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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00035

In re: Virginia Electric and Power Company's  
Integrated Resource Plan filing pursuant to  
Va. Code § 56-597 *et seq.*

**HEARING EXAMINER'S RULING**

**September 2, 2020**

By Order issued on March 9, 2020, the State Corporation Commission ("Commission") initiated this proceeding for the filing and review of the 2020 Integrated Resource Plan ("IRP") of Virginia Electric and Power Company ("Dominion" or "Company"). On April 6, 2020, the Commission issued its Order Establishing Schedule for Proceedings ("Procedural Order") for Dominion's 2020 IRP. The Procedural Order, among other things, scheduled a public hearing; provided opportunities for interested persons to participate; directed the Commission's Staff ("Staff") to investigate the IRP upon its filing; and appointed a Hearing Examiner to rule on any discovery matters that may arise during the course of this proceeding.

On May 1, 2020, Dominion filed with the Commission the Company's 2020 IRP. Concurrent with its 2020 IRP filing, Dominion filed a Motion for Entry of a Protective Ruling and Additional Protective Treatment.

On May 6, 2020, the Hearing Examiner's Protective Ruling and Additional Protective Treatment for Extraordinarily Sensitive Information ("Protective Ruling") was issued.

Notices of Participation in this proceeding have been filed by the following: Sierra Club; Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); Appalachian Voices; Natural Resources Defense Counsel; Glen Besa; the Board of Supervisors of Culpeper County; and MAREC Action.

On July 24, 2020, Consumer Counsel filed a Motion for Ruling on Confidentiality of Information ("Motion"). In its Motion, Consumer Counsel seeks a ruling directing that two pages of discovery responses, which Dominion has designated as extraordinarily sensitive, be made public.

On July 30-31, 2020, Dominion, Appalachian Voices, and Staff filed responses. On August 4, 2020, Consumer Counsel filed its reply.

On August 17, 2020, a Hearing Examiner's Ruling scheduled a remote oral argument on Consumer Counsel's Motion. On August 20, 2020, the oral argument was convened *in camera*, as scheduled, using Skype for Business. C. Meade Browder, Jr., Esquire, and John E. Farmer, Jr., Esquire, appeared on behalf of Consumer Counsel. Vishwa B. Link, Esquire, Lisa R.

Crabtree, Esquire, Jimmie Zhang, Esquire, and Paul E. Pfeffer, Esquire, appeared on behalf of Dominion. Ashley B. Macko, Esquire, and K. Beth Clowers, Esquire, appeared on behalf of Staff.

## Pleadings

In Consumer Counsel’s opinion, Dominion unnecessarily designated as extraordinarily sensitive (i) page three of an attachment the Company provided in response to Staff Interrogatory 1-17 and (ii) page three of an attachment the Company provided in response to Appalachian Voices’ Interrogatory 3-2. Both pages (collectively, “NPV Information”) include the results of net present value (“NPV”) analyses for the continued operation of generation facilities over the 2020-2029 period under a range of different assumptions. In support of its request for public disclosure, Consumer Counsel points out that the Company has publicly shared results of NPV analyses for discrete facilities in other contexts.<sup>1</sup>

Consumer Counsel finds it unlikely that the Company’s 10-year projected NPV of its generation facilities would impair the Company’s operation within the PJM Interconnection, LLC (“PJM”), capacity market, especially because the NPV analyses provide cumulative 10-year figures, rather than annualized information about discrete years, for facilities’ projected operations.<sup>2</sup>

Consumer Counsel reiterated the Commission’s recognition that “[a] primary purpose of an IRP . . . is to give the public – which includes customers and the legislators who represent them – a reasonably accurate picture of the probable costs that customers will pay in the future to receive a reliable supply of electrical power, which is essential to modern life and commerce.”<sup>3</sup>

Consumer Counsel also indicated that the NPV analyses may be relevant to the discussion of future legislation.<sup>4</sup>

Appalachian Voices filed a response in support of Consumer Counsel’s Motion. Appalachian Voices indicated that the NPV Information “provides a glimpse as to whether the Company believes continued operation over the course of the 10-year period will be economic or uneconomic—and to what degree—under a range of assumptions.”<sup>5</sup> Appalachian Voices largely echoed Consumer Counsel’s assertions about the purpose of the IRP,<sup>6</sup> the potential value of the NPV Information in the legislative process,<sup>7</sup> and the fact that NPV results are publicly disclosed in certificate of public convenience and necessity (“CPCN”) proceedings.<sup>8</sup>

<sup>1</sup> Consumer Counsel’s Motion at 3 (citing NPV projections in three combined CPCN and rate adjustment clause (“RAC”) cases).

