

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, NOVEMBER 23, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00022

Ex Parte: In the matter of adopting new rules of the State Corporation Commission governing utility rate applications by investor-owned electric utilities

ORDER ADOPTING REGULATIONS

On April 17, 2020, the State Corporation Commission ("Commission") issued an Order for Notice and Comment ("Procedural Order") in this docket establishing a proceeding to promulgate new rules governing utility rate applications and annual informational filings of investor-owned electric utilities ("Investor-owned Electric Utility Rate Case Rules"). In connection therewith, the Commission determined it would also consider limited revisions to the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* ("Existing Rate Case Rules") (together with Investor-owned Electric Utility Rate Case Rules, "Proposed Rules" or "Rules"). Draft Proposed Rules and Form Schedules prepared by the Commission Staff ("Staff") were appended to the Procedural Order.

The Procedural Order permitted interested persons to submit comments on or before June 9, 2020, which were permitted to include proposals and hearing requests. The Procedural Order further permitted Staff to file, on or before June 30, 2020, a report ("Staff Report") providing any response to comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

Comments concerning the Proposed Rules were filed by: (i) Virginia Electric and Power Company and Appalachian Power Company, jointly (individually, "Dominion" and "APCo,"

collectively, "Joint Commenters"); (ii) Kentucky Utilities Company; and (iii) the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"). No requests for hearing were received.

On June 30, 2020, Staff filed a Staff Report including certain revisions to the Proposed Rules and Form Schedules proposed by Staff after reviewing the comments provided. Staff also proposed a modification to proposed Schedule 45 in response to legislation ("Senate Bill 731") passed by the 2020 General Assembly.¹

On July 27, 2020, Joint Commenters filed a motion ("Motion") for leave to file limited supplemental comments to the Staff Report. In support of the Motion, Joint Commenters stated that they had not previously had an opportunity to comment on the Staff Report's proposed modification to Schedule 45. Joint Commenters also represented that Staff does not oppose incorporating the Joint Commenters' proposed language into Schedule 45 in place of the language included in the Staff Report related to Senate Bill 731.

NOW THE COMMISSION, upon consideration of the foregoing, finds that we should adopt the rules appended hereto as Attachment A, effective January 1, 2021.² As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration.

¹ 2020 Acts of Assembly, ch. 1108.

² The Rules were originally planned to become effective October 1, 2020. Joint Commenters requested the Rules become effective January 1, 2021 "to allow sufficient time for utilities to adopt to the final revisions once implemented." Joint Commenters Comments at 3. Staff did not oppose this request, and we find this modification to be reasonable.

The regulations we adopt herein contain a number of modifications to those that were first proposed by Staff and published in the *Virginia Register of Regulations* on May 11, 2020.³ These modifications follow our consideration of further proposed changes made by the Staff in its Staff Report, the comments filed in this proceeding, and the Motion. Although we will not comment on each rule in detail, particularly where there is limited or no disagreement, there were several contested issues that we will address further herein. In this regard, we further note that the Rules, as modified herein, continue to permit requests for waiver based on good cause shown.⁴

As stated in the Procedural Order, since the most recent revisions to the Existing Rate Case Rules, the electric utilities, interested parties and the Commission have obtained significant actual experience in implementing Chapter 23 of Title 56 of the Code of Virginia ("Regulation Act"). Among other things, subsequent legislative amendments have modified the Regulation Act to require triennial reviews rather than biennial reviews of base rate earnings; expanded the number and types of rate adjustment clauses ("RACs") that may be sought by utilities; and permitted the filing of limited prudency reviews under Code §§ 56-585.1 A 6 and 56-585.1:4 F. Importantly, the Regulation Act also establishes various statutory deadlines for the Commission to issue a final order in various types of cases, ranging from 90 days to nine months after filing. As stated by Consumer Counsel, these time periods limit the time available for discovery and

³ Other than minor edits to 20 VAC5-201-15 and 20 VAC 5-201-20 C, no additional modifications to the Existing Rate Case Rules beyond those previously attached to the Procedural Order are being adopted. Accordingly, all references for the remainder of the Order to Proposed Rules or Rules refer to the Investor-owned Electric Utility Rate Case Rules.

