

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, FEBRUARY 2, 2012

120210139

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2011-00042

For approval and certification of the proposed  
Warren County Power Station electric generation  
and related transmission facilities under §§ 56-580 D,  
56-265.2, and 56-46.1 of the Code of Virginia and  
for approval of a rate adjustment clause, designated as  
Rider W, under § 56-585.1 A 6 of Code of Virginia

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FINAL ORDER

On May 2, 2011, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("DVP" or "Company") filed with the State Corporation Commission ("Commission") an application and petitions (collectively, "Application") for approval of electric generation and associated transmission facilities (collectively, the "Project") and for approval of a rate adjustment clause ("RAC") to recover costs associated with the proposed Project.

Pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia ("Code"), the Company seeks a certificate of public convenience and necessity to construct and operate the Warren County Power Station ("Power Station"), a 1,329 megawatt ("MW") (nominal) natural gas-fired combined-cycle generation facility. DVP proposes to build the Power Station on a 39-acre site in the Warren Industrial Park near the Town of Front Royal, Warren County, Virginia.<sup>1</sup>

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<sup>1</sup> Ex. 2 at 1, 9. The Commission has approved construction and operation of a smaller generation facility at the proposed location. In 2003, the Commission approved construction by CPV Warren LLC ("CPV Warren") of a 520 MW combined-cycle generating facility. *Application of CPV Warren, LLC, For a certificate of public convenience and necessity for electric generation facilities in Warren County, Virginia*, Case No. PUE-2002-00075, 2003 S.C.C. Ann. Rept. 365, Final Order (Mar. 13, 2003). In 2007, the Commission approved CPV Warren's construction of a combined-cycle facility of up to 600 MW capacity. *Application of CPV Warren, LLC, For approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-580 D*, Case No. PUE-2007-00018, 2007 S.C.C. Ann. Rept. 406, Order (June 20, 2007). CPV Warren commenced planning and development and sold its project to DVP on February 8, 2008. Ex. 2 at 9. The Commission canceled the certificate granted to CPV Warren in Case No. PUE-2007-00018, 2010 S.C.C. Ann. Rept. 286, Order Dismissing Case (Nov. 12, 2010).

According to the Application, the Power Station will be fueled by natural gas from the Columbia Gas Transmission, LLC, pipeline located approximately three miles from the Project site.<sup>2</sup> DVP states that the Project will improve system reliability and reduce dependence on imported power at a reasonable cost.<sup>3</sup> The Company proposes to put the Power Station in commercial operation by December 2014.<sup>4</sup>

Pursuant to §§ 56-265.2 and 56-46.1 of the Code, the Company seeks a certificate of public convenience and necessity to construct necessary transmission interconnection facilities.<sup>5</sup> DVP proposes to construct the Front Royal Switching Station ("Switching Station") on the site and adjacent to the existing right-of-way. A new 500 kilovolt ("kV") transmission line, Line #592, Front Royal-Warren County Power Station, will run approximately 900 feet and will connect the Switching Station and the Power Station. The Switching Station will in turn be connected to the Company's existing 500 kV Line #580, Meadow Brook-Morrisville, by approximately 200 feet of new substation bus work. All construction will be within the Power Station enclosure.<sup>6</sup> The Company proposes to put these interconnection facilities in service by approximately January 2014.<sup>7</sup> The estimated construction cost of the Power Station and the transmission interconnection facilities is approximately \$1.091 billion, excluding financing costs.<sup>8</sup>

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<sup>2</sup> Ex. 2 at 5-6.

<sup>3</sup> *Id.* at 4-5, 7-8.

<sup>4</sup> *Id.* at 10.

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> *Id.* at 14-15.

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *Id.* at 5.

