

**Commonwealth of Virginia**

**State Corporation Commission**

**Report to the Commission on Electric Utility Regulation  
of the Virginia General Assembly**

**and the Governor of the Commonwealth of Virginia**



**Status Report: Implementation of The Virginia  
Electric Utility Regulation Act**

**Pursuant to § 56-596 B of the Code of Virginia**

**September 1, 2009**



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## INTRODUCTION

In 2008, the General Assembly amended § 56-596 B of the Code of Virginia (or “Code”) to require the Virginia State Corporation Commission (“SCC” or “Commission”) to provide annual reports to the Governor and the General Assembly on the status of the implementation of the Virginia Electric Utility Regulation Act (the “Regulation Act”), and to offer recommendations for any actions by the General Assembly or others.<sup>1</sup> This report is tendered by the Commission in compliance with § 56-596 B.

During the past year, the SCC continued the scheduled implementation of components of the Regulation Act as required by statute. The majority of this report will highlight these activities.

We also note that the SCC, both by itself and as a member of the Organization of PJM States, Inc. (“OPSI”), continued to participate in various proceedings before the Federal Energy Regulatory Commission (“FERC”) this past year. While Virginia’s return to regulated retail rates alters the impact of PJM Interconnection, LLC (“PJM”)<sup>2</sup> electricity market outcomes on Virginia’s homes and businesses, PJM markets and processes are still important to the Commonwealth’s energy future. Nearly all of Virginia’s electric utilities are members of PJM and participate in the power markets that PJM operates. For example, Virginia’s electric cooperatives and municipal utilities and their retail customers are directly affected by exposure to PJM’s wholesale market electricity prices. Additionally, the electric investor-owned

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<sup>1</sup> The SCC is not making any legislative recommendations in this report.

<sup>2</sup> PJM Interconnection, LLC is a regional transmission organization in the mid-Atlantic area comprising all or part of 13 states: Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. PJM attempts to ensure the reliable operation of the electric power supply system, facilitate an effective wholesale electricity market, and manage a long-term regional electric transmission planning process to maintain grid reliability and relieve congestion. Additional information is available at: <http://www.pjm.com>.

utilities<sup>3</sup> continue their participation in PJM markets and purchase a significant portion of their energy needs from PJM administered wholesale markets.

Accordingly, this report addresses matters before the Commission, as well as relevant FERC proceedings.

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<sup>3</sup> Electric investor-owned utilities include Virginia Electric and Power Company d/b/a/ Dominion Virginia Power (“Dominion Virginia Power” or “DVP”), Appalachian Power Company (“Appalachian” or “APCo”), the Potomac Edison Company d/b/a Allegheny Power (“Allegheny Power” or “AP”), and Kentucky Utilities d/b/a Old Dominion Power (“KU”).

## IMPLEMENTATION OF THE REGULATION ACT

### Consumer Education

The General Assembly in 2008 directed the SCC to develop and implement an electric energy consumer education program to provide retail customers with information regarding energy conservation, energy efficiency, demand-side management, demand response and renewable energy. Since the legislation was adopted, the SCC has made significant strides to establish the consumer education program with the primary objectives to:

1. Enable consumers to make rational and informed choices regarding energy conservation and efficiency, demand-side management, and renewable energy;
2. Increase awareness of cost-effective options for conserving electricity;
3. Help households, businesses, and institutions reduce energy usage and thus costs; and
4. Foster compliance with consumer protections requirements.

Over the summer of 2008, the SCC drafted a consumer education plan to create an integrated communications strategy for a statewide program named *Virginia Energy Sense*. In the early fall, the SCC sought input on the plan from a group of interested stakeholders who participated in a 2007 Commission proceeding (PUE-2007-00049) that involved a study of short-term and long-term strategies for decreasing energy consumption within an era of growing demand for energy. The stakeholder group met with SCC Staff in Richmond in October 2008 to discuss their final recommendations on the scope and structure of the consumer education program.

The finished *Virginia Energy Sense* plan was adopted by the Commission on December 5, 2008, and reported to the Commission on Electric Utility Regulation on December 17, 2008. It provided a framework for a comprehensive statewide electric energy

consumer education program to transform the public's existing general awareness of energy conservation into widespread consumer action. The SCC and the stakeholder group developed the plan in recognition of the diverse information needs of residential, business, and institutional customers. The *Virginia Energy Sense* consumer education component of the plan is designed to present a range of topics that allows consumers to weigh carefully their options and make informed decisions regarding energy products and services.

Consistent with the legislated mandate, the SCC recommended that a five-year electricity efficiency and conservation consumer education program be initiated by late 2009. *Virginia Energy Sense* will use a tiered approach to present energy conservation topics beginning with basic no-cost/low-cost steps that the public can take with little sacrifice. From that introduction, the program will lead residential, business and institutional customers to the next step by introducing moderately-priced conservation measures, energy efficient equipment and demand response options. At the next level, electricity customers will find resources on such topics as energy efficient home construction, high performance mechanical systems, and renewable and alternative energy sources.

To support the SCC in the development and implementation of *Virginia Energy Sense*, the Commission issued a solicitation on April 1, 2009 to receive proposals from firms capable of assisting with market research, public relations, website development, grassroots outreach, and advertising components of the consumer education plan. The SCC is currently evaluating several proposals and plans to award a contract for communications services in the fall of 2009.

To meet the legislative mandate and to fund *Virginia Energy Sense* adequately, the SCC will increase the special regulatory tax beginning on January 1, 2010. The increase will be within the range already approved in law. This tax is paid by consumers along with other taxes that appear on their monthly utility bills.

## **Rules Governing Retail Access**

On November 26, 2008, the Rules Governing Retail Access to Competitive Energy Services (“Retail Access Rules”)<sup>4</sup> were revised in light of the Regulation Act and adopted by Commission Order in Case No. PUE-2008-00061.<sup>5</sup> The Retail Access Rules consist of 12 sections in Chapter 312 (20 VAC 5-312-10 *et seq.*) of Title 20 of the Virginia Administrative Code.

Under the Regulation Act, mass market retail competition was scheduled to end on December 31, 2008, while retail choice would remain for large commercial and industrial customers and for certain aggregated load beyond 2008. Although six competitive service providers (“CSP”) and five aggregators registered with DVP to provide service within its Virginia territory, only one CSP, Pepco Energy Services (“PES”), provided any service. Earlier this year, PES decided to discontinue its offering and service to customers as their existing contracts expired. PES served only three residential customers with higher-priced “green” power as of July 31, 2009. The remaining residential contracts expired in August, and to the Commission’s knowledge, PES does not plan to extend any future offers at this time. No other CSP registered with Allegheny Power, APCo or any electric cooperative to provide service within their respective Virginia service territories.

Currently, 29 electric and natural gas CSPs and aggregators have renewed their licenses with the Commission in 2009 to participate in retail access. A current list of licensed suppliers can be found at <http://www.scc.virginia.gov/power/compsup.aspx>.

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<sup>4</sup> The rules apply to a competitive electricity market and a competitive natural gas market. Our focus in this report is the electricity market.

<sup>5</sup> The Rules Governing Retail Access to Competitive Energy Services are available on the Commission’s website at: <http://www.scc.virginia.gov/division/restruct/rules.htm>.

In the revisions to § 56-582 of the Code, the General Assembly moved the expiration of capped rates to December 31, 2008, and limited the ability of most consumers to purchase electric generation service from competing suppliers thereafter. Residential retail consumers have the statutory right to purchase electric generation from competitive generation suppliers selling electric energy provided 100 percent from renewable energy resources (§ 56-577 A 5), but only if the incumbent electric utility serving these consumers does not itself offer an approved tariff for electric energy provided 100 percent from renewable energy resources. Large customers exceeding 5 MW in demand maintain the ability to shop among competitive suppliers, and nonresidential customers may seek to aggregate load up to the 5 MW threshold in order to use a competitive supplier. The Commission remains responsible under §§ 56-587 and 56-588 of the Code of Virginia for licensing suppliers and aggregators interested in participating in the retail access programs in Virginia.

On May 1, 2009, DVP filed its petition with the Commission requesting waivers from certain provisions of the Retail Access Rules. Specifically, DVP requested waivers of Retail Access Rules 20(M), 20(N), 80(E) and 90(J)(3) together with partial waivers of 90(1)(3) and 90(J)(1) to the extent that those rules apply to outdoor lighting service.

On June 1, 2009, the Commission issued its Order for Notice and Comment docketing the petition as Case No. PUE-2009-00032 and inviting comment on the application. Only one person submitted comments to the Commission as directed. On July 2, 2009, the Commission Staff filed its Staff Report and did not object to the requested waivers in Dominion's petition. On July 31, 2009, the Commission issued its Order granting the requested waivers.

On June 23, 2009, Washington Gas Energy Services ("WGES"), a CSP registered to provide electric and gas services filed its petition with the Commission also seeking a waiver from certain provisions of the Retail Access Rules. WGES currently provides gas service to

customers in Washington Gas and Columbia Gas territories. On July 14, 2009, the SCC issued its Order for Notice and Comments and docketed the petition as Case No. PUE-2009-00057. Additional company information was submitted on August 7, 2009. Public comments from one party were submitted on August 14, 2009. Staff's comments were filed on August 21, 2009.

