

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 30, 2019

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PETITION OF

COSTCO WHOLESALE CORPORATION

CASE NO. PUR-2018-00088

For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia

FINAL ORDER

On June 1, 2018, Costco Wholesale Corporation ("Costco") filed with the State Corporation Commission ("Commission") a petition ("Petition") seeking permission to aggregate or combine the demands of specific nonresidential customers of electric energy pursuant to Code § 56-577(A)(4).

Under Code § 56-577(A)(3), retail access to competitive electricity supply is available to certain large customers with demand exceeding five megawatts. For the purpose of meeting the demand limitations of Code § 56-577(A)(3), certain customers may petition for Commission approval to aggregate or combine their demands.<sup>1</sup> Costco seeks the Commission's permission to aggregate or combine the demands of 27 of its retail accounts.<sup>2</sup> The Petition also identifies Virginia Electric and Power Company ("Dominion") as the local distribution company that is

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<sup>1</sup> Code § 56-577(A)(4) provides in part that "two or more individual nonresidential retail customers of electric energy within the Commonwealth, whose individual demand during the most recent calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate or combine their demands . . . so as to become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth . . . ."

<sup>2</sup> Petition at 1. The Petition provides, among other things, peak demand figures and locations for each customer. *Id.* at Attachment A.

certificated to provide retail electric service in the area where Costco proposes to aggregate its load.<sup>3</sup>

On June 18, 2018, the Commission issued an Order for Notice and Comment that, among other things, established procedures for receiving public comments from interested persons regarding Costco's Petition ("June 2018 Order"). Calpine Energy Solutions LLC ("Calpine"), MP2 Energy NE LLC ("MP2"), and Dominion filed timely notices of participation as respondents in this proceeding.

On July 27, 2018, Costco filed a Motion for Expedited Consideration and Modification of Procedural Schedule ("First Scheduling Motion"). Costco requested that the provisions for written comments established in the Commission's June 2018 Order be cancelled, and that an evidentiary hearing be scheduled. Costco further stated that no party to this proceeding objected to setting the matter for hearing.<sup>4</sup>

On August 8, 2018, the Commission issued an order that granted the First Scheduling Motion, suspended the procedural schedule, and assigned a Hearing Examiner to conduct further proceedings in this matter. In accordance therewith, the Hearing Examiner convened a prehearing conference and established a hearing date.

On September 7, 2018, Costco filed a second Motion for Expedited Consideration and Modification of Procedural Schedule ("Second Scheduling Motion"), which asked for an extension of the hearing date. On September 11, 2018, the Hearing Examiner granted Costco's Second Scheduling Motion.

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<sup>3</sup> *Id.* at 1, 3.

<sup>4</sup> Motion at 1.

On January 8, 2019, the Hearing Examiner convened the rescheduled evidentiary hearing, in which the following participated: Costco; Calpine; MP2; Dominion; and Commission Staff ("Staff"). On March 6, 2019, all of the participants filed post-hearing briefs. On March 18, 2019, the Hearing Examiner issued his Report ("Report"). On April 8, 2019, Costco, Dominion, Calpine, and MP2 filed comments on the Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Petition is denied.

#### Code of Virginia

As set forth above, this Final Order addresses the Petition filed by Costco under Code § 56-577(A)(4) to aggregate the demand of retail facilities located in Dominion's certificated service territory and, thereby, to receive Commission approval to switch its supplier of electric power from Dominion to a third-party competitive service provider ("CSP"). The Commission's analysis necessarily begins with the statutory language granting it the discretionary authority to act in this matter. Code § 56-577(A)(4) states in full (emphases added):

4. After the expiration or termination of capped rates, two or more individual nonresidential retail customers of electric energy within the Commonwealth, whose individual demand during the most recent calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth under the conditions specified in subdivision 3. The Commission *may*, after notice and opportunity for hearing, approve such petition if it finds that:

- a. Neither such customers' *incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition*. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to

such incumbent electric utility; and

b. *Approval of such petition is consistent with the public interest.*

If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a single, individual customer for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to meet the demand limitations of subdivision 3. If the Commission finds, after notice and opportunity for hearing, that such group of customers no longer meets the above demand limitations, the Commission may revoke its previous approval of the petition, or take such other actions as may be consistent with the public interest.