As provided by § 56-585.1 A 6 of the Code and the Commission's Rules Governing Utility Rate Case Applications and Annual Informational Filings ("Rate Application Rules"), 20 VAC 5-201-10 *et seq.*, the Company seeks approval of a RAC, designated as Rider W, for the recovery of Project costs allowed by statute.<sup>9</sup> As proposed by the Company, Rider W would take effect on April 1, 2012, and the initial rate year would be the period April 1, 2012 through March 31, 2013.<sup>10</sup>

On May 18, 2011, the Commission entered an Order for Notice and Hearing that, among other things, required the Company to publish notice of its Application, established a procedural schedule, permitted the filing of public comments, and scheduled a public hearing. The Commission conducted a hearing on December 6, 2011. The Company, the Commission's Staff ("Staff"), the Attorney General's Division of Consumer Counsel ("Consumer Counsel"), and respondents, the Kroger Company ("Kroger") and the Piedmont Environmental Council ("PEC"), participated in the hearing.<sup>11</sup>

The Company, the Staff, Consumer Counsel, Kroger and PEC addressed the outstanding issues in post-hearing memoranda or briefs. Kroger, PEC, Consumer Counsel, and the Staff do not oppose approval of the construction and operation of the Power Station and the transmission interconnection facilities; however, PEC raises an issue of mitigation of the Power Station's visual impact.<sup>12</sup> Additionally, Kroger, PEC, Consumer Counsel, and the Staff do not oppose approval of a Rider W to recover the financing costs of the Project in this proceeding. Consumer

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<sup>9</sup> *Id.* at 2, 17.

<sup>10</sup> *Id.* at 19, 21.

<sup>11</sup> MeadWestvaco Corporation and the Virginia Committee for Fair Utility Rates filed Notices of Participation in this case on May 19, 2011, and June 3, 2011, respectively.

<sup>12</sup> PEC's January 12, 2012 Post-Hearing Brief at 1-4.

Counsel<sup>13</sup> and the Staff<sup>14</sup> both raise issues of the proper return on common equity ("ROE") to apply in calculating the Rider W revenue requirement and the length of time for which an enhanced ROE would apply. While Kroger does not address the Rider W revenue requirement, it challenges the rate design for some classes of DVP's commercial customers.<sup>15</sup>

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Application is approved subject to the requirements set forth below.

### **Code of Virginia**

Section 56-580 D of the Code states in part as follows:

The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest.

Section 56-46.1 A of the Code states in part as follows:

Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. . . . In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the effect of the proposed facility on economic development within the

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<sup>13</sup> Consumer Counsel's January 12, 2012 Post-Hearing Brief at 2-5.

<sup>14</sup> The Staff's January 12, 2012 Post Hearing Memorandum at 4-18.

<sup>15</sup> Kroger's January 12, 2012 Post Hearing Brief at 1-3.

Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (ii) shall consider any improvements in service reliability that may result from the construction of such facility.

With regard to generating facilities specifically, § 56-580 D of the Code directs that "the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1, . . . ."

Sections 56-46.1 A and 56-580 D of the Code also contain nearly identical language explicitly limiting the Commission's authority:

In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters.

Section 56-46.1 B of the Code states that, with regard to overhead transmission lines, "[a]s a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned." Section 56-46.1 B of the Code also directs that "[i]n making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency

analyses, and reliability needs presented to justify the new line and its proposed method of installation."

Section 56-46.1 D of the Code explains that "'environment' or 'environmental' shall be deemed to include in meaning 'historic,' as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned."

Section 56-46.1 C of the Code directs that "[i]n any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company."

Section 56-259 C of the Code states that "[p]rior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way."

Finally, § 56-596 A of the Code states that "[i]n all relevant proceedings pursuant to [the Virginia Electric Utility Regulation] Act, the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth."

### **Public Convenience and Necessity**

The Commission finds that, as provided by § 56-580 D of the Code, the public convenience and necessity require the construction and operation of the proposed Power Station and that the Power Station is not contrary to the public interest. Likewise, we find that, as provided by § 56-265.2 of the Code, the public convenience and necessity require construction of the Switching Station and the Front Royal-Warren County Power Station 500 kV Transmission Line.