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.* at 5 (citing *Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Virginia Electric and Power Company’s Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq.*, Case No. PUR-2018-00065, Final Order at 3-4 (June 27, 2019)).

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

<sup>5</sup> Appalachian Voices’ Response at 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 2.

Similarly, Staff supported Consumer Counsel's Motion.<sup>9</sup> Staff identified a page in the public version of the 2020 IRP where Dominion showed whether NPVs were positive or negative for three coal generating facilities and one oil facility under four modeling scenarios.<sup>10</sup> It is unclear to Staff how the NPV Information could be used to the advantage of capacity market participants, particularly given that portions of the results of the retirement analysis (albeit at an even higher level) are provided publicly in the 2020 IRP. Staff noted that the 2020 IRP also publicly discloses: (1) potential unit retirements in Appendix 5J; (2) the projected capacity factor of individual generating units under Plan B in Appendix 5D; and (3) busbar screening results showing the levelized cost of energy for various types of generating resources at different capacity factors in Appendices 5M and 5N.<sup>11</sup>

Dominion disagreed with the request for public disclosure of the NPV results, which the Company contended is "confidential commercial and financial information that other entities could use to their competitive advantage in future negotiations – including negotiations with the Company – to the detriment of the Company and its customers."<sup>12</sup> Dominion argued that the Motion should be denied because, in the Company's view, the risk of harm of publicly disclosing the NPV Information outweighs the presumption in favor of public disclosure.<sup>13</sup>

According to Dominion, the primary harm that may be suffered from public disclosure of the NPV Information is increased costs for the Company to operate its system – costs that pass through to the Company's customers.<sup>14</sup> Dominion indicated this information would "show the Company's hand" to various counterparties to contracts or arrangements.<sup>15</sup> Dominion provided examples of this potential harm regarding fuel supply for its generation facilities,<sup>16</sup> as discussed in my analysis below. Next, as also discussed below, Dominion explained how capacity costs could potentially increase if the NPV Information is publicly released.<sup>17</sup>

Dominion asserted that another harm that may be suffered by public disclosure of the NPV Information is the risk of sending the wrong message to the communities and employees where a specific generation unit is located.<sup>18</sup> Dominion indicated it is important that the Company does not decide whether to continue to operate or retire an existing unit based on the NPV Information alone.<sup>19</sup> The Company's decisions can also consider the effect on the employees, including the families and communities that depend on the associated jobs and tax revenues.<sup>20</sup> In this regard, Dominion contended that it is the unit-specific nature of the information that poses the risk of specific harms to the Company, its customers, its employees,

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<sup>9</sup> Staff's Response at 5.

<sup>10</sup> *Id.* at 2 (citing Figure 5.2.1.1 of the IRP).

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> Dominion's Response at 4-5.

<sup>13</sup> *Id.* at 1-2.

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

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 5-6.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

and its communities.<sup>21</sup>

Dominion argued that Consumer Counsel's Motion fails to recognize the difference between IRP proceedings and other types of proceedings.<sup>22</sup> Dominion contended that Consumer Counsel's assertion that the information could inform the legislative process is irrelevant to the current proceeding because, among other things, this IRP case, "although conducted in a legislative manner, should not be transformed into a forum where market-sensitive confidential commercial and financial information is forced to be made public for some undefined future purpose."<sup>23</sup> Dominion also argued that by showing incremental NPV differences between alternative plans, the IRP meets the Commission's stated purpose to "give the public – which includes customers and the legislators who represent them – a reasonably accurate picture of the probable costs that customers will pay in the future to receive a reliable supply of electrical power, which is essential to modern life and commerce."<sup>24</sup>

Dominion noted that it would not object to the NPV Information being treated as confidential, provided entities within the categories restricted from accessing extraordinarily sensitive information do not intervene in this proceeding.<sup>25</sup>