### **Renewable Tariff**

One component of the Regulation Act redefines the eligibility of customers to choose an electricity CSP. After the termination of capped rates on December 31, 2008, large non-residential customers with at least 5 MW of load continue to have the ability to choose any competitive electricity supply. Smaller non-residential customers may petition the Commission for permission to aggregate such load to meet the 5 MW threshold to maintain the ability to choose a CSP.

As noted above, residential customers retain the ability to choose a CSP offering electric generation supply from a 100% renewable resource, provided that the local distribution company does not itself offer a Commission-approved tariff for electricity supplied 100% from renewable energy pursuant to § 56-577 A 5 of the Regulation Act.

Two investor-owned utilities submitted applications to the Commission for approval of a tariff to provide renewable energy options. DVP submitted its initial application on May 29, 2008, and a supplemental application on June 11, 2008, for approval of its Rider G Renewable Energy Program, Case No. PUE-2008-00044. APCo submitted its application on July 1, 2008, for approval of its Renewable Power Rider, Case No. PUE-2008-00057.

On December 3, 2008, the Commission issued orders approving the tariffs for voluntary renewable energy options for customers of DVP and APCo. In both programs, customers have the opportunity to purchase renewable energy certificates ("RECs") for some, or all, of the

electricity that they consume from renewable sources such as wind, solar, falling water, biomass, energy from waste, wave motion, tides, and geothermal power.

The companies will purchase RECs procured from “green” power sources equivalent to the amount of renewable energy purchased through customer contributions. A customer would see a separate line item on his or her monthly bill that would show the additional costs for participating in the renewable energy program.

The Commission, however, found that the DVP and APCo renewable energy options fail to meet Virginia’s statutory definition for electric energy provided 100 percent from renewable energy. This clarification thus establishes that customers in these utilities’ service territories may purchase 100 percent renewable electricity supply service from competitive suppliers licensed by the Commission. To the Staff’s knowledge, no CSP has made any such offering, to date.

### **Distributed Generation**

Distributed generation involves moving the generation of electricity away from large central units to smaller units located closer to the point of consumption. After receiving comments from interested persons, the Commission, in Case No. PUE-2008-00004, entered an order on May 8, 2009, adopting Regulations Governing Interconnection of Small Electric Generators in accordance with § 56-578 C of the Code of Virginia.

### **Net Metering**

As reported last September, the Commission, in Case No. PUE-2008-00008, issued its Order Adopting Final Regulations on August 7, 2008. Subsequently, during the 2009 legislative session, several amendments to § 56-594 of the Code of Virginia were enacted regarding the capacity limit of a nonresidential facility, an eligible customer-generator choosing

time-of-use tariffs, and the option to sell RECs associated with renewable customer-generators to the electric utility. Commission Staff has begun an informal dialogue with interested stakeholders regarding these amendments and the potential need to revise the Final Regulations in response to these amendments.

### **Generation and Transmission Additions**

In addition to the generating plants built in Virginia over the past decade, certificates to construct four additional facilities were granted by this Commission in the past 18 months. The respective projects, including a 39 MW wind turbine facility, a 150 MW combustion turbine extension, a 585 MW circulating fluidized bed coal facility, and a 580 MW combined cycle facility, are in various stages of development. Additionally, there are applications for two new renewable facilities using landfill gas pending before the Commission. The table at the end of this section provides further detail regarding such applications.

DVP filed an application with the U.S. Nuclear Regulatory Commission (“NRC”) on November 27, 2007, for a Combined Operating License (COL) to build and operate a new nuclear reactor at its North Anna Power Station in central Virginia. The NRC docketed the application on January 29, 2008, and began their environmental and safety analyses which, in addition to a hearing on the application, are expected to continue into early 2011.

Virginia utilities continue to expand their transmission facilities. Ten transmission lines that were granted certificates of public convenience and necessity by the Commission are now under construction. Three certificate applications are currently pending before the Commission.

As a result of PJM’s Regional Transmission Expansion Planning process focusing on 2011 needs, PJM has approved two proposed 500 kV, or above, bulk transmission projects as what PJM describes as the best solutions for addressing regional transmission reliability

concerns (including northern Virginia) by improving west-to-east power flows. The first is a 500kV transmission line project from 502 Junction in Pennsylvania to Mount Storm, West Virginia, proposed to be built by an affiliate of Allegheny Power, known as TrAILCo<sup>6</sup> that connects a joint TrAILCo/DVP 100-mile, 500 kV transmission line from Mount Storm, WV to Loudoun County in Virginia. These two lines in combination are referred to as the TrAILCo project. Pursuant to a FERC order, which is subject to further litigation, the cost of these lines will be allocated proportionally to all loads in PJM, including those in Virginia.

A Commission Hearing Examiner issued his report to the Commission on July 29, 2008 in Case Nos. PUE-2007-00031 and PUE-2007-00033, recommending approval of the Virginia portion of the TrAILCo transmission line. His recommendation was conditioned upon the receipt of regulatory approval in West Virginia<sup>7</sup> and Pennsylvania.<sup>8</sup> On October 7, 2008, the Commission issued an Order authorizing construction of the line and granting the applicable certificates of public convenience and necessity, again conditioned upon regulatory approvals in West Virginia and Pennsylvania. Regulatory approvals in West Virginia and Pennsylvania have since been granted. The Commission's Order is presently under appeal before the Supreme Court of Virginia.

PATH Allegheny Virginia Transmission Corporation ("PATH-VA") submitted an application on May 19, 2009, for SCC approval and certification of a portion of a proposed 765 kV transmission line stretching from West Virginia to Maryland. PATH-VA is part of a joint venture between American Electric Power and Allegheny Energy, Inc. The transmission line is referred to as the Potomac-Appalachian Transmission Highline ("PATH"). Construction of the PATH Project was directed by PJM under the PJM Regional Transmission Expansion Plan.

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<sup>6</sup> Or, the Trans-Allegheny Interstate Line Company.

<sup>7</sup> The Public Service Commission of West Virginia on August 1, 2008, approved Allegheny Power's plans to build the portion of the TrAILCo project traversing across northern West Virginia.

<sup>8</sup> On November 13, 2008, the Pennsylvania Public Utility Commission approved the 502 Junction Facilities

Reportedly, the proposed line is designed to relieve transmission congestion and enhance west-to-east power flows and reliability. The Virginia portion of the 765 kV PATH line is proposed to pass through Loudoun, Frederick and Clarke Counties. The Commission docketed this application as Case No. PUE-2009-00043. Local public hearings were held in Winchester and Purcellville in early August 2009 and an evidentiary hearing is scheduled on January 19, 2010.

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portion of the TrAILCo line.

**Summary of Construction Activity in Virginia**  
**As of August 1, 2009**

<i>Company/Facility</i>	<i>Size</i>	<i>Location</i>	<i>Docket</i>	<i>Fuel</i>	<i>C.O.D.*</i>	<i>Hearing</i>	<i>Order</i>
<b><u>Power plants granted SCC certificates</u></b>							
Highland New Wind Development	39 MW	Highland County	PUE-2005-00101	19-wind	fall 07	7/17/07	SCC app 12/20/07
Dominion Virginia Power	150 MW	Caroline County	PUE-2007-00032	1-dualCT	sum 09	none	SCC app 3/19/08
Dominion Virginia Power	585 MW	Wise County	PUE-2007-00066	CFBCoal	sum12	1/8/08	SCC app 3/31/08
Dominion Virginia Power	580 MW	Buckingham County	PUE-2008-00014	Gas CC	sum 10	9/30/08	SCC app 3/27/09
<b>1354 MW</b>							
<b><u>New power plants that have applied for a SCC certificate</u></b>							
GPC Green Energy, LLC	20 MW	Suffolk County	PUE-2008-00085	2-LFGas	fall 09	4/28/09	pending
Richmond Energy, LLC	6.4 MW	Henrico County	PUE-2009-00036	1-LFGas			pending
<b>26.4 MW</b>							