Prior Petitions

Costco's Petition represents the fourth request, and the third in Dominion's service territory, for what the Commission will refer to herein as "aggregated retail choice" under Code § 56-577(A)(4).<sup>5</sup> Although the potential for aggregated retail choice under this statute has existed since 2007, the first request was not submitted until 2017. The Commission approved that first request, finding that it was consistent with the public interest to approve the first petition to get actual information regarding the implementation of aggregated retail choice under this statute.<sup>6</sup> Accordingly, the Commission emphasized in that first case that "the result of this initial review is strictly limited to the instant case and does not establish specific rules for, or the

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<sup>5</sup> As required by Code § 56-577(A)(4)(a), the Commission herein takes "into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility."

<sup>6</sup> *Petition of Reynolds Group Holdings Inc., For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia*, Case No. PUR-2017-00109, Opinion at 4-5 (May 16, 2018).

eventual scope of, retail access under [Code § 56-577(A)(4)]," and that the Commission had not "created a *de minimis* standard for all aggregation requests."<sup>7</sup>

The next two petitions under this statute were filed by Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"), in which Walmart sought aggregated retail choice in both Dominion's and Appalachian Power Company's ("Appalachian") certificated service territories. The Commission denied Walmart's requests, finding "that granting either of the Petitions (a) will adversely affect, in a manner contrary to the public interest, customers not purchasing from alternate suppliers, and (b) is not consistent with the public interest."<sup>8</sup> The Commission found that Walmart's requests were not consistent with the public interest because of the costs that would be shifted to remaining customers – who do not (or cannot) switch to a CSP – in "the context of a decade of rising rates and the likelihood of even higher rates in the future."<sup>9</sup>

#### Costco's Petition

In the instant proceeding, Costco agreed with the Commission's finding in the Walmart Order that the current utility ratemaking structure in the Commonwealth is marked by ongoing rate increases and, further, confirmed that it is this very statutory ratemaking structure that Costco seeks to escape. For example, "Costco sought to aggregate its load based on Dominion's piling on of rate adjustment clauses [('RACs')], and it is the significant impact of the [RACs] ...

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<sup>7</sup> *Id.* at 5-6.

<sup>8</sup> *Petition of Wal-Mart Stores East, LP and Sam's East, Inc., For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia*, Case No. PUR-2017-00174, *Petition of Wal-Mart Stores East, LP and Sam's East, Inc., For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia*, Case No. PUR-2017-00173, Final Order at 9 (Feb. 25, 2019) ("Walmart Order"). Walmart subsequently filed a Petition for Reconsideration of the Final Order.

<sup>9</sup> *Id.* at 13.

that provided the impetus for Costco filing an aggregation petition."<sup>10</sup> Costco's witness also explained that Costco wants "to pay cost of service rates that include a *reasonable* return," but that under the current statutory structure "Dominion has been over-earning on its frozen base rates for a number of years," and "it is enormously frustrating that an incumbent utility has an incentive to keep what I view as the *customer's money*."<sup>11</sup>

Costco further testified that "[u]nder the current circumstances, Dominion's overcharging and overearning are what makes Dominion so attractive to investors and so *unattractive to customers*."<sup>12</sup> Costco argued that a wave of commercial customers leaving the utility through aggregated retail choice is "sorely needed to send a strong price signal to Dominion that its multiple additions of [RACs] and its persistence in making new investments rather than providing base rate reductions or base rate credits are making its tariffs increasingly unattractive to customers."<sup>13</sup> In sum, "Dominion's piling on of excessive costs ... was the motivation for the Costco Petition."<sup>14</sup>

Along these same lines, Costco also noted that there are many other petitions for aggregated retail choice currently pending at various stages of litigation before the Commission.<sup>15</sup> As to this, Costco's witness testified that "the raft of aggregation petitions now pending before the Commission ... are due, in my estimation, to the fact that there is no penalty

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<sup>10</sup> Costco's Comments on the Report at 4-5.