On reply, Consumer Counsel maintained that the risks of harm identified by Dominion do not overcome the presumption in favor of disclosure. Based on its understanding of the NPV calculations, Consumer Counsel contested the Company's statement that "the NPV Information does not link to 'probable costs that customers will pay in the future to receive a reliable supply of electric power.'"<sup>26</sup> Consumer Counsel disagreed with Dominion's assertion that "public interest in a proceeding before the Commission should not factor into a determination on confidentiality under [5 VAC 5-20-170 ("Rule 170")]."<sup>27</sup>

Consumer Counsel asserted that Dominion exaggerated the potential harms from public disclosure.<sup>28</sup> On this point, Consumer Counsel indicated, among other things, that any claimed harm about negative NPV figures is already incurred with public information in the IRP, including unit-specific projected capacity factors and other information cited by Staff.<sup>29</sup>

Consumer Counsel acknowledged that IRP and CPCN proceedings are different, but pointed out that its Motion does not involve questions of relevance. According to Consumer Counsel, the context of the proceeding has nothing to do with the risk of harm from publicly disclosing information.<sup>30</sup> Consumer Counsel found it inconsequential that protective treatment of similar NPV results has not been challenged in prior IRP proceedings.<sup>31</sup>

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<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> *Id.* at 8-9.

<sup>23</sup> *Id.* at 9-10.

<sup>24</sup> *Id.* at 10.

<sup>25</sup> *Id.* at 4, n.8.

<sup>26</sup> Consumer Counsel's Reply at 4.

<sup>27</sup> *Id.* at 5 (citing Dominion's Response at 9).

<sup>28</sup> *Id.* at 6-9.

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

<sup>30</sup> *Id.* at 9-10.

<sup>31</sup> *Id.* at 10.

Consumer Counsel maintained its request for the NPV Information to be made public, and not simply reclassified as confidential (rather than extraordinarily sensitive).<sup>32</sup>

### Oral Argument

During oral argument, Consumer Counsel stood by the arguments in its pleadings.<sup>33</sup> In Consumer Counsel's assessment, Dominion's position on the Motion is essentially "that it's better to keep interested stakeholders and the public in the dark because it's for their own good," which Consumer Counsel believes "turns Rule 170 on its head."<sup>34</sup>

Additionally, Consumer Counsel offered the testimony of **D. Scott Norwood**, an expert witness retained by Consumer Counsel for this case. Mr. Norwood sponsored pages from Dominion's Form 1 that contain 2019 data the Company reported publicly for three of its generation facilities.<sup>35</sup> He does not understand how a competitor or supplier could use the aggregated NPV Information to gain an economic advantage. But any such advantage can already be obtained from the reported Form 1 actual data and the projected data in the public version of the IRP.<sup>36</sup> He testified further that natural gas supply is competitive.<sup>37</sup> On cross-examination, Mr. Norwood acknowledged that the actual Form 1 data for 2019 does not provide a long-term cost to operate any generating unit.<sup>38</sup> He did not attempt to replicate the NPV Information using public data.<sup>39</sup>

In its argument, Dominion stressed that "just because an individual unit is currently NPV negative does not necessarily mean that it will have a hard-and-fast date for retirement; and likewise, just because a unit is currently NPV positive does not mean that it is in the clear as it relates to unit retirement for the IRP planning or study periods."<sup>40</sup> As for the current IRP, the Company has not decided to retire any generating units other than Yorktown Unit 3 and Chesterfield Units 5 and 6.<sup>41</sup> The NPV Information is only a data point – one that is not necessarily paired with a retirement decision.<sup>42</sup> The Company expressed concern that releasing the NPV Information for other generation facilities could mislead and disrupt communities.<sup>43</sup> While the NPVs Dominion calculates for various portfolios provide an order of magnitude about which plans are more expensive than others, they do not strictly translate to customer rates.<sup>44</sup>

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<sup>32</sup> *Id.* at 11.

<sup>33</sup> Transcript ("Tr.") at \_\_ (Browder). An addendum to this Ruling that identifies all citations to the transcript will be issued after the transcript is published.

<sup>34</sup> Tr. at \_\_ (Browder).

<sup>35</sup> Exhibit ("Ex.") 1.

<sup>36</sup> *See, e.g.*, Tr. at \_\_ (Norwood).

<sup>37</sup> Tr. at \_\_ (Norwood).