### ***Need and Reliability***

DVP projects that peak demand in the Dominion Zone will increase by approximately 4,900 MW over the next ten years. The Company's 2009 and 2010 Integrated Resource Plans

identified the need for additional capacity in service by 2015.<sup>16</sup> The Company presented evidence of its need through the forecasted load growth in the Dominion Zone and the "gap" between the capacity and energy required and the Company's existing resources.<sup>17</sup> The Staff agreed that the Company expects to be capacity deficient by 2012.<sup>18</sup> The Staff concluded that the Company's load forecast appeared reasonable and reflected current market conditions.<sup>19</sup>

DVP presented evidence on its analytical process for evaluating resources and reviewing options for power purchases, generation, and demand-side resources and determination that the Project was the best option.<sup>20</sup> The Staff identified as a limitation the absence of other generation options if the Project were not constructed.<sup>21</sup> After DVP conducted further studies, the Staff concluded that the Project compared favorably with other build alternatives.<sup>22</sup>

The Company negotiated an engineering, procurement, and construction contract, which should result in costs that are fixed and under the Company's control. Combined with competitive procurement of services and products related to the Project, DVP estimates that approximately 84% of the costs will be controlled.<sup>23</sup> DVP has contracted for transmission of

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<sup>16</sup> Ex. 4 at 5-6; Ex. 5 at 3.

<sup>17</sup> Ex. 5 at 3-6.

<sup>18</sup> Ex. 28 at 3.

<sup>19</sup> Ex. 18 at 2.

<sup>20</sup> Ex. 5 at 9-10.

<sup>21</sup> Ex. 28 at 9-10.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> Ex. 7 at 13, 16-17.

natural gas to fuel the Power Station on favorable terms. The location of the Project near an interstate gas pipeline will limit construction costs and impact.<sup>24</sup>

### *Benefits*

The Project will also provide benefits as a result of its location in a high load area. The record shows that the size and location of the project will both enhance reserve margin and reduce loading on key west-to-east facilities.<sup>25</sup> The Company also anticipates that the construction and operation of the Project may reduce price levels or power purchased and differences in prices across the DVP system.<sup>26</sup>

DVP presented evidence that the size and location of the unit would also provide benefits to the transmission system.<sup>27</sup> Operation of the Project would delay projected thermal overloads on a major transmission line originating at the Company's Mt. Storm Generating Station.<sup>28</sup> The Project would also provide dynamic reactive power support and assure adequate voltage.<sup>29</sup> As the Staff noted, transmission facilities are necessary to interconnect the Power Station, and no issues with the general design and location were identified.<sup>30</sup>

The Company also suggests that approval of the Project supports the Virginia Energy Plan's goals to promote the construction of new generation in the Commonwealth of Virginia

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<sup>24</sup> Ex. 8 at 3-4, 6.

<sup>25</sup> Ex. 6 at 2.

<sup>26</sup> *Id.* at 3-6.

<sup>27</sup> Ex. 25 at 6-7.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 7-8.

<sup>30</sup> Ex. 16 at 6-7.



("Commonwealth").<sup>31</sup> The Virginia Energy Plan, among other things, "shall propose actions . . . that will implement the Commonwealth Energy Policy . . . ."<sup>32</sup> The Virginia Energy Plan is to address the adequacy and siting of generation facilities.<sup>33</sup> As the Commission has previously held, the Commonwealth Energy Policy and the Virginia Energy Plan do not supersede the other statutory standards that the Commission must apply in this proceeding.<sup>34</sup> That is, although our findings herein may be consistent with the Commonwealth Energy Policy or the Virginia Energy Plan, consideration of such does not override our specific statutory obligations and attendant findings with regard to any particular application placed before us.

### **Economic Development**

As required by § 56-46.1 A and § 56-596 A of the Code, the Commission must consider the economic development of the Commonwealth when addressing this Application. The Company supported the anticipated economic benefits for Warren County and the Commonwealth from the Project. The Company would expend significant sums, which would promote employment in Warren County and other parts of Virginia.<sup>35</sup> While noting that the extent of any benefit is somewhat uncertain, the Staff agreed that the major expenditures would promote economic activity and employment.<sup>36</sup> In addition to these local benefits related to the

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<sup>31</sup> Ex. 3 at 6; Ex. 4 at 11.

