition and Complaint

5. On August 24, 2005,¹⁴ the DC Commission filed with this Commission a petition and complaint requesting that we direct Mirant to continue the operation of the Plant. It argues that the shutdown could have an immediate, drastic effect on electric reliability in the Washington, D.C. area, possibly exposing hundreds of thousands of consumers, federal government agencies, and critical federal infrastructure to reductions of electric service, load shedding, and blackouts.

6. The DC Commission states that the Plant is an essential element in providing electric service to the District of Columbia¹⁵ and that the shutdown could lead to catastrophic results. It says that a major load shedding event could be triggered by the combination of the shutdown of the Plant with a severe weather situation, the loss of key transmission capability, or other major outages, which could endanger electric service to the District of Columbia.

7. The DC Commission requests immediate action by the Commission under sections 207¹⁶ and 309¹⁷ of the FPA to prevent Mirant from ceasing operations at the Plant and to

¹⁴ The DC Commission submitted its filing to the Commission after business hours on August 24, 2005, so it was officially filed on August 25, 2005. On September 1, 2005, the DC Commission filed an errata. On September 6, 2005, it submitted an addendum requesting that a press release by District of Columbia Mayor Anthony Williams be added to its complaint as an attachment. The press release states that the power plant is a critical element in providing electricity to the District and that the plant should be restarted immediately.

¹⁵ The DC Commission states that PJM has identified the Plant as being critical to electric system reliability in the Washington D.C. area. It says that the shutdown of the Plant could result in a severe strain on the transmission system and electrical outages if other key generation or transmission facilities become unavailable during high demand periods.

¹⁶ Section 207 states that “whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished, and shall fix the same by its order, rule, or regulation.”

¹⁷ Section 309 authorizes the Commission “to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary to carry out the provisions of [the FPA].” 16 U.S.C. § 825(h) (2000).

ensure that electric reliability is not adversely affected. The DC Commission contends that the shutdown of the Plant will result in “inadequate or insufficient” interstate service.

III. Data Requests

8. The Commission issued a data request for additional information from PJM, PEPCO, and Mirant on August 25, 2005, and these parties filed their responses on August 26, 2005. The Commission issued a supplemental data request to these parties on September 6, 2005. Mirant filed its response on September 9, 2005, and PJM and PEPCO jointly filed their response on September 12, 2005. The Commission issued a third data request to PJM and PEPCO on September 22, 2005. They jointly filed their response on September 27, 2005.

IV. Notice of Complaint and Responsive Pleadings

9. Notice of the DC Commission’s filing was published in the *Federal Register*, 70 Fed. Reg. 51,769 (2005), with comments, interventions, and protests due no later than August 29, 2005. The State Corporation Commission for the Commonwealth of Virginia filed a notice of intervention. The Pennsylvania Public Utility Commission (Pennsylvania Commission) filed a notice of intervention with comments. Chesapeake Climate Action Network, Maryland Conservation Council, Inc., Virginia Electric and Power Company, Allegheny Power and Allegheny Energy Supply Company, LLC, Official Committee of Unsecured Creditors of the Mirant Corporation, and Office of the People’s Counsel of the District of Columbia filed motions to intervene. PJM, City of Alexandria, Virginia (Alexandria), Mirant, PEPCO, and the District of Columbia Water and Sewer Authority (DC Water & Sewer) filed motions to intervene and comments. Virginia DEQ and Southern Environmental Law Center (Southern Environmental) filed motions to intervene and protests. Potomac Riverkeeper, Inc., Anacostia Riverkeeper at Earth Conservation Corps., Inc., and Patuxent Riverkeeper, Inc. (Riverkeepers) and the State of New York Department of Public Service (New York Commission) filed motions to intervene out of time. The Government of the District of Columbia (DC Government) filed a motion to intervene out of time and comments. An individual, Patricia Kirk, filed a comment. Two individuals, Elizabeth Chimento and Poul Hertel, jointly filed two comments. Mirant and PEPCO filed answers to the comments and protests. PEPCO later filed supplemental comments. Virginia DEQ filed a motion to deny relief, or in the alternative, to defer action. PJM and PEPCO, jointly, and the DC Commission filed answers to Virginia DEQ’s motion to deny relief. Virginia DEQ filed an answer. PEPCO filed an answer to Virginia DEQ’s answer.