<sup>38</sup> Tr. at \_\_ (Norwood).

<sup>39</sup> Tr. at \_\_ (Norwood).

<sup>40</sup> Tr. at \_\_ (Link).

<sup>41</sup> Tr. at \_\_ (Link).

<sup>42</sup> Tr. at \_\_ (Link).

<sup>43</sup> Tr. at \_\_ (Link).

<sup>44</sup> Tr. at \_\_ (Link).

Dominion also offered the testimony of **Greg Workman**, Director of Field Management for the Company, and **Scott Gaskill**, Director of Power Generation, Regulated Operations, for the Company. Mr. Workman discussed the negotiation process, and the associated long-term relationships, for goods and services required to operate generation facilities, including for nonstandard products.<sup>45</sup> Such products include environmental consumables and fuel, and services include transportation.<sup>46</sup> He testified that active negotiations can be disrupted if counterparties receive information indicating that a generation facility is either losing or making a lot of money.<sup>47</sup> He believes this information would likely be received by “word of mouth.”<sup>48</sup> He emphasized the magnitude of fuel expenses.<sup>49</sup> On cross-examination, he acknowledged that a negative NPV could also be a bargaining tool for the Company to obtain lower prices potentially.<sup>50</sup>

Mr. Gaskill discussed the general capacity requirements and penalties associated with the fixed resource requirement (“FRR”) in PJM.<sup>51</sup> He explained how an FRR utility does not want to disclose the extent of any short position prior to negotiating for capacity from a merchant generator or another utility.<sup>52</sup> Similarly, if Dominion remains in PJM’s capacity auction process, his competitive concern has less to do with competitors being able to derive the Company’s bid strategy from the NPV Information and more to do with whether competitors have more information to assess whether Dominion will be long or short “over time” based on expectations about which units will clear the auction.<sup>53</sup> If the Company were to elect the FRR, he expects Dominion would enter more bilateral contracts for capacity.<sup>54</sup> Mr. Gaskill identified cost and revenue information for generation facilities that is not included in the FERC Form 1 data discussed by Mr. Norwood.<sup>55</sup> Mr. Gaskill also discussed the disruptive effect negative information about a generation facility can have on employees and communities.<sup>56</sup> Mr. Gaskill acknowledged that Dominion can bid its units into the capacity market at zero. However, he provided an example of when the Company might bid units in above zero.<sup>57</sup>

After hearing Dominion’s argument and evidence, Staff continued to support Consumer Counsel’s Motion. Staff argued that with all the information already publicly available, “there is little or no competitive advantage to knowing the 10-year NPV results of the individual units that cannot already be known with this other public information.”<sup>58</sup> As for the risk that the NPV Information could send a misleading signal to employees and communities, Staff indicated “the

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<sup>45</sup> Tr. at \_\_ (Workman).

<sup>46</sup> Tr. at \_\_ (Workman).

<sup>47</sup> Tr. at \_\_ (Workman).

<sup>48</sup> Tr. at \_\_ (Workman).

<sup>49</sup> Tr. at \_\_ (Workman).

<sup>50</sup> Tr. at \_\_ (Workman).

<sup>51</sup> Tr. at \_\_ (Gaskill).

<sup>52</sup> Tr. at \_\_ (Gaskill).

<sup>53</sup> See, e.g., Tr. at \_\_ (Gaskill).

<sup>54</sup> Tr. at \_\_ (Gaskill).

<sup>55</sup> Tr. at \_\_ (Gaskill).

<sup>56</sup> Tr. at \_\_ (Gaskill).

<sup>57</sup> Tr. at \_\_ (Gaskill).

<sup>58</sup> Tr. at \_\_ (Macko). See also Tr. at \_\_ (Abbott).