<sup>32</sup> Va. Code § 67-201 A.

<sup>33</sup> Va. Code § 67-201 B.

<sup>34</sup> *Application of Virginia Electric and Power Company, For a certificate to construct and operate a generating facility; for certificates of public convenience and necessity for a transmission line: Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line*, Case No. PUE-2008-00014, 2009 S.C.C. Ann. Rept. 296, Final Order (Mar. 27, 2009) at 300.

<sup>35</sup> Ex. 4 at 13.

<sup>36</sup> Ex. 19 at 9.

construction and operation of the Power Station, the benefits of assured reliability of power supply at a reasonable cost will promote economic development in the Commonwealth.<sup>37</sup>

### **Environmental Impact**

We must consider environmental impact. The relevant statutes, however, do not require the Commission to find any particular level of environmental benefit, or an absence of environmental harm, as a precondition to approval. Rather, the statutes direct that the Commission "shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact."<sup>38</sup>

The Department of Environmental Quality ("DEQ") coordinated an environmental review of the proposed Project by a number of agencies and submitted comments.<sup>39</sup> DEQ made the following recommendations:

Follow DEQ's recommendations to avoid and minimize impacts to wetlands and streams as applicable and coordinate with DEQ about potential permitting requirements as applicable.

Consider DEQ's recommendations, including reuse of vegetative waste in lieu of open burning for air quality protection and coordinate with DEQ regarding potential permitting or registration requirements as applicable.

Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, and follow DEQ's recommendations to manage waste, as applicable.

Coordinate with the Department of Conservation and Recreation (DCR) regarding its recommendations as well as for updates to the Biotics Data System database if a significant amount of time passes before the project is implemented.

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<sup>37</sup> See, e.g., Ex. 3 at 4-5.

<sup>38</sup> Va. Code §§ 56-46.1 A and 56-580 D.

<sup>39</sup> Comments of the Department of Environmental Quality filed August 10, 2011 ("DEQ Comments").

Coordinate with the DCR regarding its recommendations on the Madison Cave Isopod and the associated protection plan.

Coordinate with the Department of Game and Inland Fisheries (DGIF) pertaining to its recommendations on the protection of wildlife and other natural resources.

Coordinate with the Front Royal Country Club regarding its groundwater well as recommended by the Virginia Department of Health.

Contact the Department of Historic Resources regarding its recommendations to protect historic and archeological resources.

Coordinate with the Federal Aviation Administration and the Department of Aviation on recommendations pertaining to aircraft and airport safety.

Follow the principles and practices of pollution prevention to the maximum extent practicable.

Limit the use of pesticides and herbicides to the extent practicable.<sup>40</sup>

The Company stated that it had obtained or would obtain all of the required permits identified in the DEQ Comments.<sup>41</sup> In this regard, DVP obtained from the U.S. Fish and Wildlife Service a Federal Endangered Species Act permit to cover its activities that might harm the threatened Madison Cave Isopod.<sup>42</sup> DVP has expressed no objection to any of the recommendations made in the DEQ Comments and summarized above.<sup>43</sup>

The proposed Power Station would be constructed adjacent to a transmission right-of-way occupied by two existing 500 kV transmission lines. The Switching Station and the

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<sup>40</sup> *Id.* at 6-7 (internal references omitted).

<sup>41</sup> Ex. 23 at 2.

<sup>42</sup> Ex. 9 at 6; Tr. at 30:6-31:6.

<sup>43</sup> Ex. 23 at 2.

