Public Service Commission of the District of Columbia
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Summary of Testimony of Betty Ann Kane

Chairman of the Public Service Commission of the District of Columbia

Before the U.S. House of Representatives

Committee on Energy and Commerce, Subcommittee on Energy and Power

On H.R. 4273, the "Resolve Environmental and Grid Reliability Conflicts Act of 2012"

May 9, 2012

H.R. 4273 speaks directly to a difficult and challenging experience of the D.C. Public Service Commission in its efforts to ensure reliable electricity service in the Nation's Capital. Enactment of H.R. 4273 could prevent or quickly resolve conflicts in the future between the enforcement of air quality regulations and the need to obtain peak load electricity generation.

My Testimony describes a situation in 2005 - 2006, when the Mirant Corporation issued a press release announcing it was going to shut down the Potomac River Generating Station in just two days. The PRGS, located in the City of Alexandria, Virginia, is connected to the District's power grid through several transmission lines. Mirant announced its shutdown of the PRGS in response to emissions abatement concerns raised by the Virginia Department of Environmental Quality, acting under the federal Clean Air Act. The Testimony outlines the subsequent steps taken by the D.C. PSC, the Federal Energy Regulatory Commission and the U.S. Department of Energy to ensure continued operation of the PRGS during peak demand summer months while minimizing environmental consequences. I conclude by describing the steps taken by the D.C. PSC, Pepco and PJM to expand transmission capacity in and around the Washington, D.C. area to address the eventual shutdown of the PRGS.

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Mr. Chairman, members of the Subcommittee on Energy and Power, Good Morning. My name is Betty Ann Kane. I am the Chairman of the District of Columbia Public Service Commission. Thank you for the invitation to appear before you today to provide comments on H.R 4273, the "Resolve Environmental and Grid Reliability Conflicts Act of 2012." As I understand it, the intention of H.R. 4273 is to more clearly define situations in which emergency orders may be issued under the Federal Power Act and to limit the liability of electric power generators when obeying such an order. The provisions of H.R. 4273 speak directly to a difficult and challenging experience of the D.C. Public Service Commission in its efforts to ensure reliable electricity service in the Nation's Capital. I am pleased to have the opportunity to share that experience and to describe how enactment of H.R. 4273 could prevent such situations in the future and lead to a more timely resolution of those kinds of conflicts. I must also state for the

record that nothing in my testimony has a relationship to any open case currently before the D.C. Commission.

The District of Columbia Public Service Commission is an independent agency of the government of the District of Columbia, first established by Congress in 1913 and reaffirmed as a Home Rule Charter Agency under the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, title IV, § 493(a), 87 Stat. 774 (1973). The Commission is a quasi-judicial regulatory agency. Like our fellow public utility commissions in the other 50 states, our statutory responsibility is to ensure the provision of safe, affordable, and adequate natural gas, electricity and telecommunications services by the public utilities and service providers licensed to do business in the District. Specifically, the D.C. Public Service Commission has a responsibility under District law, and through our oversight of the Potomac Electric Power Company ("Pepco") in the District of Columbia, to ensure that the nation's capital has an adequate supply of electricity at all times. In the summer of 2005, a conflict between the need for electric reliability and environmental laws came close to compromising the electric supply in Washington, D.C. for residents, businesses and local and federal government agencies.

In the summer of 2005, the District of Columbia was served by three must-run power plants, the Benning Road Generating Station, the Buzzards Point Generating Station, and the Potomac River Generating Station. As a result of legislation enacted by the D.C. Council, these plants were not owned by our local distribution company but were owned by independent generating companies. These plants included what are called "must-run" units, which means that they were crucial to the reliability of electricity supply at peak times. Consumers relied upon

these plants during hot summer days when, due to limitations in transmission capacity at the time, it was not possible to import sufficient power into the District from other generators.

On August 22, 2005, Mirant Corporation, an independent power provider, who then owned one of these must-run plants, the Potomac River Generating Station ("PRGS" or "Plant") issued a press release announcing it was going to shut down the Plant in just two days. The PRGS is located in the City of Alexandria, just across the river from the District, but it does not supply any electricity to Virginia. It is connected to the District's power grid through several transmission lines. Mirant announced its shutdown of the Plant in response to emissions abatement concerns raised by the Virginia Department of Environmental Quality ("VA DEQ"), acting under the federal Clean Air Act.

The D.C. Commission immediately responded to this announced shutdown by filing emergency petitions on August 24, asking the Federal Energy Regulatory Commission ("FERC") and Department of Energy ("DOE") to order the Plant to continue to operate. The continued operation of the PRGS was critical to ensuring that the downtown sectors of the District, including the White House, the Capitol, and other important federal, as well as District government agencies, had adequate access to electricity supplies.

The PRGS was shut down for twenty-eight (28) days. Finally, on September 21, 2005, Mirant voluntarily resumed operation of the Plant at a reduced level. I was not on the Commission at the time, but staff tells me that every day during that hot end of summer period that the plant was not operating they prayed for mild weather. The Federal agencies did not respond for several more months. The Secretary of Energy issued Order No. 202-05-3, in Docket No. EO-05-01, on December 20, 2005, which directed the continued operation of the

PRGS to ensure "reasonable electric reliability . . . [that also] minimizes any adverse environmental consequences." The FERC issued its Order on January 9, 2006, in Docket No. EL05-145-000, directing Pepco and PJM Interconnection, L.L.C. ("PJM"), the Regional Transmission Organization with responsibilities for electric transmission covering the Washington, D.C. area, to file an immediate plan, as well as a long-term plan, to ensure the maintenance of electric reliability in the Washington, D.C. area.