<sup>11</sup> Ex. 14 (Reed Rebuttal) at 10 (emphasis added).

<sup>12</sup> *Id.* at 12 (emphasis added).

<sup>13</sup> Costco's Post-hearing Brief at 31-32 (internal quotation marks and citation omitted).

<sup>14</sup> Ex. 14 (Reed Rebuttal) at 3.

<sup>15</sup> *See, e.g.*, Case Nos. PUR-2017-00173 (Walmart), PUR-2018-00150 (Kroger Limited Partnership I), PUR-2018-00151 (Harris Teeter, LLC), PUR-2018-00158 (Target Corporation), PUR-2018-00164 (New Albertsons L.P.), and PUR-2019-00025 (Cox Communications, Inc.).

to Dominion for over-earning."<sup>16</sup> Thus, Costco "believes that [these] other petitions are motivated by the same desire to escape Dominion's excessive rates...."<sup>17</sup> Finally, Costco is also seeking to avoid the anticipated *future* rate increases (as also referenced by the Commission in its Walmart Order) from "the huge potential cost impact if Dominion elects to fully implement the Grid Transformation and Security Act."<sup>18</sup>

### Public Interest

The Commission respects the economic and business goals reflected in Costco's pleadings and testimony herein.<sup>19</sup> As discussed in the Walmart Order, the Commission also recognizes the ongoing upward trajectory of rates, as chronicled by Costco, since the passage of Code § 56-577(A)(4) over ten years ago:

As permitted by statute, Appalachian and Dominion have sought and received a series of rate increases over this period attributable to base rates, fuel rates, and new statutorily-created RACs. For example, the Commission reported that since the enactment of Code § 56-577(A)(4) in 2007, residential customers of Appalachian and Dominion had seen *monthly* bill increases of approximately \$48 (a 73% increase) and \$26 (a 29% increase), respectively.

Further, additional bill increases are expected as utilities incur new costs under the mandates of [Senate Bill 966] regarding, among other things, renewable generation, grid transformation, underground distribution, and energy efficiency spending.<sup>20</sup>

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<sup>16</sup> Ex. 14 (Reed Rebuttal) at 10.

<sup>17</sup> Costco's Comments on the Report at 5.

<sup>18</sup> Costco's Post-hearing Brief at 31 (internal quotation marks and citation omitted). The "Grid Transformation and Security Act" referenced by Costco is often referred to as "Senate Bill 966" (2018 Acts ch. 296).

<sup>19</sup> Furthermore, the Commission has fully considered the evidence and arguments in the record supporting Costco's request. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

<sup>20</sup> Walmart Order at 10-11 (citations omitted) (emphasis in original).

Costco acknowledged this specific finding "in the Walmart Order concerning the amount of rate increases imposed by Dominion on its captive customers in the past, as well as those likely to be imposed in the future."<sup>21</sup> In this regard, Costco stressed that, "[i]ndeed, these are the very circumstances that have compelled Costco to seek permission to aggregate its accounts."<sup>22</sup>

Although Costco argued that the rate impact on other customers of aggregation petitions such as Costco's would be "*imperceptible*,"<sup>23</sup> there is evidence in the instant record showing "how cost responsibility would increase for customers remaining on Dominion's system, if some customers leave the system."<sup>24</sup> For example, the "loss of load can result in changed allocation factors," and "[r]emaining customers would bear a greater share of Dominion's fixed generation costs, including cost recovery for new generation investments that is relatively higher in the early stages of its depreciable life and for any deferred balances accrued while the departing customer was served by Dominion."<sup>25</sup>

In addition, Staff "generally explained how retail customer shopping shifts costs to non-shopping retail customers."<sup>26</sup> For example, "in the near-term shopping would spread a fixed pool of costs over a smaller number of customers, leading to higher RAC rates for the remaining customers."<sup>27</sup> As to base rates, non-shopping customers could be negatively impacted by "lower

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<sup>21</sup> Costco's Post-hearing Brief at 11 (citation omitted).

<sup>22</sup> *Id.*

<sup>23</sup> Costco's Comments on Report at 5 (emphasis in original).

<sup>24</sup> Report at 7 (citing Ex. 4 (Morgan) at 5).