\*Commercial Operation Date

<i>Company/Facility</i>	<i>Size</i>	<i>Location</i>	<i>Docket</i>	<i>C.O.D.*</i>	<i>Order</i>
<b><u>Transmission lines</u></b>					
DVP Brambleton-Greenway	230kV – 8 mi	Loudoun	PUE-2002-00702	9/09	10/8/04 approved, under construction
DVP Fort Belvoir-EPG	230kV – 0.5 mi	Stafford	PUE-2008-00072	3/10	approved, under construction
DVP Beaumeade-NIVO**	230kV – 1 mi	Loudoun	PUE-2008-00063	4/10	approved 5/20/09, under construction
DVP Ladysmith	230kV - 5mi	Caroline	PUE-2008-00002	5/10	approved 9/5/08, under construction
DVP Garrisonville Phase 1***	230kV - 5mi	Stafford	PUE-2006-00091	5/10	4/8/08 approved, under construction
DVP Pleasant View-Hamilton**	230kV- 16 mi	Loudoun	PUE-2005-00018 and PUE-2008-00042	6/10	2/18/08 & 5/28/08 approved, under construction
DVP Clinch River-VA City	138kV – 9 mi	Wise & Russell	PUE-2007-00111	11/10	7/9/08 approved, under construction
DVP Elmont-Chickahominy Phase 2	230kV – 16 mi	Charles City, Henrico, Hanover	PUE-2009-00045	11/10	pending
DVP Garrisonville Phase 2***	230kV - 5mi	Stafford	PUE-2006-00091	12/10	4/8/08 approved, under construction
DVP Carson-Suffolk-Thrasher	500/230kV-82 mi	Dinwiddie-Suffolk	PUE-2007-00020	6/11	10/31/08 approved, under construction
DVP Meadowbrook-Loudoun	500kV	Northern Virginia	PUE-2007-00031	6/11	10/7/08 approved, under construction
DVP Remington-Gainesville	230kV – 24 mi	Fauquier, Prince William	PUE-2009-00050	6/11	pending
DVP-Hayes-Yorktown	230kV – 8 mi	Gloucester & York	PUE-2009-00049	6/12	pending
APCo Lake Forest	138kV – 3 mi	Botetourt	PUE-2007-00113	6/09	9/24/08 approved, under construction
APCo Sunscape	138kV – 3 mi	Roanoke City	PUE-2008-00053	6/10	3/27/09 approved, under construction
APCo Lockhart Extension	138kV – 900 ft	Dickenson	PUE-2008-00116	12/10	pending
APCo Huntington Court-Roanoke	138kV – 6 mi	Roanoke City	PUE-2008-00096	6/11	pending
TrAILCo Mt. Storm – Meadowbrook	500kV – 28 mi	Fredrick, Warren	PUE-2007-00033	6/11	10/7/08 approved, under construction
PATH Amos – Kemptown	765kV – 31 mi	Loudoun, Frederick, Clarke	PUE-2009-00043	6/14	pending, hearing on 1/19/10

\* Commercial Operation Date

\*\* Underground pilot project pursuant to Chapter 799 of the 2008 Acts of Assembly (House Bill 1319)

\*\*\* Underground pilot project pursuant to Commission Order

### **Certificate of Public Convenience and Necessity Requirements**

On July 25, 2008, the Commission initiated a rulemaking proceeding, Case No. PUE-2008-00066, prompted by statutory changes to § 56-580 D of the Code of Virginia pertaining to the Commission's approval and certification of any electric generation facility proposed by utilities for construction and operation in the Commonwealth. The Commission received comments from six interested persons regarding the Staff's proposed amendments to the Commission's Generation Rules reflecting: (i) the re-established showing of "need" required of Virginia's regulated electric utilities as a result of the General Assembly's 2007 amendments to § 56-580 D; (ii) Virginia's newly enacted integrated resource planning ("IRP") statutes; and (iii) expedited review of proposed electric generation facilities of 5 MW or less in capacity. On December 23, 2008, the SCC issued its Order Adopting Regulations effective January 15, 2009, consisting of five sections in Chapter 302 (20 VAC 5-302-10 *et seq.*) of Title 20 of the Virginia Administrative Code.

### **Integrated Resource Planning Requirements**

Chapter 476 (Senate Bill 311) of the 2008 Acts of Assembly established a mandatory Integrated Resource Plan ("IRP") requirement for Virginia's jurisdictional electric utilities.<sup>9</sup> As defined by § 56-597 of the Code, an IRP is "a document developed by an electric utility that provides a forecast of its load obligations and a plan to meet those obligations by supply side and demand side resources over the ensuing 15 years to promote reasonable prices, reliable service, energy independence, and environmental responsibility."

On November 12, 2008, pursuant to § 56-597 *et seq.* of the Code of Virginia, the Commission issued an Order Proposing Guidelines and Directing the Filing of Integrated Resource Plans (Case No. PUE-2008-00099). This Order directed each investor-owned electric

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<sup>9</sup> Senate Bill 311 added a new Chapter 24 (§ 56-597 *et seq.*) in Title 56 of the Code of Virginia.

utility to develop and file an IRP by September 1, 2009 and, pursuant to § 56-599 A of the Code, proposed guidelines for use by each electric utility in developing its IRP. The Order also afforded interested persons an opportunity to comment on the proposed guidelines.

As mandated by § 56-599 A of the Code, the Commission developed "guidelines" rather than filing "requirements" issued as part of the Virginia Administrative Code. The following language was included in the guidelines to clarify this point: "To the extent the information requested is not currently available or is not applicable, the utility will clearly note and explain this in the appropriate location in the plan, narrative, or schedule." Moreover, § 56-599 C of the Code permits the Commission to modify the guidelines after gaining experience by issuing subsequent guidelines for updated and revised IRPs. Similarly, the guidelines do not limit the information that the Commission may determine is reasonable and relevant as part of the utilities' subsequent, actual IRP cases to be filed by September 1, 2009.

On December 23, 2008, the Commission issued a Final Order approving the guidelines. Each IRP to be filed with the Commission by September 1, 2009, must conform to the Commission's Rules of Practice and Procedure in effect at the time of the filing. Additionally, each electric utility is required to provide a copy of its IRP filed with the SCC to the chairmen of the House Committee on Commerce and Labor, Senate Commerce and Labor Committee, and the Commission on Electric Utility Regulation.

### **Renewable Portfolio Standards**

As evidenced by the Governor's Virginia Energy Plan and also by actions taken by the General Assembly to provide, among other things, incentives for regulated electric utilities to implement or increase the sale of electricity from renewable sources through development of a program emphasizing a renewable energy portfolio standard ("RPS"), the Commonwealth's interest in developing alternative energy sources continues to grow. In particular, the General

Assembly's 2007 enactment of § 56-585.2 provided economic incentives for Virginia's electric utilities to provide increasing amounts of electric energy from renewable sources. Effectively, this legislation created a voluntary renewable portfolio standard ("RPS") for Virginia.

As reported last year, the SCC issued a Final Order on August 11, 2008, approving APCo's application for participation in a voluntary RPS program. In addition, DVP submitted an application on July 28, 2009, seeking approval to participate in a voluntary RPS program. On August 26, 2009, the Commission issued an Order for Notice and Comment providing an opportunity for comments or request for hearing by October 16, 2009 and directing Staff to file its report by November 20, 2009.

### **Conservation, Energy Efficiency and Demand Response**

#### **State Corporation Commission**

In 2009, the Virginia General Assembly enacted Chapters 752 and 855 of the 2009 Acts of Assembly containing the following provisions:

2 . § 1 . That the State Corporation Commission shall conduct a formal public proceeding that will include an evidentiary hearing for the purpose of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric utility in the Commonwealth. As used in this act, "generating electric utility" means a public service corporation that serves electric load at retail, has rates regulated by the State Corporation Commission, and that, as of January 1, 2009, directly owns and operates electric generation facilities in excess of six megawatts, other than diesel generators used for voltage control. The determination of what consumption and peak load reductions can be achieved cost-effectively shall consider standard industry recognized tests. The Commission shall determine which test should be given greatest weight when preparing a cost-benefit analysis of a demand-side management program, taking into consideration the public interest and the potential impact on economic development in the Commonwealth.

§ 2. That the State Corporation Commission shall report its findings to the Governor and the General Assembly on or before November 15, 2009. Such report shall (i) indicate the range of consumption and peak load reductions that are potentially achievable by each generating

electric utility, the range of costs that consumers would pay to achieve those reductions, and the range of financial benefits or savings that could be realized if the targets were met over a 15-year period; and (ii) determine a just and reasonable ratemaking methodology to be employed to quantify the cost responsibility of each customer class to pay for generating electric utility-administered demand-side management programs. This evaluation shall include an examination of the class cost responsibility methods used in other jurisdictions, including, but not limited to, the allocation of costs based on projected class benefits and the allocation of costs based on program participation. The analysis shall also examine other jurisdictions that permit certain nonresidential customers or classes of customers to either be exempt from paying for the utility demand-side management programs or to opt out of participating in or paying for the utility demand-side management programs, and determine if it would be in the public interest for the Commonwealth to have a similar policy.

The Commission issued a scheduling order on April 30, 2009, establishing Case No. PUE-2009-00023, to conduct the evidentiary proceeding directed by this legislation. The Commission is presently seeking input from the broadest range of persons and organizations having an interest in energy conservation within the Commonwealth. The Commission found that each “generating electric utility” as defined in the legislation should be made a respondent in this proceeding. Accordingly, DVP, APCo and KU are named as respondents. All respondent generating electric utilities filed testimony and supporting briefs by June 30, 2009, and other parties proposing to participate as respondents filed the same by July 31, 2009. Staff is directed to file testimony and a report with any supporting legal briefs concerning its investigation of the issues raised on or before September 9, 2009. A public hearing is scheduled for September 23, 2009.