10. PJM recommends that the Commission adopt a practical and equitable solution that balances reliability interests with health and safety issues. It states that the loss of all units at the Plant, coupled with the loss of critical transmission lines, creates a significantly increased risk of losing a large block of load and that there would be no

alternative to restore service other than to either return the lost lines to service or reactivate the Plant.¹⁸ PEPCO urges the Commission to grant the DC Commission's requested relief because the Plant is critical to reliability of the electric grid in the Washington D.C. area.¹⁹ It suggests that Mirant should have proposed a short-term solution less drastic than completely shutting down the Plant so that the Plant remained sufficiently operational while also meeting environmental concerns.

11. The Pennsylvania Commission, DC Water & Sewer, and the DC Government also support the DC Commission's petition. The Pennsylvania Commission states that it supports the DC Commission's petition because the immediate and compelling public interest lies with the protection of life and property threatened by the Plant's shutdown. DC Water & Sewer argues that the loss of electricity to its Blue Plains Advanced Wastewater Treatment Plant (Blue Plains Plant) would result in environmental consequences that would not be limited to the Washington D.C. area and that should be considered in balancing environmental and reliability interests. DC Government states that the reliability of the electric grid is of vital importance and that the Plant must continue to operate at a minimum output level to ensure reliability, while parties are developing long-range plans.

12. On the other side, Virginia DEQ argues that the DC Commission's complaint does not offer a plan to mitigate or minimize environmental harm that could result if the Plant is reopened and states that the Commission should not issue any order requiring restoration of operations at the Plant without considering air quality and the health of Virginia residents. Alexandria says that the DC Commission's emergency request is premature because the DC Commission provides no evidence of any imminent emergency. It states that the Plant's emissions are harming air quality in Alexandria and jeopardizing the health of its residents, and it says that a Commission order directing that the Plant resume operations would not be in the public interest and would require a review of effects and alternatives under the National Environmental Policy Act of 1969 (NEPA).²⁰ Southern Environmental argues that closure of the Plant is not an emergency under section 202(c) of the FPA and argues that there may be no loss of transmission capability at all because PEPCO has two contingency plans to replace electricity lost

¹⁸ PJM cites to two occasions in 1992 and 1997 on which load in the District of Columbia was lost because of outages or unavailability involving the Plant and the same critical transmission lines described here.

¹⁹ PEPCO states that shutdown of the Plant reduces overall import capability by approximately 100 MW. In addition, without generation from the Plant, normal maintenance of key transmission facilities supplying electricity to PEPCO's load cannot be scheduled, increasing the likelihood of a reliability breakdown.

²⁰ 42 U.S.C. §§ 4321, *et seq.* (2002).

from the Plant. Patricia Kirk, an individual, supports continued closure of the Plant until pollution control technology is adopted that would ensure compliance with state requirements. Two citizens of Alexandria, Elizabeth Chimento and Poul Hertel, urge the Commission to reject the DC Commission's complaint, as reopening the Plant would jeopardize their health and welfare and suggest that the Commission consider using generation from other local power plants and construct new transmission lines as an alternate solution to resuming operations at the Plant.

13. In its comments and answer, Mirant says that it appreciates the need to address the reliability implications of shutting down the Plant while taking into account the environmental concerns of Virginia DEQ. It says that it is committed to developing solutions that will return the Plant to operation as soon as possible, in compliance with environmental laws and regulations.