<sup>25</sup> *Id.* (citing Ex. 4 (Morgan) at 5, 8).

<sup>26</sup> *Id.* at 11 (citing Ex. 12 (White) at 12-15).

<sup>27</sup> *Id.* at 12 (citing Ex. 13 (Carr) at 2-3).



customer refunds or lower customer credit reinvestment offsets."<sup>28</sup> Further, if base rates are changed as part of statutorily-required rate reviews, non-shopping customers could be negatively impacted by "higher rates than otherwise necessary."<sup>29</sup>

The Hearing Examiner also found that "there can be no dispute that fixed generation costs remain part of a vertically integrated utility's regulated cost-of-service even if some of the utility's customers shop."<sup>30</sup> Thus, "one likely near-term effect of customers shopping and receiving generation supply from a new supplier is to leave customers of a vertically integrated utility that do not, or cannot, shop with a larger responsibility for paying fixed generation costs than if shopping had not occurred."<sup>31</sup> The Hearing Examiner concluded that, "[p]ut simply, non-shopping customers would pay more for electric service than they otherwise would have paid if other customers had not shopped."<sup>32</sup>

As to the instant Petition, there is evidence in the record that if Costco aggregates its load and purchases its electricity from a CSP instead of Dominion, \$1.57 million of additional costs could be shifted to non-shopping customers on an *annual* basis. Specifically, "Dominion's estimates indicate that if Costco shops approximately \$1.57 million in annual Virginia jurisdictional non-fuel generation revenue would no longer be recovered from Costco that would

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<sup>28</sup> *Id.* (citing Ex. 13 (Carr) at 3-5).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 18 (citing Ex. 13 (Carr) at 3).

<sup>31</sup> *Id.* (citing Ex. 4 (Morgan) at 8; Ex. 13 (Carr) at 2-4).

<sup>32</sup> *Id.* Costco did not contest the Hearing Examiner's conclusion that a non-shopping customer could pay a higher bill than it otherwise would pay absent aggregated retail choice. *See, e.g.*, Tr. at 43 (Reed).

instead be shifted to Virginia retail customers that continue to be supplied by Dominion in order for Dominion to maintain the same rate of return."<sup>33</sup>

In exercising the discretionary authority delegated to the Commission by the General Assembly under Code § 56-577(A)(4), we find that approval of the Petition is not "consistent with the public interest."<sup>34</sup> The Commission makes this finding because of the costs that would be shifted to remaining customers – primarily residential and small business customers – who do not (or cannot) switch to a CSP, in the current context of a decade of rising rates and the likelihood of even higher rates in the future.<sup>35</sup> The Commission similarly finds, under the separate and independent standard in Code § 56-577(A)(4)(a) and based on the instant record, that "retail customers of [Dominion] that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting [Costco's Petition]."<sup>36</sup>

#### Claims of Legal Error

The Commission has also considered Costco's argument that rejection of its Petition could represent legal error. In this regard, Costco "agrees that, as stated in the Walmart Order,

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<sup>33</sup> Report at 18 (citing Ex. 9 at 3, line 16).

<sup>34</sup> Code § 56-577(A)(4)(b). Although not necessary to reach our public interest conclusions herein, the Commission also agrees with the Hearing Examiner's finding that "[t]o the extent one company [(e.g., Costco)], but not its competitor(s) [(e.g., Walmart or Sam's Club)], can shop for generation supply, this could confer a competitive advantage with *public interest implications*." Report at 25 (emphasis added).

<sup>35</sup> The vast majority of Dominion's customers have no ability to shop for *solely lower* prices, because the Code only provides large customers with demands exceeding five megawatts with such right. Code § 56-577(A)(3). In addition, although Costco argues that Dominion's customers currently can purchase 100% renewable energy from a CSP, this in no manner guarantees that remaining customers will be able to avoid Dominion's statutory rate structure or the costs resulting from Costco's request for aggregated retail choice. Moreover, Costco has not established that it would be consistent with the public interest to force non-shopping customers to seek non-utility electric supply.