Company is free to provide whatever context to the results that it feels [is] necessary.”<sup>59</sup>

Staff also offered the testimony of **Greg Abbott**, Deputy Director with the Commission’s Division of Public Utility Regulation. Mr. Abbott sponsored an exhibit showing that in the prior IRP proceeding Dominion provided NPV results for generation facilities the Company had previously announced plans to place in cold storage.<sup>60</sup> He also discussed, among other things, why Staff is investigating the NPV Information for potential use in its upcoming testimony.<sup>61</sup>

### **Applicable Standard**

Paragraph (7) of the Protective Ruling in this proceeding, which substantively mirrors provisions of Rule 170 of the Commission’s Rules of Practice, applies to the Motion. Paragraph (7) of the Protective Ruling, with emphasis added, provides as follows:

Staff or any party to the proceeding may challenge the confidential designation of particular information by filing a motion promptly with the Commission. The Commission or Hearing Examiner will conduct an *in camera* review of the challenged documents, materials or information. *Upon challenge, the information shall be treated as confidential pursuant to the Rules only where the party requesting confidential treatment can demonstrate to the satisfaction of the Commission or Hearing Examiner that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure.* In no event shall any party disclose the Confidential Information it has received subject to this Protective Ruling absent a finding by the Commission or Hearing Examiner that such information does not require confidential treatment.

Given the challenge presented by Consumer Counsel’s Motion, Dominion must demonstrate that the risk of publicly disclosing the NPV Information outweighs the presumption in favor of public disclosure.<sup>62</sup>

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<sup>59</sup> Tr. at \_\_ (Macko).

<sup>60</sup> Ex. 2; Tr. at \_\_ (Abbott).

<sup>61</sup> Tr. at \_\_ (Abbott).

<sup>62</sup> The case participants supporting the Motion identified reasons why they believe public disclosure may be in the public interest and emphasized the Commission’s prior statement that “a primary purpose of an IRP ... is to give to the public – which includes customers and the legislators who represent them – a reasonably accurate picture of the probable costs that customers will pay in the future.” *See, e.g.*, Consumer Counsel’s Motion at 5; Appalachian Voices’ Response at 1-2; Tr. at \_\_ (Abbott). However, the legal presumption in favor of public disclosure, as contained in Rule 170 and Protective Ruling Paragraph (7), appears to encompass any such considerations. Consumer Counsel does not argue that a heightened presumption, or a standard different than the provisions shown above, should apply to its Motion. Tr. at \_\_ (Browder).

## Analysis

As explained by Dominion:

The NPV Information represents the results of financial analyses that compare customer costs and benefits forecasted for the next ten years for existing generation units based on a snapshot in time when the analyses were conducted. This information includes a positive or negative number for each unit or series of units at a particular station, with a positive NPV indicating a level of customer benefit. The NPV Information also includes sensitivities showing NPV results using different assumptions.<sup>63</sup>

The case participants supporting public disclosure identified examples of CPCN/RAC cases in which Dominion publicly provided projected NPV results for proposed generation facilities over their projected service lives.<sup>64</sup> Staff also identified projected NPV results that Dominion provided publicly for generation facilities the Company had previously announced plans to place in cold storage.<sup>65</sup> As these examples did not include any projected NPV figures for existing facilities that Dominion plans to continue operating, whether the NPV Information should be made public appears to be an issue of first impression.

Dominion organized potential risks associated with public disclosure of the NPV Information in three categories. Dominion identified risks associated with: (1) the capacity market, including auctions and bilateral contracts; (2) third-party contracts for services and goods, including fuel, needed at generation facilities; and (3) employees working at generation facilities and the local communities.

### (1) Capacity

Regarding the capacity market, Dominion discussed potential risks associated with two scenarios: one in which the Company continues to participate in PJM's regional auctions to procure capacity and another in which the Company does not. If Dominion continues to participate in the auctions, the Company asserted that:

Publicly disclosing the market-sensitive NPV Information could inform the market of the Company's potential bidding strategy for various units, and whether they are likely to clear the capacity market or not. Further, to the extent that the Company is "short" capacity, it engages in bilateral capacity purchases on mutually agreeable terms. Requiring the public disclosure of unit-specific NPVs – particularly negative NPVs – discloses information on the underlying economics of specific units. This information could lead market participants to assume that the Company will retire

<sup>63</sup> Dominion's Response at 4.

<sup>64</sup> See, e.g., Consumer Counsel's Motion at 3-4; Tr. at \_\_ (Link).