### **Dominion Virginia Power**

Subsequent to last year’s report, DVP concluded most of its pilot programs approved in Case No. PUE-2007-00089. On March 27, 2009, DVP filed its final report on the status of the pilot programs. DVP filed its first follow up report on July 1, 2009, to provide the status

updates of the two continuing pilots, the Programmable Thermostats with Advanced Metering Infrastructure and Critical Peak Pricing Pilot and the Distributed Generation/Load Curtailment for Large Non-residential Customers Pilot. DVP will continue to file such quarterly reports until the completion of these pilots.

On July 28, 2009, DVP asked the Commission to approve a broad offering of programs that DVP states will enable customers to reduce their energy usage and save an estimated \$1.2 billion over 15 years. According to DVP, the plan provides a portfolio of 12 energy-saving and demand-reducing programs designed to meet the needs of its customers and move it toward meeting the 10 percent voluntary energy conservation goal enacted by the Virginia General Assembly and the Governor. DVP also states that it will provide environmental benefits in a cost-effective manner that will also translate into financial savings to customers. A major portion of the energy, demand and cost savings is to be achieved by digital “smart” meter technology currently being deployed throughout the company’s service area. DVP states that the installation by 2013 of approximately 2.4 million “smart” meters will enable the company to save energy by delivering it more efficiently to customers. DVP’s first major smart meter project is now under way in the Charlottesville area, making that region the first in the state – and one of the first in the nation – to reportedly benefit from the new technology.

Along with its application for approval to implement its DSM portfolio, DVP filed for approval of two rate adjustment clauses, Riders C1 and C2, with respect to its DSM portfolio. DVP is seeking to recover the capital costs and operating expenses of designing, implementing and operating the proposed DSM programs for 2009, the first quarter of 2010, and the rate period April 1, 2010 – March 31, 2011. DVP also seeks to recover an equity return on invested capital and a margin on the projected operating expenses associated with energy efficiency programs for costs incurred after July 1, 2009, pursuant to § 56-585.1 5 C of the Code of

Virginia. The plan must be approved by the SCC before the programs can be implemented. If approved, most of the programs would be available to customers by next summer.

### **Appalachian Power**

Section 3 of Chapters 752 and 855 of the 2009 Acts of Assembly requires the Commission to approve "any demand response program proposed to be offered to retail customers" by a generating electric utility "that has elected to meet its capacity obligations of a regional transmission entity through a fixed capacity resource requirement as an alternative to other capacity mechanisms," if the Commission finds the proposed demand response program "to be effective, reliable, and verifiable as a capacity resource" and "to be in the public interest."

On July 15, 2009, APCo, filed an application with the Commission requesting permission to offer two Demand Response Riders ("DR Riders") to its Virginia retail customers pursuant to the section cited above. APCo also requested that the Commission, upon approval of the DR Riders, disallow any future participation by APCo's customers in other demand response programs offered by PJM, stating that such a disallowance is necessary to ensure the reliability and effectiveness of the DR Riders. On August 3, 2009, the Commission issued an Order for Notice and Comment establishing Case No. PUE-2009-00068 to consider APCo's application.

### **Additional Regulatory/Rate Proceedings**

#### **Appalachian Power**

##### *General Rate Cases*

At the time of the last Commission report to the CEUR, APCo's May 30, 2008, application<sup>10</sup> for a general rate increase pursuant to Chapter 10 of Title 56 and § 56-582 of the Code of Virginia, and the Commission's Rate Case Rules was pending before the Commission. APCo requested an increase in its annual base revenues of \$207.9 million, or 23.9%, based on a return on common equity ("ROE") of 11.75%. APCo implemented its proposed rate request on an interim basis on October 27, 2008.<sup>11</sup> The Commission issued its Final Order on November 17, 2008 adopting a stipulation offered by several case participants,<sup>12</sup> authorizing an increase in base revenues of \$167.9 million based on a return on equity ("ROE") of 10.2%, and requiring refunds of revenues collected from interim rates in excess of the final rates.

On July 15, 2009, APCo filed an application<sup>13</sup> for a statutory review of rates pursuant to § 56-585.1 A of the Code. Such application requests an increase in annual generation and distribution base revenues of \$169.2 million based on a ROE of 13.35%. The requested ROE includes a 0.85% performance incentive as provided for in § 56-585.1 A 2 c of the Code. APCo proposes that its rates become effective on December 12, 2009.<sup>14</sup> On July 23, 2009, APCo filed a Motion for Leave to File Supplemental Direct Testimony and Schedules in response to a ruling made by the Commission in Case No. PUE-2009-00019, *Application of Virginia Electric and Power Company for a 2009 statutory review of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*. By order dated

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<sup>10</sup> Case No. PUE-2008-00046, *Application of Appalachian Power Company, For an increase in electric rates*.

<sup>11</sup> Under § 56-238 of the Code of Virginia the Commission can only suspend rates for 150 days from the filing of a complete application. After that time a utility may implement its requested rate increase. If the Commission later approves a lower amount, the utility must refund any amounts overcollected with interest.

<sup>12</sup> The Stipulation was offered at the October 29, 2008 hearing by APCo, Old Dominion Committee for Fair Utility Rates, VML/VACo, Wal-Mart, Kroger and the Staff. The Attorney General Office of Consumer Counsel did not sign the Stipulation, but stated that it did not oppose the agreement contained therein. Steel Dynamics opposed the Stipulation.

<sup>13</sup> Case No. PUE-2009-00030, *Application of Appalachian Power Company, For a 2009 statutory review of rates pursuant to § 56-585.1 A of the Code of Virginia* ("APCo's 2009 Statutory Review case").

<sup>14</sup> December 12, 2009 is based on a 150 day suspension period from the July 15, 2009 filing date. However, Staff found APCo's application to be incomplete as filed. Supplemental information was filed on July 23, 2009 completing the Application.

July 27, 2009, the Commission granted APCo's motion and APCo supplemented its filing on August 14, 2009.

The Commission issued its Order for Notice and Hearing on August 26, 2009, which, among other things, allows (but does not obligate) APCo to place its proposed rates in effect, subject to refund, on December 12, 2009. This Order also schedules hearings in November in Abingdon and Rocky Mount, within APCo's service territory, to receive public comment on the application. A hearing will be held on March 16, 2010, in Richmond to hear public comment and to receive evidence from case participants.

*Adjustments to Capped Rates for Environmental and Reliability ("E&R") Costs*

Also pending before the Commission at the time of its last report to the CEUR was APCo's May 30, 2008, application<sup>15</sup> to adjust its capped rates pursuant to § 56-582 B (vi) of the Code of Virginia to revise its surcharge for the recovery of its E&R costs. In its application, APCo requested that its E&R Factor be revised effective January 1, 2009 to recover approximately \$66.5 million of E&R costs incurred during the period October 2006 to December 2007. The proposed E&R Factor would be effective for one year, through December 31, 2009. The case participants presented a Stipulation at the hearing for Commission consideration that resolved all issues in the proceeding and proposed a reduced revenue increase of \$60.6 million to be recovered during calendar year 2009. The Commission issued its Final Order October 14, 2008, adopting the Stipulation.

On July 15, 2009 APCo filed an application<sup>16</sup> to adjust its E&R Factor to recover incremental environmental and reliability costs incurred during calendar year 2008, resulting in a net revenue requirement of \$102.2 million. APCo's request is based on a ROE of 12.5% and

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<sup>15</sup> Case No. PUE-2008-00045, *Application of Appalachian Power Company, For adjustment to capped electric rates pursuant to § 56-582 B (vi) of the Code of Virginia.*

<sup>16</sup> Case No. PUE-2009-00039, *Application of Appalachian Power Company, For recovery of environmental and reliability costs.*

proposes that such costs be recovered over a 12-month period beginning January 1, 2010. This represents an annual revenue increase of \$41.6 million over the level collected via the E&R Factor in place during calendar year 2009. The Commission issued its Order for Notice and Hearing on June 3, 2009, which, among other things, directed APCo to publish notice, and established a procedural schedule including a public hearing date of October 1, 2009.

*Fuel cases*

APCo's July 18, 2008, application<sup>17</sup> to increase its fuel factor from 1.418 cents/kWh to 2.255 cents/kWh effective September 1, 2008, in accordance with § 56-249.6 of the Code was pending at the time of the Commission's last report to the CEUR. The Commission issued an Order Establishing 2008-2009 Fuel Factor Proceeding on July 21, 2008, which, among other things, allowed an interim Factor of 2.255 cents/kWh to take effect on September 1, 2008. The Commission's Order Establishing Fuel Factor was issued on October 15, 2008 and approved a fuel factor of 2.160 cents/kWh for service rendered on and after October 20, 2008.

APCo's most recent fuel factor application,<sup>18</sup> filed on May 15, 2009, proposed to increase its fuel factor from 2.160 cents/kWh to 3.381 cents/kWh, an estimated revenue increase of \$226.1 million over a 14-month period beginning July 1, 2009. After conducting public hearings in Wytheville and Richmond regarding this application, the Commission issued its Order Establishing Fuel Factor on August 3, 2009, which, among other things, adopted a reduced fuel factor of 2.876 cents/kWh effective seven days after the date of the order.