900-foot transmission line will be located entirely on the Project site.<sup>44</sup> PEC presented testimony on the visual impact of the stacks required for the Power Station and the need for visual screening of impacted properties of historic significance.<sup>45</sup> PEC recommended that the Commission direct the Company to offer the services of an arborist and to pay for trees and planting to screen the properties from views of the Project.<sup>46</sup> In response, DVP noted that the Virginia Department of Historic Resources ("DHR") had identified no adverse impact on historic resources posed by the Project.<sup>47</sup> The Company explained that it had previously cooperated with DHR to identify impacts and to employ DHR's Guidelines for Assessing Impacts of Proposed Electric Transmission Lines and Associated Facilities on Historic Resources in the Commonwealth of Virginia ("DHR Guidelines").<sup>48</sup>

The Commission declines to exercise its jurisdiction to direct DVP to provide assistance to private landowners as proposed by PEC in this case. The Company has stated that the DHR Guidelines are appropriate in this case. In this case, cooperation with DHR and application of the DHR Guidelines meets the requirement of § 56-46.1 of the Code to minimize adverse environmental impact of a transmission line.<sup>49</sup> The Commission finds that compliance with the DHR Guidelines likewise promotes the virtually identical requirements for minimizing the impacts of a generation facility.

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<sup>44</sup> Ex. 25 at 8-9.

<sup>45</sup> Ex. 13.

<sup>46</sup> *Id.* at 4-5.

<sup>47</sup> Ex. 23 at 2-4, Rebuttal Schedules 1 and 2.

<sup>48</sup> *Id.* at 5.

<sup>49</sup> *See also Application of Virginia Electric and Power Company D/B/A Dominion Virginia Power, For approval and certification of electric facilities: Mt. Storm-Doubs 500 kV transmission line rebuild*, Case No. PUE-2011-00003, Doc. Con. Cen. No. 451669, Final Order (Sept. 1, 2011) at 7-8, *corrected*, Doc. Con. Cen. No. 451858, Erratum Order (Sept. 9, 2011).

Thus, based on the record in this case, we find that requiring DVP to comply with the recommendations in the DEQ Comments is "desirable or necessary to minimize adverse environmental impact . . . ." <sup>50</sup> As a requirement of our approval herein, the Company shall comply with the DEQ recommendations set forth above. <sup>51</sup>

**Code of Virginia — Rider W**

Section 56-585.1 A 6 of the Code, pursuant to which DVP applied for a RAC, includes the following:

To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of . . . (ii) one or more other generation facilities . . . . A utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction [('AFUDC')], planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below. The costs of the facility, other than return on projected construction work in progress and [AFUDC], shall not be recovered prior to the date the facility begins commercial operation.

Section 56-585.1 A 6 of the Code also contains specific requirements attendant to the enhanced ROE, including the following:

Such enhanced rate of return on common equity shall be applied to [AFUDC] and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. . . . [T]he Commission shall determine the duration of the

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<sup>50</sup> Va. Code §§ 56-46.1 A and 56-580 D.

<sup>51</sup> The Company shall coordinate with DEQ its implementation of these recommendations.

first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility.

Section 56-585.1 A 6 of the Code also includes the requirements to calculate AFUDC "utilizing the utility's actual capital structure and overall cost of capital, including an enhanced [ROE] as determined pursuant to this subdivision, until such construction work in progress is included in rates."

The Project includes a generation facility and associated transmission facilities, which fall within the scope of § 56-585.1 A 6 of the Code for recovery through a RAC. While the Staff and Consumer Counsel raise several issues with regard to the calculation of the revenue requirement for the Rider W, no participant in the case opposes the prescription of a RAC to recover the Project's allowable costs.

DVP filed the supporting schedules and other materials required by our Rate Application Rules.<sup>52</sup> Rider W consists of a Projected Cost Recovery Factor, which provides for the projected financing costs of the Project for the rate year. In addition, an AFUDC Cost Recovery Factor provides for the amortization of AFUDC accrued between the expiration of capped rates, January 1, 2009, and March 31, 2012.<sup>53</sup> When the record closed, the Company's proposed revenue requirement for the rate year April 1, 2012, to March 31, 2013, was \$35,286,000.<sup>54</sup> The

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<sup>52</sup> Ex. 7; Ex.7C; Ex.10; Ex 10C.; Ex. 2, Filing Schedules 46B and 46D.

<sup>53</sup> Ex. 10 at 3-4; Ex. 17 at 2. In future years, Rider W will include a third component, the Actual Cost True-up Recovery Factor. Since Rider W is proposed to become effective on April 1, 2012, no true-up is included. Ex. 10 at 4.

