

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Mirant Corporation and Its Public Utility Subsidiaries

Docket No. EC05-58-000

(June 27, 2005)

The Commission issued an order in the above-captioned proceeding on June 17, 2005. *Mirant Corporation and Its Public Utility Subsidiaries*, 111 FERC ¶ 61,425 (2005). Commissioner Kelly's dissenting statement to the order is attached.

Magalie R. Salas,  
Secretary.

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KELLY, Commissioner, *dissenting*:

This order approves Mirant's proposed disposition of jurisdictional facilities and concludes that the proposed transaction will not have an adverse effect on retail rates. However, I believe that the protestors have made a persuasive showing that the proposed transfer of assets will affect retail rates, and I disagree with the majority's conclusion that these concerns are speculative.

The Office of the People's Counsel of the District of Columbia states that the examiner in the bankruptcy proceeding estimated that if Mirant fails to perform under the contracts, Pepco will be deprived of payments totaling more than \$550 million. In my view, it is not necessary to require the protestors to make the additional showing regarding the amount "current retail rates would be affected if Pepco were allowed to recover all of the estimated \$550 million . . . ." <sup>1</sup> It is not a leap in reasoning to conclude that losses in the amount of \$550 million will likely have some adverse effect on Pepco's retail rates.

In addition, the Executive Director of the Maryland Public Service Commission (Maryland Commission) offered testimony that the Maryland Commission is likely to approve Pepco's recovery of these costs from its customers. The majority summarily rejected this claim and characterized the Maryland Commission's action as "speculative." Short of a final state commission decision approving a specific rate increase—something that most protestors would not have in hand at this stage of the proceedings—it is difficult to imagine what would be required to successfully demonstrate an adverse effect on retail rates under the majority's criteria. I believe the majority has established an insurmountable standard.

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<sup>1</sup> Order at P 43.

In my opinion, the protestors have successfully demonstrated that the most likely outcome of the transaction at issue will be an adverse effect on retail rates. This fact should have been taken into account when reviewing the transaction's consistency with the public interest. Accordingly, I respectfully dissent.

	<hr/> <p>Suedeem G. Kelly</p>
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