Pepco and PJM have been working since this period to expand transmission capacity in and around the Washington, D.C. area to address the eventual shutdown of the Potomac River Generating Station. On March 6, 2006, in Formal Case No. 1044, Order No. 13895, the D.C. Commission approved Pepco's emergency application for a certificate of convenience and necessity to construct two 69kV overhead transmission lines and accepted notice of the proposed construction of two 230kV underground transmission lines. Further, the D.C. Commission, in Order No. 13907, established a Demand Response Working Group to develop near term solutions to bolster options for addressing reliability concerns. The necessary transmission capacity was fully installed on June 22, 2007. It took 16 months to install after the emergency certificate of convenience and necessity was issued, but that time period was greatly shortened because it made use of preexisting conduits under the Potomac River. As of the most recent assessment from PJM, issued in September 2011, the planned shutdown of the Plant in October of 2012 would not cause any reliability issues, but additional transmission capacity would be required before 2016, when load growth would again require use of the Plant.

The Department of Energy issued a series of orders extending its original December 2005 emergency order to ensure that the Potomac River Generating Station continued operating until

the additional transmission capacity was installed. On March 23, 2007, at the direction of PJM, and in accordance with the Department of Energy's order, the Plant was operating to ensure a reliable supply of electricity in the District while a transmission line was down for maintenance. During this event, the VA DEQ cited the owners of the Plant for its operations, which exceeded applicable emission standards. Mirant was fined $52,000 during the course of providing the necessary electricity supply to Washington, D.C.

A complete chronology of the PRGS incident is attached to my testimony.

The "Resolving Environmental and Grid Reliability Conflicts Act of 2012" would relieve must-run generators, like the Potomac River Generating Station, from having to pay such environmental fines, while they are operating under an Emergency Order from another agency pursuant to Section 202(c) of the Federal Power Act. Because the proposed legislation would enable generation companies to operate electric plants without fear of penalties for violations of other laws when required to do so by emergency orders of FERC and DOE, for example, I am supportive of this bill. The proposed law would also encourage generators to keep plants operational for emergency use to maintain electric reliability and prevent any premature plant retirements based solely on having to pay fines for operating in emergency situations.

I also hope that H.R. 4273 could be useful in ensuring that emergency orders can be obtained in sufficient time to compel a generating plant to continue operating. For the twenty-eight days that the Potomac River Generating Station was shutdown, the electric reliability of the Nation's Capital was imperiled because environmental regulations compelled the immediate shutdown of a must-run generating facility. It was another one-hundred and eighteen (118) days from the date the plant was first shutdown until the Department of Energy issued an emergency

order directing the Plant to resume operations. Only the voluntary decision of the Plant's owner shortened this period of heightened risk. The electricity consumers of the District of Columbia, including the offices, facilities and operations involved in all three branches of government, as noted in the DOE Order, were fortunate not to have required the additional capacity provided by the Potomac River Generating Station during the twenty-eight days before Mirant voluntarily restarted the Plant. If Mirant had not voluntarily resumed operation, that luck would have to have held out over four times as long for the proposed legislation to have an impact. It is important that the legislation also remove any barriers to ensure that the Department of Energy and FERC have the authority necessary to issue section 202(c) orders in an expedited manner.

The PRGS experience was not a comfortable one for the D.C. Commission. No state agency wants to be in a position to have to go to a federal agency and ask them to do something that is either going to cause a company to violate what another federal agency has ordered them to do, or what a neighboring state has ordered them to do. The provisions of H.R. 4273 can resolve that conflict while supporting the obligation of state utility commissions to carry out their responsibility for the reliability and safety of the electric transmission, distribution and supply system under their jurisdiction.

Thank you for allowing me this opportunity to explain to the Committee why the passage of the "Resolving Environmental and Grid Reliability Conflicts Act of 2012" is important and necessary for the future of electric reliability. I would be happy to answer any questions.

Attachment: Chronology – Summary of Events in 2005 - 2008

Date	Event Description
August 19, 2005	Mirant submitted to VA DEQ an emissions modeling study which showed emissions contributed to significant localized exceedances of the National Ambient Air Quality Standards
August 19, 2005	VA DEQ issued a letter to Mirant requesting immediate actions to protect human health and environment, including either reduced level of operation or shut down of PRGS. This letter asked Mirant to provide a summary of the actions taken by August 24, 2005
August 21, 2005	Mirant reduced production of all units at the Plant to their minimum load
August 22, 2005	Mirant issued a press release to shut down Potomac River Generation Plant on August 24, 2005
August 24, 2005	DCPSC filed emergency petition with DOE and FERC
August 24, 2005	Mirant shut down all five units of the PRGS
September 21, 2005	Mirant resumed its operation at the reduced level
December 20, 2005	DOE issued the Emergency Order, Order No. 202-05-3, expiration date October 1, 2006

Date	Event Description
January 9, 2006	FERC order issued
March 6, 2006	DCPSC Issued Order No. 13895, approving the proposed two 69 kV lines and accepting notice of the construction of two 230 kV lines
September 28, 2006	DOE extended the expiration date until December 1, 2006
November 21, 2006	DCPSC requested an extension of Order No. 202-05-3
November 22, 2006	DOE issued an order allowing for extension for effective time period to February 1, 2007
January 31, 2007	DOE issued an order allowing for extension for effective time period to July 1, 2007
March 23, 2007	VA DEQ issued NOV, date of violation – February 23, 2007
June 22, 2007	Transmission capacity was fully installed
July 2, 2008	VA DEQ issued enforcement order by consent (imposing a fine of $52,000)