<sup>36</sup> In addition, the Commission finds that the potential for load growth does not alter our public interest determinations herein. The reallocation of costs among remaining customers occurs independent of whether load growth exists, and certain utility costs are incurred regardless of load growth. *See, e.g.*, Report at 8, 20.

'the General Assembly has delegated to the Commission the broad discretion to determine the public interest for purposes of aggregated retail choice under Code § 56-577(A)(4),'<sup>37</sup> but Costco argues that "this discretion cannot be exercised in a manner that nullifies [Code § 56-577(A)(4)]."<sup>37</sup> Specifically, Costco states that "[s]imply denying the Costco Petition based on *any* adverse effect would create a per se rule that nullifies the meaning" of Code § 56-577(A)(4).<sup>38</sup> Costco further asserts that any adverse impacts in this case are not "significant enough to be contrary to the public interest" because they are "speculative" and "*de minimis*."<sup>39</sup>

In considering these arguments the Commission starts, as we must, with the statute. As the Commission discussed in the Walmart Order, in 2007 the General Assembly and the Governor made the policy decision to terminate the Commonwealth's experiment with retail choice that began in 1999, and to return to the model of a vertically-integrated monopoly provider of both the wires function as well as electricity supply.<sup>40</sup> This legislation, however, permitted the continuation of retail choice in three narrow and specifically identified cases. Two of those are mandatory (*i.e.*, the Commission has no discretion to approve or reject): (i) retail choice for large customers with a demand exceeding five megawatts;<sup>41</sup> and (ii) retail choice for 100% renewable energy if the same is not offered by the customer's utility.<sup>42</sup> The third is subject

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<sup>37</sup> Costco's Post-hearing Brief at 5.

<sup>38</sup> *Id.* at 6 (emphasis in original).

<sup>39</sup> *Id.* at 7.

<sup>40</sup> 2007 Va. Acts chs. 888, 933 ("Regulation Act"). See, e.g., *Old Dominion Comm. for Fair Util. Rates v. State Corp. Comm'n*, 294 Va. 168, 172 (2017) ("In 2007, the General Assembly ended the deregulation program effective December 2008, and ... established a new regulatory regime.") (citations omitted).

<sup>41</sup> Code § 56-577(A)(3).

<sup>42</sup> Code § 56-577(A)(5).

to the Commission's discretion and is at issue in the instant case: retail choice for nonresidential customers that aggregate their demand to exceed five megawatts.<sup>43</sup>

Contrary to Costco's characterization, the Commission has not denied the instant Petition (nor did we deny Walmart's petitions) based on a sole finding of any adverse effect. First, the Commission has found that the estimate of \$1.57 million of additional annual costs resulting from Costco's Petition is reasonably supported by the record. Next, the Commission has separately found (pursuant to Code §§ 56-577(A)(4)(a) and (b), respectively) that under existing circumstances such adverse impact is (a) "contrary to the public interest" for non-shopping customers, and (b) not "consistent with the public interest." As explicitly acknowledged by Costco, these circumstances entail a decade of rising rates and the likelihood of even higher rates in the future. In short, the Commission's findings are supported by the record and are within the discretionary authority delegated to the Commission by the General Assembly.

Costco also questions the extent to which the Commission can properly consider cost-shifting to non-shopping customers in our analysis, because cost-shifting is "a natural result of allowing aggregated load."<sup>44</sup> This argument seems to be premised on the proposition that because the General Assembly must have known that aggregated retail choice would increase costs for others, the Commission does not have the discretion to consider the same in its public interest analysis. Such a limitation, however, is not expressed in the statute and, moreover, is contrary to the plain language and the broad discretionary authority delegated to the Commission in Code § 56-577(A)(4).<sup>45</sup>

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<sup>43</sup> Code § 56-577(A)(4).

<sup>44</sup> Costco's Post-hearing Brief at 7.