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<sup>17</sup> Case No. PUE-2008-00067, *Application of Appalachian Power Company, To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia.*

<sup>18</sup> Case No. PUE-2009-00038, *Application of Appalachian Power Company, To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia.*

### *Transmission Rate Adjustment Factor*

On July 15, 2009, APCo filed an application<sup>19</sup> pursuant to § 56-585.1 A 4 of the Code for a transmission rate adjustment clause (“TRAC”) to recover costs it is charged by PJM. APCo proposed that its TRAC recover \$93.6 million. The application states that APCo’s current base rates, established in PUE-2008-00046, include \$69.4 million of transmission costs which will be transferred to the TRAC, resulting in a net annual revenue increase of \$24.2 million. The Company requests that the proposed TRAC become effective on December 12, 2009, the same implementation date proposed for rates in APCo’s 2009 Statutory Review case, discussed above, to avoid any duplication or omission of transmission costs in rates. The Commission issued an Order for Notice and Hearing on July 24, 2009, which, among other things, scheduled a hearing for September 10, 2009.

### **Dominion Virginia Power**

#### *General Rate Case*

On March 31, 2009, DVP filed an application<sup>20</sup> pursuant to § 56-585.1 A 1 of the Code for a 2009 statutory review of rates. On April 21, 2009 the Commission issued its Order for Notice and Hearing which, among other things, allows (but does not require) DVP to implement interim rates on September 1, 2009, and scheduled a public hearing for January 20, 2010. Since the application was filed, the Commission has granted two *Motions in Limine*<sup>21</sup> and, as a result of those rulings, Dominion Virginia Power re-filed its application on July 24, 2009 (“July 24 Revised Application”). The July 24 Revised Application proposes an annual

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<sup>19</sup> Case No. PUE-2009-00031, *Application of Appalachian Power Company, For approval of rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia.*

<sup>20</sup> Case No. PUE-2009-00019, *Application of Virginia Electric and Power Company For a 2009 Statutory Review of rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia.*

<sup>21</sup> June 29, 2009 Order on Consumer Counsel *Motion in Limine* and July 14, 2009 Order on Commission Staff’s *Motion in Limine.*

revenue increase of \$250.2 million based on a ROE of 14.0%. The ROE includes a 100 basis point performance incentive pursuant to § 56-585.1 A 2 c of the Code.

*Rate adjustment factors to recover generation facility costs*

Wise County Facility

On March 31, 2008, the Commission issued a Final Order that, among other things: (1) approved DVP's application<sup>22</sup> for a certificate of public convenience and necessity to construct and operate a generation facility ("Wise County Facility"); (2) established a general rate of return on equity of 11.12% and, authorized an additional 100 basis points of return above the 11.12% ROE for the Wise County Facility; and (3) approved a rate rider ("Rider S") to be effective January 1, 2009, subject to true-ups beginning in 2010. At the date of the Commission's last report to the CEUR the Commission's March 31, 2008 Final Order had been appealed to the Supreme Court of Virginia. The Supreme Court of Virginia affirmed the Commission's decision on May 6, 2009.

On March 31, 2009, DVP filed an application for another generation rate rider associated with the Wise County Facility pursuant to § 56-585.1 A 6 of the Code. This generation rider application<sup>23</sup> proposes to revise Rider S, discussed above, to recover projected 2010 carrying costs and to continue recovery of AFUDC accrued prior to 2009 associated with the Wise County Facility. The application states that the Wise County Facility is generally progressing on schedule and on budget. The projected budget remains at \$1.8 billion, excluding financing costs. DVP's revised Rider S is designed to collect \$182.5 million during calendar year 2010, an increase of \$99.2 million over the 2009 Rider S level. DVP proposes a

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<sup>22</sup> Case No. PUE-2007-00066, *Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity to construct and operate an electric generation facility in Wise County, Virginia, and for approval of a rate adjustment clause under §§ 56-585.1, 56-580 D, and 56-46.1 of the Code of Virginia.*

<sup>23</sup> Case No. PUE-2009-00011, *Application of Virginia Electric and Power Company For approval of the Annual Filing as required by Final Order of the State Corporation Commission in Case No. PUE-2007-00066 granting approval of a rate adjustment clause, Rider S, with respect to the Virginia City Hybrid Energy Center generation*

ROE of 14.5% which is comprised of the general ROE of 13.5% proposed in DVP's 2009 Statutory Review case and a 100 basis point incentive required by § 56-585.1 A 6 of the Code. The Commission issued its Order for Notice and Hearing on April 21, 2009 which, among other things, scheduled an August 18, 2009 hearing, and determined that to provide for judicial economy issues relating to the establishment of a general ROE should be addressed in DVP's 2009 Statutory Review case.

#### Bear Garden Facility

DVP also filed a second generation rider application<sup>24</sup> on March 31, 2009, relating to the Bear Garden Generating Facility. The factor, designated Rider R, is designed to recover projected carrying costs for calendar year 2010 and allowance for funds during construction accrued during 2009. DVP states that the total cost of the Bear Garden Generating Facility, excluding financing costs, is \$619 million. The proposed Rider R is designed to recover \$77.3 million during 2010, based on a 14.5% ROE (general ROE of 13.5% and an incentive of 100 basis points). The Commission issued its Order for Notice and Hearing on April 21, 2009 which, among other things, scheduled an August 11, 2009 hearing, and determined that to provide for judicial economy issues relating to the establishment of a general ROE should be addressed in DVP's 2009 Statutory Review case.

DVP expects to re-file its generation riders annually to recover the next year's projected costs and to true-up the prior year's factor for any over- or under cost recovery.

#### *Fuel case*

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*and transmission facilities located in Wise County, Virginia.*

<sup>24</sup> Case No. PUE-2009-00017, *Application of Virginia Electric and Power Company For approval of a rate adjustment clause pursuant to § 56-585.1 A of the Code of Virginia with respect to the Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line.*

On March 31, 2009, DVP filed an application<sup>25</sup> to decrease its fuel factor from 3.893 cents/kWh to 3.529 cents/kWh effective July 1, 2009. The proposed decrease includes recovery of approximately \$505 million of the June 30, 2009 deferred fuel balance (“Deferral Portion”) that is eligible for recovery during the twelve month period beginning July 1, 2009, conforming to the limitation set out in § 56-249.6 C of the Code that the fuel factor rate associated with recovery of the Deferral Portion shall not increase total residential rates in effect on June 30, 2009 by greater than 4%. On April 21, 2009, the Commission issued its Order Establishing 2009-2010 Fuel Factor Proceeding which, among other things, allowed DVP to implement its proposed fuel factor on July 1, 2009. On July 10, 2009, DVP and the Office of Attorney General Division of Consumer Counsel (“Consumer Counsel”) filed a Joint Motion for Continuance seeking a delay in the July 16, 2009 hearing until the week of September 14, 2009 to allow DVP, Consumer Counsel, and other case participants an opportunity to narrow the issues in this proceeding and the other applications made by DVP on or around March 31, 2009.<sup>26</sup> The Commission issued its Order on Motion for Continuance on July 14, 2009, continuing the July 16, 2009 hearing date to September 1, 2009. The July 16, 2009 hearing was convened to receive public comments.

#### *Transmission Rate Adjustment Factor*

Pursuant to § 56-585.1 A 4, DVP filed an application<sup>27</sup> on March 31, 2009, to recover costs it is charged by its regional transmission provider, PJM., through a rate adjustment clause (“Rider T”). DVP proposed that Rider T recover \$227.3 million in annual revenues and that its proposed Rider T become effective on September 1, 2009, the same implementation date

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<sup>25</sup> Case No. PUE-2009-00016, *Application of Virginia Electric and Power Company, To revise its fuel factor pursuant to Section 56-249.6 of the Code of Virginia.*

<sup>26</sup> Including Case Nos. PUE-2009-00011, PUE-2009-00016, PUE-2009-00017, PUE-2009-00018 and PUE-2009-00019.

<sup>27</sup> Case No. PUE-2009-00018, *Application of Virginia Electric and Power Company, For approval for a rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia.*

proposed for rates in DVP's 2009 Statutory Review. The application was heard by the Commission on June 16, 2009, and the Commission issued its Final Order on June 29, 2009, which, among other things, approved a modified Rider T authorizing the recovery of \$217.8 million in revenue over twelve months to be effective September 1, 2009. Because the surcharge implemented by Rider T is designed to recover \$148.4 million in transmission costs that had been recovered in DVP's base rates, there is a corresponding reduction in base rates.

### *Bidding Program*

On August 8, 2008, Dominion Virginia Power submitted an application to abandon its established bidding program pursuant to 20 VAC 5-301-10 *et seq.* in addition to revise its cogeneration tariff pursuant to PURPA Section 210. A hearing regarding this application, docketed as Case No. PUE-2008-00078, occurred on April 17, 2009, and post hearing briefs were filed on May 26, 2009.