<sup>65</sup> Ex. 2; Tr. at \_\_ (Abbott).



specific units, which would potentially result in the Company being “short” capacity. Market participants could exploit this market intelligence, driving up the price of bilateral capacity purchases and resulting in higher capacity costs for the Company and its customers.<sup>66</sup>

In my assessment, the NPV Information provides little meaningful information on potential auction bidding strategy. While PJM’s auctions procure capacity for specified future delivery years, the NPV Information is aggregated for a projected ten-year period and thus includes no information for any given year. Importantly, any reliance by the market on this information would appear misplaced since, according to Dominion, its retirement decisions are based on “[m]any quantitative and qualitative factors beyond the NPV Information.”<sup>67</sup> Another reason capacity market participants should be wary of relying on the NPV Information to speculate about how Dominion may bid its regulated generation into the auction, or whether it will clear, is that Dominion can bid its operational cost-of-service generation facilities into the capacity market at zero.<sup>68</sup> Unlike merchant generation facilities, Dominion’s regulated facilities do not depend on wholesale market revenues. The prudently incurred costs of constructing and operating the Virginia City Hybrid Energy Center and the Brunswick Power Station, for example, are recovered on a dollar-for-dollar basis through retail rate adjustment clauses and the fuel factor.<sup>69</sup>

As for bilateral capacity purchases, the NPV Information itself provides no indication of whether, much less when, the Company plans to retire any generation facility that would create a capacity need. Like capacity auction participants discussed above, reliance on the NPV Information by bilateral market participants would appear misplaced since Dominion does not decide whether to retire its cost-of-service generation based solely on this information. At most, the potential for the NPV Information to signal a capacity need is a potential risk from a redundant signal, in my view. Of the seven facilities with negative NPVs in the base modeling case or more than one sensitivity, Dominion has already identified – in, among other places, the short-term action plan of its public IRP – specific planned retirement years for three of these seven facilities.<sup>70</sup> Three of the others are facilities that, absent reliability concerns, the General Assembly has directed Dominion to retire during the projected NPV period.<sup>71</sup> Moreover, to the extent the NPV Information indicates certain generation facilities are not projected to operate at high levels if operated based on economic dispatch, this signal is already shown by the projected capacity factors for these facilities that are included in the public version of the IRP.<sup>72</sup>

In the hypothetical scenario where Dominion opts out of the regional capacity auction process in which it currently participates, auction bidding strategy is no longer a potential

<sup>66</sup> Dominion’s Response at 5-6.

<sup>67</sup> *Id.* at 7.

<sup>68</sup> *See, e.g.*, Consumer Counsel’s Reply at 8; Tr. at \_\_\_ (Gaskill).

<sup>69</sup> Code § 56-585.1 A 6; Code § 56-249.6.

<sup>70</sup> *See, e.g.*, IRP at Appx. 3C; Dominion’s Response at 9, n.15.

<sup>71</sup> *See also* Tr. at \_\_\_ (Workman).

<sup>72</sup> *See, e.g.*, Staff’s Response at 3; Consumer Counsel’s Reply at 7-8.

concern but the Company would become more reliant on self-build and bilateral capacity.<sup>73</sup> Although the Company expressed concern about showing a potential need prior to negotiating capacity contracts as an FRR utility in an opaque bilateral capacity market,<sup>74</sup> requests for proposals (“RFPs”) can provide transparency and mitigate concerns about capacity suppliers potentially driving up the price of bilateral capacity purchases. Dominion regularly conducts RFPs for long-term energy and capacity and, subject to timing considerations, could potentially use RFPs to fill a short-term need, should one arise.<sup>75</sup> In any event, regardless of whether Dominion continues to participate in the regional auction or opts out, the NPV Information itself provides no indication of whether or when the Company plans to retire any generation facility.

## (2) Contracts for Generation Facilities

Dominion indicated the NPV Information would “show the Company’s hand” to various counterparties to contracts or arrangements associated with its generation facilities.<sup>76</sup> Dominion provided the following example regarding fuel contracts or arrangements:

For instance, if fuel suppliers for an existing generation unit see that the NPV for the unit(s) they are supplying is highly positive, the suppliers may use that information to their advantage to demand higher prices, which would then be passed through to the Company’s customers. In contrast, if fuel suppliers see that the NPV for the unit is highly negative, they may seek other buyers for the fuel in anticipation of a unit retirement, which could result in a more expensive alternative fuel source or a lack of fuel source options. This is especially true for fuels where a supply shortage already exists, such as the wood for the Company’s biomass units.<sup>77</sup>