<sup>45</sup> See, e.g., *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 284 Va. 726, 741 (2012) ("[W]e presume that where the General Assembly has not placed an express limitation in a statutory grant of authority, it intended for the Commission, as an expert body, to exercise sound discretion."). See also *City of Alexandria v. State Corp. Comm'n*,

As evidenced throughout Title 56 of the Code, the General Assembly knows how to limit the Commission's discretion if it so chooses and, as evidenced in Code § 56-577(A)(3), knows how to mandate retail choice if it so chooses. In Code § 56-577(A)(3) the General Assembly determined that it is consistent with the public interest to permit retail choice for large customers with a demand exceeding five megawatts, and it did not delegate any authority to the Commission to find otherwise. In stark contrast, in Code § 56-577(A)(4) the General Assembly did *not* determine whether it is consistent with the public interest to permit aggregated retail choice but, rather, directed the Commission to make such determination.

In this regard, Code § 56-577(A)(4) explicitly provides that the Commission "may" permit aggregated retail choice, but only if the Commission makes two separate and independent public interest findings. Thus, the General Assembly not only delegated the public interest determination to the Commission, it required the Commission to cross not just one, but two separate public interest thresholds before we "may" permit aggregated retail choice. In Code §§ 56-577(A)(4)(a) and (b), respectively, the General Assembly: (a) recognized that aggregated retail choice may have certain adverse effects and required the Commission to find that such were not "contrary to the public interest"; and, in addition (b) required the Commission to find separately that approval of the Petition is "consistent with the public interest."

In order to make these determinations, the Commission necessarily must consider circumstances that we conclude are relevant to the public interest. That is what we have done here. Those circumstances obviously may change over time; for example, today's circumstances

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296 Va. 79, 100 (2018) (The Court refused to limit the Commission's discretionary authority by "interpretive inference" and further stated: "When a statute delegates such authority to the Commission, we presume that any limitation on the Commission's discretionary authority by the General Assembly will be clearly expressed in the language of the statute.") (quoting and citing *Virginia Elec. & Power*, 284 Va. at 741).

are not the same as those existing in 2007 immediately after the passage of the aggregated retail choice statute. Indeed, by delegating these public interest determinations to the Commission, the General Assembly has allowed for the possibility that the Commission's analysis of the public interest may change as specific circumstances do likewise. For purpose of today's analysis, the Commission concludes that the estimated annual cost increase resulting from the Petition, in conjunction with a decade of rising rates with more expected to follow, is relevant to our public interest analysis. Contrary to Costco's position, the Commission does not believe that this is legal error.

Costco, however, contends that denying its Petition conflicts with statutory intent, because – according to Costco – the General Assembly has given commercial customers like Costco an "escape valve" via Code § 56-577(A)(4) if Dominion's rates get too high.<sup>46</sup> In further support of this plea, Costco also proclaims that "having some customers save at the expense of other customers is nothing unusual."<sup>47</sup> The Commission's consideration of this argument is consistent with that discussed above. That is, while the General Assembly may have mandated an "escape valve" in Code § 56-577(A)(3) for large customers with a demand exceeding five megawatts, it did not do the same for commercial customers like Costco in Code § 56-577(A)(4). Rather, the General Assembly delegated that decision to the Commission. In exercising our delegated discretionary authority in this particular instance, the Commission has found that it is not consistent with the public interest for Costco to save money "at the expense of other customers."<sup>48</sup>

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<sup>46</sup> Ex. 14 (Reed Rebuttal) at 13-14.

<sup>47</sup> Costco's Comments on the Report at 5.

<sup>48</sup> *Id.*

The Commission's application of the statute herein is consistent with the Walmart Order, and we similarly close the instant order as we did therein. Specifically, if Costco believes that the current statutory structure for setting vertically-integrated electric utility rates results in unreasonable or unnecessarily high rates, its potential for recourse may be found through the legislative process. In the instant case, given the context of a decade of rising rates and the likelihood of even higher rates in the future, the Commission does not find it consistent with the public interest for non-shopping or rate-captive customers – predominantly residential and small business – to experience the cost-shifting identified herein by enabling a larger commercial customer to seek its power supply elsewhere through aggregation. This Commission will not allow small customers who cannot escape this structure, predominantly small businesses and residential customers, to be further burdened by the identified cost-shifting that will occur if larger customers like Costco choose to seek better deals for themselves outside of Dominion's system.

Accordingly, IT IS SO ORDERED, and this matter is dismissed.

Commissioner Patricia L. West did not participate in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.