### **Allegheny Power**

#### *General rate case*

On February 24, 2009, the Commission issued an order requiring that Allegheny Power file an application for review of its rates, terms and conditions pursuant to § 56-585.1 A of the Code on October 1, 2009 (AP's 2009 Statutory Review case). On June 2, 2009 Allegheny Power filed a Motion to Delay the Filing Date of the Rate Case Application<sup>28</sup> requesting a delay in the required filing date pending the outcome of an anticipated filing to be made pursuant to the Utility Transfers Act, § 56-88 *et seq.* of the Code. Allegheny Power states in the Motion that it has entered into Asset Purchase Agreements, dated May 4, 2009, with two Virginia electric cooperatives that will render AP's 2009 Statutory Review case unnecessary. Alternatively, Allegheny Power requests that the Commission waive the requirements of its

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<sup>28</sup> Case No. PUE-2009-00046, *Application of Potomac Edison Company d/b/a Allegheny Power For a 2009*

Rules Governing Utility Rate Applications and Annual Informational Filings insofar as the rules require the filing of supporting testimony, exhibits and schedules. The Commission issued an Order on Motion on July 29, 2009, granting the delay if a proposed joint petition for the Asset Transfer Proceeding is filed by September 15, 2009. If it is not, the general rate case is expected to be filed on October 1, 2009.

*Fuel case*

On April 29, 2009 Allegheny Power filed an application<sup>29</sup> to increase its levelized purchased power factor (“LPPF”) effective July 1, 2009. If granted, the increase will produce additional annual revenues of \$19.4 million, a revenue increase of approximately 8.3%. On May 15, 2009, the Commission issued its Order for Notice and Hearing which, among other things, allowed Allegheny Power to implement its proposed LPPF on July 1, 2009 subject to refund and established a hearing date of September 16, 2009. On July 31, 2009, the Commission issued its Order Modifying Procedural Schedule which retained the September 16, 2009 hearing date for the sole purpose of receiving public comment and scheduled another hearing on October 21, 2009, to receive public comment and to take evidence on the application.

*Transmission Rate Adjustment Factor*

On June 5, 2009 Allegheny Power filed an application<sup>30</sup> for approval of a transmission rate adjustment clause (“TRAC”) for recovery of approximately \$1.0 million of PJM transmission enhancement charges incurred between January 2009 and August 2010. Allegheny Power requests that the TRAC remain in effect for one year beginning September 1,

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*Statutory Review of rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia.*

<sup>29</sup> Case No. PUE-2009-00028, *Application of Potomac Edison Company d/b/a Allegheny Power, For an increase in its fuel factor pursuant to Code of Virginia § 56-249.6.*

<sup>30</sup> Case No. PUE-2009-00048, *Application of Potomac Edison Company d/b/a Allegheny Power, For approval for a rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia.*

2009. By order dated June 17, 2009, the Commission set the application for hearing on July 30, 2009. A Stipulation was reached by Staff and the parties and presented on July 31, 2009. The Hearing Examiner issued his report on August 6, 2009, and recommended the Commission accept the Stipulation.

## **Kentucky Utilities**

### *General Rate Case*

On June 3, 2009, Kentucky Utilities filed an application<sup>31</sup> for a general rate case pursuant to Chapter 10 of Title 56 of the Code (§§ 56-232 *et seq.*) and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings. KU requests an increase of \$12.2 million, based on a ROE of 12.0%. This represents an increase in total revenues of 21%. KU requests that its proposed rates become effective on November 21, 2009. On July 10, 2009, the Commission issued its Order for Notice and Hearing which, among other things, schedules a hearing on November 18, 2009, in Norton, Virginia to hear public comment and another hearing on January 6, 2010, in Richmond, to hear public comment and receive testimony from case participants. The Commission's July 2, 2009, Order Suspending Rate Increase allows the proposed rates to take effect on November 1, 2009, subject to refund.

### *Fuel Case*

On February 18, 2009 KU filed an application<sup>32</sup> to increase its fuel factor from 2.597 cents/kWh to 3.360 cents/kWh effective April 1, 2009. On February 24, 2009, the Commission issued its Order Establishing 2009-2010 Fuel Factor Proceeding that, among other things, set a public hearing on May 5, 2009, and allowed KU's proposed fuel factor to be effective subject

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<sup>31</sup> Case No. PUE-2009-00029, *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company, For an adjustment of electric base rates.*

<sup>32</sup> Case No. PUE-2009-00008, *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company, To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia.*

to refund, on April 1, 2009. The Commission issued its Order Establishing Fuel Factor on May 11, 2009, wherein it approved a fuel factor of 3.213 cents/kWh effective May 21, 2009.

### **Northern Neck Electric Cooperative**

Northern Neck Electric Cooperative (“NNEC”) completed its application<sup>33</sup> to increase its revenues by \$2.2 million on August 15, 2008. At the December 16, 2008 public hearing Staff and NNEC submitted a Stipulation for Commission consideration that narrowed the issues in the case, including the recommended reduction of the annual base revenue increase to \$2.0 million. By order dated January 13, 2009, the Commission adopted the Stipulation’s proposed revenue increase effective January 1, 2009.

### **Mecklenburg Electric Cooperative**

Mecklenburg Electric Cooperative (“MEC”) completed its application<sup>34</sup> for a general increase in its electric rates, pursuant to § 56-585.3 of the Code, on February 19, 2009. MEC requested an increase in annual revenues of \$7,125,931, based on a times interest earned ratio of 2.18. MEC requested that the proposed rates become effective on March 1, 2009. The Commission issued its Order for Notice and Hearing on February 25, 2009, which, among other things, scheduled a hearing and suspended the proposed rates for 150 days, through July 19, 2009. After amending the rate design included in its original application, MEC was allowed to implement its proposed rates on an interim basis on April 1, 2009. At the hearing on June 30, 2009, a Commission Hearing Examiner received evidence on the application. MEC and the Commission Staff also presented a Stipulation that, among other things, reflected Staff’s agreement with MEC’s proposed revenue increase. Consumer Counsel did not oppose the Stipulation. A Commission ruling in this case is expected in the near future.

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<sup>33</sup> Case No. PUE-2008-00076, *Application of Northern Neck Electric Cooperative, For a general increase in electric rates.*

<sup>34</sup> Case No. PUE-2009-00006, *Application of Mecklenburg Electric Cooperative, For a general increase in its electric rates.*

### **Rappahannock Electric Cooperative**

On February 25, 2009, Rappahannock Electric Cooperative (“REC”) filed an application<sup>35</sup> to re-align its unbundled rates to accurately reflect the costs of distribution and energy supply services, resulting in an overall revenue reduction. On March 27, 2009, REC filed a Motion to Withdraw Application because it believed the changes could be accomplished under the provisions of § 56-585.3 of the Code. On March 31, 2009 the Commission granted REC’s motion.

### **Central Virginia Electric Cooperative**

On March 3, 2009 Central Virginia Electric Cooperative (“CVEC”) filed an application<sup>36</sup> requesting approval of a streamlined rate increase. CVEC’s proposed rates were designed to produce an additional \$2.3 million in annual revenues. The Commission’s March 30, 2009 Order approved CVEC’s request for a streamlined rate request allowing the proposed rates to become effective on a permanent basis on April 2, 2009.

### **Prince George Electric Cooperative**

On August 18, 2009, Prince George Electric Cooperative (“PGEC”) filed an application<sup>37</sup> for a general increase in rates requesting an annual revenue increase of \$2,292,018, based on a times interest earned ratio of 2.26. PGEC requested, among other things, that the rates become effective on September 1, 2009, and that the Commission not require further notice to customers.

### **Other rate adjustments made by Electric Cooperatives**

In addition to the electric cooperative cases described above, beginning January 1, 2009, § 56-585.3 of the Code provides electric cooperatives with the ability to implement

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<sup>35</sup> Case No. PUE-2009-00010, *Application of Rappahannock Electric Cooperative, For a general rate revision.*

<sup>36</sup> Case No. PUE-2009-00013, *Application of Central Virginia Electric Cooperative, For a stremlined increase in electric rates.*

<sup>37</sup> Case No. PUE-2009-00089, *Application of Prince George Electric Cooperative, For a general increase in its*

adjustments to its rates if certain requirements are met upon action of its Board of Directors, without review by the Commission. A Cooperative is required to file its revised tariffs with the Commission for informational purposes. Three electric cooperatives have implemented rate changes to Schedule F fees<sup>38</sup> pursuant to § 56.585.3 3, one implemented a base rate increase pursuant to § 56.585.3 2, and one implemented revenue neutral rate adjustments pursuant to § 56-285.3 4. Each filing is briefly described below.

*Community Electric Cooperative*

Effective January 1, 2009 the Community Electric Cooperative increased several of its Schedule F fees pursuant to § 56-585.3 3 of the Code. Additionally, pursuant to § 56-585.3 2 of the Code, CEC implemented a base rate increase of 5%.

*Mecklenburg Electric Cooperative*

Effective March 1, 2009 the MEC increased several of its Schedule F fees pursuant to § 56-585.3 3 of the Code.

*Central Virginia Electric Cooperative*

CVEC will, effective September 1, 2009, increase several of its Schedule F fees pursuant to § 56-585.3 3 of the Code.