V. PEPCO's Answer and Supplemental Comments

14. PEPCO responds that without the generating capacity provided by the Plant, if key transmission facilities fail, there will be a blackout until the circuits are repaired or the Plant's generators are restarted. Such a blackout would affect electric customers in major portions of the District of Columbia, including the Blue Plains Plant. PEPCO proposes the following solution for operating the Plant while meeting both emissions and reliability concerns: 1) on peak load days, at least one generator must be running so that the loss of key transmission facilities will not cause an overload of any remaining transmission facilities; 2) during any maintenance outage, depending on the load level, up to all units at the Plant must be running on at least partial output; 3) if key transmission facilities trip unexpectedly, all units at the Plant must be available to start within 11 hours; and 4) for multiple transmission outages, all load served by the Plant would be lost; for a rapid restoration of this load, all generators must be available to start in 11 hours.

15. PEPCO states that once it has completed its transmission reinforcement construction plan, estimated to take between 18 to 24 months, the Plant will not be necessary to ensure reliability. In the meantime, PEPCO suggests that Mirant make modifications to allow the Plant to operate without exceeding the Air Quality Standards or to reduce the level of SO₂ ambient concentrations.²¹

16. PEPCO filed supplemental comments in response to Mirant's reactivation of one generating unit at the Plant. It contends that this reactivation is only part of the process needed to restore the same degree of reliability that existed before Mirant shut down the

²¹ PEPCO suggests actions such as temporary skid arrangements for the injection of trona type product into the furnaces, use of low sulfur coal, injecting lime into the gas stream, combining stacks, raising stacks, and increasing stack temperatures.

Plant. It argues that during maintenance outage of a transmission circuit, up to all units at the Plant must be running at least at partial output for the duration of the maintenance. For a certain transmission outage scenario, all units at the Plant must be available to start in 11 hours. During other transmission outage scenarios, in order to restore lost load in the District of Columbia, all units at the Plant must be available to start within 11 hours.

VI. Virginia DEQ's Motion to Deny Relief and Answers

17. In its motion to deny relief, Virginia DEQ argues that the Commission must fashion any remedy under the FPA to conform to the CAA because the Commission cannot take any action that violates the State Implementation Plan under section 176(c)(1) of the CAA. In their answers, PJM and PEPCO, jointly, and the DC Commission respond that there can be no conflict between Commission action in this proceeding and the CAA and Virginia State Implementation Plan because there have been no actual monitored violations of SO₂, NO_x, and particulates standards at the ambient air monitors closest to the Plant²² and because no one has alleged that the Plant has violated, or cannot operate in compliance with, any emission limits for those pollutants. Moreover, PJM, PEPCO, and the DC Commission state that Virginia DEQ cannot base emergency orders on a modeling analysis; emergency orders must be based on actual monitored data.²³

18. Virginia DEQ next argues that the Commission must prepare an environmental impact statement under NEPA before it can take any substantive action. PJM and PEPCO, jointly, and the DC Commission respond that ordering Mirant to operate the Plant is not a "major federal action" within the meaning of NEPA, since it would not require an expansion of the Plant, the Plant would not be operated differently than it has been operated in the past, and the Plant would not be operated in a manner inconsistent with the CAA or the Virginia State Implementation Plan. Virginia DEQ responds that

²² Virginia DEQ responds that this argument is without merit because the purpose of the downwash study was to determine the localized effects of pollutants being emitted by the Plant. It states that the closest air monitoring station is about 1.5 miles away from the Plant and would not be expected to register an exceedance caused by the Plant's emissions. PEPCO responds that Virginia DEQ's answer admits that Virginia DEQ did not order the Plant to shut down; thus it argues that there will be no conflict between Commission action in this proceeding and any Virginia DEQ order.

²³ Virginia DEQ responds that its decision to act on the basis of the downwash study is not reviewable by the Commission, is entitled to substantial deference, and, in any case, is appropriate. On the merits, Virginia DEQ states that air modeling is a well-recognized tool used to determine whether emissions would result in adverse impacts on human health or the environment.

any order requiring the Plant to resume operations would be a major federal action because it would profoundly alter the status quo.