The more positive NPVs shown in the NPV Information are for facilities using fuel that is less susceptible to pricing pressure due in part to the manner in which it is typically priced.<sup>78</sup> Additionally, the extent to which these facilities have been – and are projected to continue being – dispatched economically in the market is a matter of public record. The IRP publicly provides, among other things, historic capacity factors and capacity factors projected by Dominion based on economic dispatch under the various planning scenarios/sensitivities.<sup>79</sup>

The negative (highly or otherwise) NPVs shown in the NPV Information, as discussed above, are primarily for (a) facilities that are identified for retirement, with a planned retirement year, in the public IRP’s short-term action plan; and (b) facilities that the Code requires be retired during the projected NPV period.<sup>80</sup> For these six facilities, Dominion’s public IRP and/or

<sup>73</sup> Tr. at \_\_ (Gaskill).

<sup>74</sup> Tr. at \_\_ (Gaskill).

<sup>75</sup> See, e.g., IRP at 84; Tr. at \_\_ (Gaskill).

<sup>76</sup> Dominion’s Response at 5.

<sup>77</sup> *Id.*

<sup>78</sup> See, e.g., Tr. at \_\_ (Norwood); Tr. at \_\_ (Workman).

<sup>79</sup> IRP at Appx. 5D.

<sup>80</sup> See also Tr. at \_\_ (Workman).

the legislature have already largely shown the Company's "hand" – and in a more discernible fashion than the projected NPV Information. For the seventh facility, no evidence or argument was presented indicating that fuel supply is tight. Indeed, Staff provided testimony to the contrary.<sup>81</sup> Moreover, to the extent any of the negative NPVs in the NPV Information are considered highly negative, Staff and Dominion acknowledged that a highly negative NPV might put *helpful* pressure on pricing.<sup>82</sup>

### (3) Employees at Generation Facilities and Local Communities

The third harm Dominion indicated may occur as a result of public disclosure of the NPV Information involves the risk of sending the wrong message to the employees and communities where a specific generation unit is located.<sup>83</sup> Essentially, employees and the surrounding communities could assume that highly negative NPV results indicate a generation facility is retiring, even though, as Dominion indicated, the Company "does not decide whether to continue to operate an existing [generation] unit based on the NPV Information alone, and the NPV Information is not a decision to retire any particular unit or series of units."<sup>84</sup>

While releasing information without proper context could cause confusion as a general matter, a ruling on Consumer Counsel's Motion does not in any way prevent Dominion from communicating (in this Commission case or otherwise) whatever contextual information it believes appropriate. To the same end, I reiterate the Company's position that the NPV Information "is *not* a decision to retire any particular [generation] unit or series of units."<sup>85</sup> Similarly, my ruling is in no way indicative of whether any generation facility may operate another ten, twenty, or thirty years – and it should not be construed otherwise.

In sum, Dominion has not demonstrated that the risk of harm from publicly disclosing the NPV Information outweighs the legal presumption in favor of public disclosure. Based on my assessment of the argument and evidence, Consumer Counsel, Appalachian Voices, and Staff have cast significant doubt on Dominion's claims of potential harm. Because any potential competitive value associated with the NPV Information appears limited and duplicative of publicly available information, I do not find that the NPV Information is extraordinarily sensitive or confidential. Finally, I direct that the NPV Information be made publicly available because I find that the cumulative potential for harm from such disclosure – including the potential for the NPV Information to be taken out of context – does not outweigh the presumption in favor of public disclosure. Accordingly, **IT IS DIRECTED THAT:**

- (1) Consumer Counsel's Motion is granted; and
- (2) The following information shall be redesignated as public: (a) page three of the attachment to Dominion's response to Staff Interrogatory 1-17; and (b) page three of the attachment to Dominion's response to Appalachian Voices' Interrogatory 3-2.

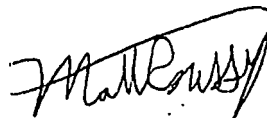
<sup>81</sup> Tr. at \_\_ (Abbott).

<sup>82</sup> Tr. at \_\_ (Abbott); Tr. at \_\_ (Workman).

<sup>83</sup> Dominion's Response at 7.

<sup>84</sup> *Id.* at 4.

<sup>85</sup> *Id.* (emphasis added).



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D. Mathias Roussy, Jr.  
Hearing Examiner

Document Control Center is requested to send a copy of this Ruling to 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, VA 23219.