*Northern Neck Electric Cooperative*

Effective July 1, 2009 Northern Neck Electric Cooperative implemented an increase to its Basic Customer Charges and reduced volumetric charges, resulting in no change to the overall revenues collected. This change was made pursuant to § 56-585.3 4 of the Code.

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*electric rates.*

<sup>38</sup> Schedule F fees vary with each Cooperative as defined in its Terms and Conditions and include fees for items such as connection and re-connection, membership, late payment charges, service charges, meter testing, etc.

**Electricity prices**

Under the Seventh Enactment Clause of SB 1416 enacted as the Regulation Act, the Commission will report, among other information, on the retail price for electric power paid by Virginia consumers. The following table includes the most recently available data.

**Residential Consumer Electric Rates in Virginia**  
**Expressed in \$ per 1000 kWh**

	<u>7/1/2007</u>	<u>7/1/2008</u>	<u>1/1/2009</u>	<u>7/1/2009</u>	<u>8/10/2009</u>	<u>% Change 07-08 12 Months</u>	<u>% Change 07-09 18 Months</u>	<u>% Change 08-09 6 Months</u>	<u>% Change 08-09 12 Months</u>	<u>% Change 08-09 13 Months</u>
National Average (EEI - IOU)*	\$ 113.74	\$ 123.59	\$ 116.83			8.66%	2.72%			
Dominion Virginia Power**	\$ 94.39	\$ 111.00	\$ 106.84	\$ 108.89	\$ 108.89	17.60%	13.19%	-3.75%	-1.90%	-1.90%
Appalachian	\$ 66.65	\$ 69.92	\$ 91.37	\$ 91.37	\$ 91.97	4.91%	37.09%	30.68%	30.68%	31.53%
Allegheny Power	\$ 69.67	\$ 90.12	\$ 90.12	\$ 95.59	\$ 95.59	29.35%	29.35%	0.00%	6.07%	6.07%
Old Dominion (KU)	\$ 67.57	\$ 62.75	\$ 62.75	\$ 69.91	\$ 69.91	-7.13%	-7.13%	0.00%	11.41%	11.41%
Rappahannock EC***	\$ 127.72	\$ 132.24	\$ 134.69	\$ 133.19	\$ 133.19	3.54%	5.46%	1.85%	0.72%	0.72%
Southside EC	\$ 133.32	\$ 136.44	\$ 144.55	\$ 132.02	\$ 132.02	2.34%	8.42%	5.94%	-3.24%	-3.24%
Northern Neck EC	\$ 126.35	\$ 131.88	\$ 141.88	\$ 142.54	\$ 142.54	4.38%	12.29%	7.58%	8.08%	8.08%
Northern VA EC	\$ 129.20	\$ 129.52	\$ 131.40	\$ 133.45	\$ 133.45	0.25%	1.70%	1.45%	3.03%	3.03%
A&N EC	\$ 122.59	\$ 127.44	\$ 130.62	\$ 128.88	\$ 128.88	3.96%	6.55%	2.50%	1.13%	1.13%
BARC EC	\$ 123.18	\$ 127.28	\$ 150.63	\$ 123.07	\$ 123.07	3.33%	22.28%	18.35%	-3.31%	-3.31%
Central VA EC	\$ 83.04	\$ 83.28	\$ 89.63	\$ 93.04	\$ 93.04	0.29%	7.94%	7.62%	11.72%	11.72%
Community EC	\$ 122.37	\$ 122.68	\$ 126.28	\$ 107.87	\$ 107.87	0.25%	3.20%	2.93%	-12.07%	-12.07%
Craig Botetourt EC	\$ 114.90	\$ 113.71	\$ 123.22	\$ 115.20	\$ 115.20	-1.04%	7.24%	8.36%	1.31%	1.31%
Prince George EC	\$ 118.62	\$ 123.09	\$ 124.53	\$ 121.32	\$ 121.32	3.77%	4.98%	1.17%	-1.44%	-1.44%
Shenandoah Valley EC	\$ 115.12	\$ 117.65	\$ 132.54	\$ 114.28	\$ 114.28	2.20%	15.13%	12.66%	-2.86%	-2.86%
Mecklenburg EC	\$ 121.71	\$ 124.35	\$ 126.85	\$ 141.22	\$ 141.22	2.17%	4.22%	2.01%	13.57%	13.57%

\* National average data from Edison electric Institute's Typical Bills and Average Rates Reports for investor-owned utilities.

\*\* DVP % Change 08-09 (6 Months) reflects summer/winter differential.

\*\*\* Electric Cooperative

## **RTE PARTICIPATION**

Section 56-579 G of the Code of Virginia requires the Commission to report annually “its assessment of the practices and policies of the RTE.”<sup>39</sup> APCo, Allegheny Power, and DVP, as well as ODEC, are currently participating in PJM, a RTE.<sup>40</sup> This report will discuss recent developments in RTE participation and the impacts of RTE operations on the energy market.

As a result of requirements set forth in Code of Virginia § 56-579 A, Virginia’s largest electric utilities have now been integrated into PJM for at least three years. Consequently, the Commission Staff continues to gather and review data to facilitate a better understanding of the implications of PJM membership on the utilities and to assess the effectiveness of the electric utility industry in the Commonwealth. This task remains time consuming given the sheer volume of PJM’s operating rules and the complexities associated with the transmission grid. Although § 56-579 draws the Commission’s attention to policies and tasks made by and for Virginia and resulting PJM market outcomes, Virginia utilities will continue to participate in PJM markets and processes in substantial ways. For example, Virginia’s electric cooperatives and municipal utilities and their retail customers remain affected by PJM wholesale market electricity prices. Also, Dominion Virginia Power currently purchases a significant portion of its energy needs from PJM-administered wholesale markets. In addition, Virginia’s utilities participate in PJM demand response programs and are impacted by PJM’s proposed construction of major bulk transmission lines. Thus, PJM matters to Virginia.

Prices associated with PJM’s energy markets are based on a system of locational

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<sup>39</sup> “RTE” is an acronym for the term “regional transmission entity.”

<sup>40</sup> PJM accepted control of Allegheny Power’s transmission facilities on April 1, 2002, AEP’s on October 1, 2004, and Dominion Virginia Power’s on May 1, 2005.

marginal prices (“LMP”), where the price for a given time increment is based on the offer to sell electricity submitted by the last, or highest-priced, unit needed to operate during that time period, as selected through a competitive auction. All units selected during this time interval receive the same payment based on the last selected bid, i.e. the “market clearing” price. Virginia’s electricity consumers are impacted to the extent that their utilities purchase electricity from the PJM market. For a more detailed description of LMP and its effects on Virginia, see Appendix A.

PJM manages a Capacity Market which is designed to ensure the adequate availability of necessary resources that can be called upon to ensure the reliability of the grid. The basis for the PJM capacity market design is the Reliability Pricing Model (“RPM”). The goal of RPM is to align capacity pricing with system reliability requirements and to provide transparent information to all market participants far enough in advance for actionable response to the information. DVP participates in the RPM. The PJM Capacity Market also contains an alternative method of participation, known as the Fixed Resource Requirement (“FRR”) Alternative. The FRR Alternative provides utilities with the option to submit a FRR Capacity Plan and meet a fixed capacity resource requirement as an alternative to the requirement to participate in the RPM. APCo utilizes the FRR Alternative.

## **SIGNIFICANT RTE-RELATED DOCKETS AT FERC**

The Regulation Act directs the Commission to participate “to the fullest extent permitted” in RTE-related dockets at the FERC (§ 56-579 C of the Code of Virginia). Accordingly, the following section of this report discusses recent developments in significant RTE related dockets at FERC in connection with which the Commission has participated.

### **PJM’s Reliability Pricing Model**

PJM has conducted several auctions under the procedures approved by FERC. The May 2008 auction, for the 2011-2012 delivery year, was the first to procure capacity under a full three-year forward commitment. On May 30, 2008, a number of interested parties, including the Maryland Public Service Commission, the Delaware Public Service Commission, the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities (the "RPM Buyers"), filed a complaint at FERC, alleging that "PJM’s Reliability Pricing Model, as implemented through the ‘transitional’ Base Residual Auctions, has produced unjust and unreasonable capacity prices." The Commission subsequently intervened in support of the complaint, reiterating its earlier statements to FERC that PJM had never, and still has not, demonstrated that the RPM construct would result in just and reasonable rates.

On September 18, 2008, FERC dismissed the complaint, concluding that "for the transition auctions, no party violated PJM’s tariff and the prices determined during the auctions were in accord with the tariff provisions governing the auctions." FERC further found there was no sufficient basis to re-run the past auctions or change the prices that resulted from those auctions. However, by separate order issued the same day, FERC granted the RPM Buyers' motion for a technical conference on certain designated issues regarding RPM, and directed

PJM and interested parties to make proposals to FERC for any necessary changes prior to the May 2009 auction.