19. Virginia DEQ finally argues that the Commission can act under section 207 only after providing an opportunity for hearing and that, if action is required before a hearing, such action would be more properly taken by the Secretary of Energy under section 202(c). In their answer, PJM and PEPCO state that given the significant record already in front of the Commission and the fact that interested parties have had the opportunity to present their arguments, the Commission should decide whether further hearing procedures are even warranted. If so, PJM and PEPCO request that the Commission consider use of a “paper” hearing procedure, rather than a trial-type hearing. The DC Commission argues that the Commission has satisfied the requirement for a paper hearing by publishing notice of the petition and complaint and by receiving interventions, comments, protests, and answers to the Commission’s data requests, as a part of the record in this proceeding and that an evidentiary, trial-type hearing would considerably delay resolution of the critical issues in its petition and complaint.²⁴ PJM and PEPCO, jointly, and the DC Commission further argue that nothing in section 207 limits the Commission’s authority, directs it to defer to the Department of Energy, or states that a party bringing an issue under 202(c) is barred from concurrently requesting relief under section 207. Virginia DEQ responds that the Commission has section 207 authority to require Mirant to furnish adequate and sufficient service, but it questions whether the Commission could order emergency relief under section 207, particularly without a hearing.

20. In their answer, PJM and PEPCO, jointly, and the DC Commission also argue that Virginia DEQ’s motion to deny relief is an impermissible supplemental protest filed after the deadline established by the Commission and should be rejected by the Commission. Virginia DEQ responds that its motion to deny relief should be accepted by the Commission because it is needed for a fully developed record, since Virginia DEQ did not have access to privileged information before preparing this motion.²⁵

²⁴ In its answer, Virginia DEQ responds that parties must have an opportunity to be heard in a meaningful fashion before the Commission acts and that an evidentiary hearing must be held before the Commission acts under section 207.

²⁵ Virginia DEQ states that it received access to CEII information on September 29, 2005 and that it prepared its motion to deny relief after fully analyzing the CEII information. Virginia DEQ Answer at 7.

VII. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Riverkeepers', the DC Government's, and the New York Commission's untimely motions to intervene, given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits answers to protests or answers to answers unless otherwise ordered by the decisional authority. We will accept Mirant's, PEPCO's, the DC Commission's, and Virginia DEQ's answers, as well as Virginia DEQ's motion to deny relief, PJM and PEPCO's joint answer, and PEPCO's supplemental comments because they have provided information that assisted us in our decision-making process. PJM and PEPCO, jointly, and the DC Commission argue that the Commission should not accept Virginia DEQ's motion to deny relief as an impermissible late protest. We accept this filing because it assisted us in our decision-making process.

B. Effect of Plant's Shutdown on Reliability in the District of Columbia Region

23. We note that the Department of Energy has found that an emergency exists due to a shortage of electric energy and has acted to address the short-term threat to reliability. However, we will describe the problem in some detail, since it is also the reason for our action here addressing the long-term problem. Reliability is seriously endangered on the transmission system serving the Potomac River substation as a result of shutting down the Plant, including violations in planning and operation criteria. Without generation from the Plant and under certain transmission outage scenarios, PJM may need to shed load to maintain system reliability.²⁶ During other transmission outage scenarios, all loads at the Potomac River substation would be shed, including critical load in downtown Washington D.C.