<sup>54</sup> Ex. 11C, Rev. Sched. 1, at 1 of 8.

revenue requirement identified by the Staff was \$34,088,000.<sup>55</sup> The difference in these revenue requirements arises primarily from differing ROEs, which impact both the AFUDC and the projected cost recovery factors.<sup>56</sup>

### **Applicability of Enhanced ROE**

As previously noted, § 56-585.1 A 6 of the Code awards an enhanced ROE of 100 basis points for a combined-cycle combustion turbine generation facility like the Power Station "as an incentive to undertake such projects . . . ." As further provided by this provision, "[s]uch enhanced rate of return on common equity shall be applied . . . during the construction phase of the facility and shall thereafter be applied . . . during the first portion of the service life of the facility." By statute, the first portion of the service life of a combined-cycle combustion turbine facility is at least ten years and may be as long as 20 years. The Commission is to determine the duration of the first portion of the service life based upon the public interest, how critical the facility may be in meeting energy needs, and the risk involved in development of the facility.

The Company maintains that application of the statutory criteria to the record in this case requires the maximum duration of the first portion of the service life, which in this case is 20 years.<sup>57</sup> The Staff's position is that the first portion of the service life should extend for the

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<sup>55</sup> Ex. 17, Sched. 1 Rev.

<sup>56</sup> In its Application, the Company used an ROE of 12.5% pending prescription of an ROE in the biennial review proceeding, Case No. PUE-2011-00027, plus an enhancement of 100 basis points for the first portion of the service life as directed by Va. Code § 56-585.1 A 6, for a total placeholder ROE of 13.5%. Order for Notice and Hearing (May 18, 2011) at 5.

<sup>57</sup> Ex. 3 at 7-8; Ex. 33 at 5-7.

shortest period provided by statute, which is ten years.<sup>58</sup> Consumer Counsel recommends that the first portion of the service life be set in the lower half of the 10-20 year range.<sup>59</sup>

Based on our consideration of the public interest, how critical the facility may be, and the associated development risks, we establish the "first portion of the service life" for the Project at ten years. This duration is supported, in part, by record evidence regarding: (1) the significant portion of project costs fixed by contract;<sup>60</sup> (2) the choice of a proven generation technology;<sup>61</sup> and (3) the selection of a site previously approved for the construction of generation facilities.<sup>62</sup> Additionally, we do not find that the criticality of the Project requires the "first portion of the service life" to extend beyond ten years.<sup>63</sup>

In the Final Order in Case No. PUE-2011-00027, the Commission prescribed a combined ROE of 10.4%.<sup>64</sup> Accordingly, the Commission finds that an ROE of 10.4% plus 100 basis points for a total of 11.4% is appropriate for determining the Rider W Projected Cost Recovery Factor.

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<sup>58</sup> Ex. 32 at 8-11.

<sup>59</sup> Consumer Counsel's January 12, 2012 Post Hearing Brief at 2-4.

<sup>60</sup> See, e.g., Ex. 4; Ex. 7 at 19; Tr. 103: 6-11.

<sup>61</sup> See, e.g., Ex. 3 at 4, 9; Ex. 7 at 10.

<sup>62</sup> See, e.g., Ex. 4 at 14; Ex. 9 at 2-3.

<sup>63</sup> Although we find herein that the Project is required by the public convenience and necessity, how critical the Project may be is a separate statutory consideration for the limited purpose of establishing the "first portion of the service life."

<sup>64</sup> *Application of Virginia Electric and Power Company, For a 2011 biennial review of the rates, terms, and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2011-00027, Final Order (Nov. 30, 2011) at 23 ("Biennial Review"). We also prescribed the addition of a 50 basis point Renewable Energy Portfolio Standard ("RPS") performance incentive, for a return of 10.9%. The Commission determined that the RPS incentive did not extend to RACs. *Biennial Review*, Final Order at 25.



### Return on Equity for AFUDC

For purposes of calculating AFUDC for Rider W, we reject the Company's request to use an ROE of 11.3% from the Stipulation and Addendum ("Stipulation") in Case No.