Subsequently, FERC appointed a Settlement Judge to preside over negotiations with the parties regarding the identified issues. Settlement conferences were held at FERC in December 2008 and January 2009. The Commission participated in these settlement conferences, but little progress was made. On January 15, 2009, FERC terminated the formal settlement proceedings, but some of the RPM Buyers continued to negotiate informally with PJM. On February 9, 2009, PJM and the RPM Buyers submitted an Offer of Settlement, proposing to resolve the contested issues. A group of parties, largely consisting of generators and suppliers participating in the RPM auctions, opposed the settlement.

On March 26, 2009, FERC issued an order approving many of the proposals in the settlement regarding changes to RPM. FERC accepted the revised Cost of New Entry ("CONE") values in the settlement agreement, which PJM uses to set auction prices. The new values are less of an increase than originally proposed by PJM. FERC also approved PJM's proposal regarding changes to the Ancillary Services Offset, which were opposed by the Independent Market Monitor ("IMM"). FERC also approved PJM's proposal to include demand response resources (up to 2.5%) in the RPM auction, as well as changes to the market power mitigation process proposed by PJM and the IMM. Finally, FERC rejected the request of the Public Power Association of New Jersey, the Blue Ridge Power Agency and the Pennsylvania Public Utility Commission to initiate a Section 206 proceeding to revise PJM's peak load forecast for the May 2009 Base Residual Auction. A number of parties requested rehearing of the March order, and these requests remain outstanding.

### **Issues Related to PJM’s Market Monitoring Function**

The SCC and its Staff have long been concerned with market monitoring issues at PJM. OPSI has shared these concerns as well. Last year’s report to the CEUR detailed an ongoing dispute between PJM and its Market Monitoring Unit (“MMU”) at FERC that culminated in a settlement agreement between PJM, the MMU, OPSI and others wherein the PJM MMU was moved to an external unit, led initially by the existing internal PJM Market Monitor. The external MMU formally began operating independently on August 1, 2008.

Unfortunately, OPSI has recently been forced to notify FERC that OPSI believes that PJM is failing to honor its obligations under the settlement agreement. OPSI alleged to FERC that PJM continues to take actions which undermine the independence and effectiveness of the MMU. This litigation thus remains ongoing.

### **FERC Rulemaking on Wholesale Competition in Regions with Organized Markets**

FERC held two technical conferences in 2007 to address issues related to wholesale competition in regions with functioning RTEs. As a result of these technical conferences, FERC issued an Advanced Notice of Proposed Rulemaking on June 22, 2007 and a Notice of Proposed Rulemaking (“NOPR”) on February 22, 2008, proposing substantive changes to the rules governing RTEs and their markets in four areas: demand response, long-term contracting, market monitoring, and RTE/ISO<sup>41</sup> responsiveness.

Last year's report to the CEUR detailed OPSI's comments in response to the NOPR. On October 17, 2008, FERC issued Order No. 719, its Final Rule on Wholesale Competition in Regions with Organized Markets. In general, the Final Rule adopted the proposals in the NOPR. The Commission examined the order and concluded that it was generally consistent

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<sup>41</sup> “ISO” is an acronym for the term “independent system operator”.

with the MMU settlement discussed above. The PJM market monitor, while initially voicing concerns regarding the Final Rule, also found it to be consistent with the settlement.

On April 29, 2009, PJM filed with FERC a Compliance Filing purporting to implement Order No. 719. As noted above, on June 26, 2009, OPSI objected to the filing on the grounds that it appeared to contradict the terms of the 2007 MMU Settlement Agreement by granting PJM "broad new tariffed authority to exercise PJM management's review and control of market monitoring functions that it was unable to acquire in the settlement of the complaints filed against it by OPSI." Numerous other parties, including the PJM Market Monitor, made similar arguments. FERC has yet to rule on PJM's filing.

## **CLOSING**

As described in this report, the Commission continues to implement the various components of the Virginia Electric Utility Regulation Act. As stated previously, the SCC does not tender any legislative recommendations at this time but stands ready to provide additional information or assistance if requested.

**APPENDIX A**

**DESCRIPTION OF**

**LOCATIONAL MARGINAL PRICING**

## **DESCRIPTION OF LOCATIONAL MARGINAL PRICING**

Since the various components of the transmission system have differing levels of capacity, PJM has to control flows across its system so that no single transmission element becomes overloaded. PJM controls transmission flows by dispatching generating units based both on the bids of the units and physical conditions. The results of this dispatch are the basis for LMPs throughout the PJM region. LMPs within PJM are typically not uniform for each time interval since the PJM grid cannot always reliably accommodate a free flow of power throughout the entire PJM footprint.

During these constrained periods, market clearing prices begin to separate throughout PJM to reflect the accessibility of load to generation or conversely of generation to load. In effect, the LMP system recognizes that PJM's electricity market segments into smaller markets as the ability of the transmission grid to reliably accommodate economic transfers of power decreases. Unfortunately, transmission flows are a function of an ever-changing set of conditions that include but are not limited to generating unit availability and output, transmission configuration, and load levels. As such, the size of a particular electrical market is never static.

Generally, electrical markets separate and become smaller as the electrical system becomes more constrained. As markets grow smaller they become less competitive since the available universe of buyers and sellers shrink. During unconstrained periods there are many buyers and sellers. At the other extreme, when the system is very constrained, a relevant electrical market may consist of a single buyer or seller. In other words, the competitive playing field is often not level or balanced. The field typically becomes less balanced as the transmission system becomes more constrained. As such, the degree of

separation in LMPs throughout PJM can provide insights with regard to the competitiveness of the electrical system for a given area.

While the degree of LMP price separation within PJM can provide insights as to the competitiveness of the segmented electrical markets, factors other than transmission constraints can contribute to the degree of price separation and the degree of price separation is not an absolute indicator of competitiveness. The greatest difference in price between regions may not correspond with the time when the system is the most constrained due to other factors that may impact LMPs. For example, LMP price differences may be greater when the spread between fuel prices, i.e. between coal and gas prices, is higher even if dispatch and transmission flows are identical.

LMP prices can also be used as indicators of what competitive prices would be in the absence of regulation or price caps. The LMP market is in effect a spot market where the spot price of electricity is clearly defined. Once again, however, LMP prices should not be viewed as an absolute indicator of the market price of electricity. Competitive prices may also be derived through bilateral contracts or auctions. While not absolute, LMP is a reasonable indicator of potential market prices since they may also form the basis for longer-term pricing arrangements. Such arrangements will likely reflect expectations of LMPs over the terms of those arrangements as well as the risk premiums or discounts that may be required as a result of risk aversion.

Given the insights that can be obtained from LMPs, the Staff has collected LMP information and analyzed that information in a number of ways. The following table presents the load-weighted monthly average day-ahead LMPs for the Virginia zones of

AEP<sup>42</sup>, AP, DVP, and the entire PJM footprint for the 12 months ending June, 30, 2009. The load weighted LMP price is a better indicator of market prices in that the actual costs incurred to serve load will vary with the respective load and price for the varying time intervals. LMPs paid by loads vary hourly.

**Average Monthly Load Weighted LMP**

	<b>APCo</b>	<b>AP</b>	<b>DVP</b>	<b>PJM</b>
	/MWh	/MWh	/MWh	/MWh
<b>Jul</b>	\$76.18	\$94.50	\$122.71	\$101.42
<b>Aug</b>	\$60.61	\$68.08	\$83.76	\$70.93
<b>Sep</b>	\$51.13	\$63.70	\$75.54	\$64.16
<b>Oct</b>	\$44.34	\$50.32	\$7.16	\$51.90
<b>Nov</b>	\$46.00	\$52.63	\$56.56	\$52.90
<b>Dec</b>	\$44.90	\$50.63	\$55.52	\$50.45
<b>Jan</b>	\$52.39	\$67.33	\$79.15	\$66.79
<b>Feb</b>	\$51.68	\$46.39	\$51.68	\$44.99
<b>Mar</b>	\$37.37	\$44.21	\$48.44	\$41.06
<b>Apr</b>	\$32.07	\$35.74	\$35.89	\$34.13
<b>May</b>	\$32.26	\$33.63	\$35.53	\$33.11
<b>Jun</b>	\$33.13	\$34.47	\$39.55	\$34.76
<b>12 Months</b>	<b>\$46.84</b>	<b>\$53.47</b>	<b>\$57.62</b>	<b>\$53.88</b>

The Staff has also examined differences in hourly LMP prices for the Virginia Zones and PJM in an attempt to gain insights as to the degree of market segmentation impacting operation in the Commonwealth. During periods of congestion, prices will be higher or lower in the various zones depending on each zone’s access to specific generating units. If a given zone has less access to low cost generation as a result of transmission congestion it will experience higher LMPs. Conversely, zones that have lower cost generation that would otherwise be dispatched in the absence of transmission congestion would see lower LMPs when the system is congested. For example, the average hourly LMP for the AEP zone exceeded the PJM-wide average LMP during only

<sup>42</sup> APCo is a subsidiary of AEP, or American Electric Power.

769 hours and was below the PJM-wide average LMP during 7,991 hours during the twelve months ending June, 2009. On the other hand, LMPs in the Dominion zone were lower during only 335 hours and higher than the PJM-wide average LMP during 8,425 hours for this same period.