24. PJM and PEPCO jointly indicated that two reliability criteria violations are possible when the Plant is not operating: violation of PJM reliability planning criteria

²⁶ See PEPCO Answer to Comments and Protests at 4.

section III²⁷ and violation of North American Electricity Reliability Council (NERC) Reliability Standard TPL-003-0,²⁸ Category C (loss of two or more bulk electric system elements).²⁹ The PJM reliability planning criteria are violated when the transmission lines serving the Potomac River area are out, since more than 300 MW of load would be lost. If a key transmission facility were to trip unexpectedly, and the Plant is operating only one unit, load served by the Potomac River substation would more than likely lose power – over 300 MW. Under this scenario, NERC Reliability Standard TPL-003-0 is also violated for loss of two or more transmission lines, since some transmission facilities will be outside of their voltage or thermal limits in the Washington, D.C. area. When a transmission facility trips unexpectedly, the power flowing on the tripped facility flows over other transmission lines, which can cause them to exceed their thermal limits and can also decrease line voltages below voltage limits. Further, the Potomac River 69 kV system could experience severe voltage drops for loads above 500 MW during a single line contingency.³⁰

25. The likelihood of experiencing a single line contingency is high, since there have been six such outages in the past six years.³¹ If the contingency involves cable failure, the repair time is expected to be much longer than one day. In addition, maintenance of the transmission lines serving the Potomac River substation load will be difficult to perform without backup generation to serve load if one or more lines are forced out of service.

26. Without the generation from the Plant, routine transmission maintenance on key transmission facilities cannot be performed without posing a risk to reliability. If scheduled transmission maintenance requires outage of key transmission facilities, the

²⁷ PJM Reliability Planning Criteria Section III applies to the outage of the transmission lines serving the Potomac River substation and limit the load loss to 300 MWs. *See* Attachment G, page 88, of the PJM Generation and Interconnection Planning Manual M-14, available at <http://www.pjm.com/contributions/pjm-manuals/pdf/m14bv05.pdf>

²⁸ NERC Reliability Standard TPL-003-0 requires that studies be performed and plans implemented to maintain voltages and thermal limits within applicable ratings following the loss of two or more bulk power system elements (Category C outages). The standard is available at ftp://www.nerc.com/pub/sys/all_updl/standards/rs/TPL-003-0.pdf.

²⁹ *See* PJM Response to Data Request, September 12, 2005 at 6, question 9.

³⁰ *See* PEPCO Response to Data Request, September 27, 2005 at 3, question 3.

³¹ *See* PEPCO Response to Data Request, September 12, 2005 at 4, question 5.

generation at the Plant must match and follow load in real-time in order to ensure reliability in the area and avoid overloading remaining transmission facilities. During any maintenance outage, up to all units at the Plant must be running to provide “load following.”³² As a result of the shutdown of the Plant, maintenance cannot be conducted on key transmission facilities. This could make the circuits and related equipment more susceptible to failure, thus increasing the probability of an unexpected line outage or blackout.

27. PEPCO proposes an initial transmission reinforcement construction plan to resolve these reliability problems. This plan is estimated to take between 18 and 24 months to implement.³³

C. Resolution

28. We address the DC Commission’s petition and complaint under section 207. There is little precedent under section 207; although section 207 arguments have been raised by parties in previous proceedings, the Commission has not ruled substantively on these arguments.³⁴ The absence of precedent is not, however, dispositive, because our action here is consistent with the plain meaning of section 207. We find, as described above, that “interstate service . . . is inadequate or insufficient” because shutdown of the Plant poses a serious threat to the reliability of electric service in the area. Accordingly, and in light of the immediate nature and short-term relief granted to the DC Commission by the Secretary of Energy,³⁵ directing Mirant to operate in a manner that supports reliability and minimizes adverse environmental effects through September 30, 2006, we address establishing transmission solutions to the reliability problems in the Washington, D.C. area.

29. Virginia DEQ argues if action is required prior to an opportunity for hearing, then such action would more properly be taken by the Secretary of Energy under his section 202(c) emergency authority. Here, we are not taking emergency action under

³² See PJM/PEPCO Response to Data Request, September 27, 2005 at 2, question 1.

³³ See PEPCO Supplemental Comments at 5.

³⁴ The Commission did not rule on the merits of section 207 arguments that were raised in Vermont Department of Public Service and Vermont Public Service Board v. Connecticut Light and Power Company, et al., 61 FERC ¶ 61,257 (1992) and El Paso Electric Co. v. Central and South West Services, Inc., 68 FERC ¶ 61,181 (1994).