PUE-2009-00019.<sup>65</sup> We find that the Stipulation is inapplicable to the instant proceeding.

Specifically, as part of the Stipulation, DVP proposed and agreed that the 11.3% ROE would apply to RACs "filed on or before June 30, 2010," and that the 11.3% ROE does not apply to RACs "filed after June 30, 2010."<sup>66</sup> The instant RAC application was filed on May 2, 2011, and, thus, is not covered by the Stipulation.<sup>67</sup>

In addition, § 56-585.1 A 6 states that the ROE for such RACs shall be "the fair combined rate of return on common equity as it is determined by the Commission from time to time for such utility pursuant to subdivision 2 [of § 56-585.1 A ('Subdivision 2')]." The Commission, however, did not determine ROE pursuant to Subdivision 2 in the *2009 Rate Case* Stipulation. Rather, the parties in that case agreed to a specific ROE as part of an overall settlement. The parties did not agree, and the Commission did not find, that the ROE therein was determined pursuant to Subdivision 2. To the contrary, the Stipulation explicitly stated that (i) it was "a compromise for purposes of settlement," and (ii) "none of the signatories . . . necessarily agrees with the treatment of any particular item."<sup>68</sup> The Commission's Order Approving

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<sup>65</sup> *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*, Case No. PUE-2009-00019, 2010 S.C.C. Ann. Rept. 301, Order Approving Stipulation and Addendum (March 11, 2010) ("*2009 Rate Case*").

<sup>66</sup> See *2009 Rate Case*, Stipulation and Addendum at 5. See also Staff's January 12, 2012 Post-Hearing Memorandum at 5-7; Consumer Counsel's January 12, 2012 Post-Hearing Brief at 4-5.

<sup>67</sup> This is not the first time that the Commission has applied this specific provision of the Stipulation. In DVP's recently concluded biennial review proceeding, the plain language of this provision operated to the Company's benefit as requested by DVP therein. Specifically, we found that 11.3% would apply to four existing RACs (filed prior to June 30, 2010) in accordance with the Stipulation. *Biennial Review*, Final Order at 24-26.

<sup>68</sup> *2009 Rate Case*, Stipulation and Addendum at 8.

Stipulation and Addendum likewise "emphasize[d] . . . that such finding does not establish precedent for any specific matter addressed in the Stipulation and Addendum."<sup>69</sup>

In 2008, we determined an ROE for DVP of 11.12% under Subdivision 2.<sup>70</sup> The next instance in which we determined an ROE for DVP under Subdivision 2 occurred in 2011, where we determined an ROE of 10.4%.<sup>71</sup> In addition, § 56-585.1 A 6 of the Code requires an additional 100 basis points for combined-cycle combustion turbines. For purposes of calculating AFUDC for Rider W, we will allow an ROE of (a) 12.12% (11.12% plus 100 basis points) for calendar years 2009 and 2010, and (b) 11.4% (10.4% plus 100 basis points) for calendar year 2011 and until changed.<sup>72</sup> Finally, we note that DVP has neither alleged nor established that the ROEs of 12.12% and 11.4% prevent the Company from recovering its reasonable cost of service applicable thereto.<sup>73</sup>

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<sup>69</sup> *2009 Rate Case*, Order Approving Stipulation and Addendum at 6. Indeed, in rejecting a previous attempt to use the settlement ROE of 11.3% as precedent, we explained that the Stipulation "encompassed a number of items not present in the instant proceeding, including: (1) refunds or credits of fuel, base rate, and rate adjustment clause recoveries that totaled approximately \$726 million; and (2) the [Dominion Virginia Power] stipulation also provided for no change in base rates until December 2013, at the earliest." *Application of Appalachian Power Company, For a statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00030, 2010 S.C.C. Ann. Rept. 308, Final Order (July 15, 2010) at 311 n.30.

<sup>70</sup> *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*, Case No. PUE-2007-00066, 2008 S.C.C. Ann. Rept. 385, Final Order (Mar. 31, 2008) at 391-92.

<sup>71</sup> *Biennial Review*, Final Order at 17-21.