³⁵ The Secretary of Energy noted the limited duration of his order, stating that he viewed the order not as a permanent solution to the region’s reliability issues, but as a bridge between the current untenable situation and a more permanent solution.

section 202(c) but are acting within our authority under section 207. Given the many comments and protests we received in this proceeding, several of which we accepted after the comment date, we believe that interested parties have already been afforded an opportunity to present their positions. We have fully considered these arguments in our analysis, and a formal evidentiary hearing would be superfluous and would delay action. We find that the other issues presented by Virginia DEQ in its motion to deny relief are moot because we are not ordering the Plant to run.

30. PJM and PEPCO are obligated under the PJM OATT to be in compliance with NERC and PJM Reliability Standards; however, PJM's and PEPCO's current transmission system has been shown to have a high probability of violating these standards.³⁶ Given that PJM and PEPCO are working on alternatives to mitigate reliability risk,³⁷ the Commission directs them to develop and implement comprehensive long-term plans for the operation, planning and construction of transmission facilities to address the current reliability risks to the system. Specifically, PJM and PEPCO are ordered to identify the necessary project milestones, with their applicable dates, beginning one month from this order through the projected completion of the long-term solutions.

31. The Department of Energy has acted to require Mirant to operate the Plant as needed to meet demand in the Central Washington, D.C. area, as specified by PJM, during any period in which one or both transmission lines is out of service. However, the Department of Energy has not required the transmission entities to operate in accordance with applicable reliability standards or to identify the necessary operational, planning, and construction milestones necessary to address the reliability risks. Therefore, in coordination with the Department of Energy order, the Commission orders PJM and

³⁶ See discussion *infra* paragraph 24. There are two possible reliability criteria violations when the Plant is not operating: violation of PJM reliability planning criteria section III and NERC Reliability Standard TPL-003-0, Category C. See, e.g., PJM OATT, § 1.7.11 "Emergencies." Section 1.7.11 of the PJM OATT states, in part, that actions by the Office of the Interconnection and the Market Participants shall be carried out in accordance with the PJM OATT, the NERC Operating Policies, Applicable Regional Reliability Council reliability principles and standards, Good Utility Practice, and the PJM Manuals.

³⁷ On November 1, 2005, PJM announced that it has approved an additional \$297 million in upgrades to the electric transmission system in the 13-state PJM region. The approved upgrades include \$70 million for the addition of new transmission lines to address concerns about reliability in the Washington, D.C. area. Press Release, PJM Interconnection, L.L.C., PJM Approves Additional \$297 Million in Transmission System Improvements (Nov. 1, 2005), available at [http:// www.pjm.com/contributions/news-releases/2005/20051101-pjm-approved-additional-297-million.pdf](http://www.pjm.com/contributions/news-releases/2005/20051101-pjm-approved-additional-297-million.pdf)

PEPCO to jointly develop a plan to maintain adequate reliability during the following conditions: (1) with and without the Plant during planned and forced outages for the duration of the Department of Energy order, and (2) with and without the Plant during planned and forced outages for the time between the end of the Department of Energy order and when a long-term solution is in place. This plan, which should include a supporting study report and a timeline and description of milestones, shall be submitted to the Commission within one month from the date of this order.

The Commission orders:

(A) PJM and PEPCO are to jointly develop and implement a comprehensive operational, planning, and construction plan, including applicable milestone events with projected completion dates, to provide adequate reliability in the transmission system serving the Potomac River substation, as described in the body of the order, to be submitted to the Commission within one month from the date of this order.

(B) PJM and PEPCO are to jointly develop and implement a plan to provide adequate reliability in the transmission system serving the Potomac River substation, until a long-term solution is in place, to be submitted to the Commission within one month from the date of this order.

(C) PJM and PEPCO are to jointly submit monthly progress reports on the implementation of such plans to the Commission.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.