<sup>72</sup> We find that this option, which is permitted by the above statute, represents actual cost of equity capital and results in a reasonable ROE for accrued AFUDC. We further find that it is not necessary to use the Company's proposed quarter-end capital structures (*see, e.g.*, DVP's January 12, 2012 Post-Hearing Brief at 25-26) but, rather, that Staff's proposed use of actual end-of-test period capital structures is permitted by statute and reasonable for this purpose. *See, e.g.*, Ex. 32.

<sup>73</sup> In addition, as explained in the *Biennial Review*, the ROE approved herein is not further modified by the Company's participation in the renewable energy portfolio program under § 56-585.2 C of the Code. *Biennial Review*, Final Order at 24-26.

### **Rate Design**

DVP developed its rates for Rider W using the same general methodology that the Commission has approved for Rider R (Bear Garden Generating Station) and Rider S (Virginia City Hybrid Energy Center).<sup>74</sup> In lieu of the Company's rate design, Kroger proposes a rate design that would use a demand charge to recover the costs of the Project assigned to Rate Schedules GS-2 and GS-2T.<sup>75</sup> The Commission will not direct revision of the rate design. The record shows that a redesign as suggested by Kroger would have an impact on a broad range of customers, and some might be affected adversely.<sup>76</sup>

### **Sunset Provision**

As a requirement of our approval herein, we find that the authority granted by this Final Order shall expire January 1, 2015, if the Project has not commenced commercial operation and that DVP may subsequently petition the Commission for an extension of this sunset provision for good cause shown.

In conclusion, the Commission finds that the Project, including the Warren County Power Station, the Front Royal Switching Station, and the Front Royal-Warren County Power Station 500 kV Transmission Line, will serve the public convenience and necessity and are in the public interest. Accordingly, we approve construction and operation of the facilities subject to the conditions imposed herein. We also find that Rider W should be approved as modified herein.<sup>77</sup>

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<sup>74</sup> Ex. 27 at 2-4.

<sup>75</sup> Ex. 12 at 3-4.

<sup>76</sup> Ex. 36 at 5-7.

<sup>77</sup> The Staff identified an additional issue, which may impact periodic determinations of Rider W with the addition of the Actual Cost True-up Factor in 2014. Internal Revenue Code § 199, Income Attributable to Domestic Production Activities, could provide the Company a federal income tax deduction, and this deduction could affect the true-up factor in Rider W as well as other rates prescribed by the Commission. We direct the Staff to review this

Accordingly, IT IS ORDERED THAT:

(1) Subject to the findings and requirements set forth in this Final Order, the Company is granted approval and certificate of public convenience and necessity No. ET-196 to construct and to operate the Warren County Power Station in accordance with the design and configuration set out in its Application.

(2) Subject to the findings and requirements set forth in this Final Order, the Company is granted approval and a certificate of public convenience and necessity to construct and to operate 500 kV transmission interconnection facilities connecting the Warren County Power Station with the Front Royal Switching Station.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 *et seq.*) of Title 56 of the Code, the Company is issued the following certificates of public convenience and necessity:

Certificate No. ET-189b, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Warren County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2011-00042; Certificate No. ET-189b cancels Certificate No. ET-189a issued to Virginia Electric and Power Company on September 1, 2011, in Case No. PUE-2011-00003.

(4) The Company's Application for approval of a Rate Adjustment Clause, designated as Rider W, is granted in part and denied in part as set forth herein.

(5) The Company shall forthwith file a revised Rider W and supporting workpapers with the Clerk of the Commission and with the Commission's Divisions of Energy Regulation and Utility Accounting and Finance, as necessary to comply with the directives set forth in this Final

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issue, and we encourage DVP and other entities subject to Commission ratemaking jurisdiction to cooperate with the Staff in developing procedures that balance the interests of the regulated entities and ratepayers.

Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(6) Rider W, as approved herein, shall become effective for service rendered on and after April 1, 2012.

(7) The Company shall file its annual Rider W application on or before June 1 of each year.

(8) This case is dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk of the Commission.

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 hereof shall also be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.