⁴ 20 VAC 5-204-10 E.

analysis of requested rate changes, and "enormous amounts of ratepayers dollars are typically at issue in these cases."⁵

20 VAC 5-204-10 B – Testimony summaries

The Joint Commenters suggested that testimony summaries be permitted to be two pages in length, rather than only one page as proposed.⁶ With regard to testimony summaries, the Commission finds that a summary of up to two pages is appropriate for base rate and triennial review proceedings. For all other proceedings, summaries should be limited to one page in length.

20 VAC 5-204-10 H – Requirements for electronic submission of documents

Proposed 20 VAC 5-204-10 H expands on current requirements to provide Staff with electronic versions of documents including the application, direct testimony and schedules on the day of filing, with the exception of schedules that do not have calculations derived from formulas, which would be required to be provided to Staff within five business days. Joint Commenters state they "fully support" moving toward increased use of electronic media, but request more time to provide such electronic copies, ranging from one to five additional business days after filing an application.⁷ Staff argues that the additional time requested by the Joint Commenters is unnecessary given that the Existing Rate Case Rules require that such electronic schedules be provided on the application filing date and applicants have generally complied with

⁵ Consumer Counsel Comments at 2.

⁶ Joint Commenters Comments at 5.

⁷ *Id.* at 6-8.

this rule for over a decade without any issues.⁸ We agree and approve the timelines as originally proposed.

With regard to providing electronic versions of documents to Consumer Counsel, we agree with the clarification suggested by Joint Commenters that applicants need only provide Consumer Counsel with the public version of the application and direct testimony, consistent with current practice.⁹

We also note that the Joint Commenters requested to provide certain information to Staff, including information required by Schedules 18, 28 and 36, within 10 business days.¹⁰ Staff disagreed with this proposal, noting the Proposed Rules already provide up to five business days for certain information.¹¹ The Commission declines to extend further the time for providing required information as requested by Joint Commenters. The Rules, as approved, strike a balance between tight statutory deadlines and the burden of producing information that can be voluminous and time consuming to prepare.

20 VAC 5-204-10 I – Filing of paper copies

Several comments supported, to varying degrees, reducing the number of paper copies of documents filed with the Clerk of the Commission and provided to Staff.¹² As a general matter, we share the desire to reduce the filing of unnecessary paper copies. We also recognize, however, that the copies filed with the Clerk's office are distributed to the Commission's various

⁸ Staff Report at 13.

⁹ Joint Commenters Comments at 6.

¹⁰ *Id.* at 17-23.

¹¹ Staff Report at 15.

¹² *See, e.g.*, Joint Commenters Comments at 8-9; Kentucky Utilities Comments at 1-2;

divisions for internal use in investigating each application. In addition, the copies of Schedules 29 and 40 required to be provided to Staff are also for internal use in investigating each application. At this time, we will retain the number of copies required by the Proposed Rules.¹³

20 VAC 5-204-10 J – Electronic service on local officials

We agree with the Joint Commenters that electronic service on local officials should be permitted under the Rules, consistent with the limited waiver the Commission granted Dominion related to electronic service on Commonwealth officials.¹⁴ We will, however, adopt the alternative language proposed in the Staff Report which provides as follows:

Service specified by this paragraph shall be made electronically to the extent the applicant has official email addresses for such officials. If not, such service shall be made either by (i) personal delivery or (ii) first class mail to the customary place of business or to the residence of the person served.¹⁵

Schedules 3, 4 and 5

Schedules 3, 4 and 5 of the Rules provide information related to an applicant's historical capital structure and cost of capital information. The Rules would require these schedules to be filed in RAC proceedings, which is not currently required. Joint Commenters oppose providing these schedules in RAC proceedings, asserting it is unnecessary, cost additive and redundant.¹⁶ We adopt Schedules 3, 4 and 5 as originally proposed and will require them to be filed in RAC

¹³ We note that the Rules reduce the number of copies to be filed with the Clerk of the Commission that would otherwise be required under our Rules of Practice and Procedure.

¹⁴ Joint Commenters Comments at 9 (citing *Petition of Virginia Electric and Power Company, For a continuing waiver of 20 VAC 5-201-10 J of the Rules Governing Utility Rate Applications and Annual Informational Filings to permit electronic service to local officials upon request*, Case No. PUE-2016-00039, Doc. Con. Cen. No. 160420194, Order (Apr. 19, 2016)).

¹⁵ Staff Report at 7.

¹⁶ Joint Commenters Comments at 13.

proceedings. In making this determination, we find the following persuasive: (i) the information in these schedules is necessary to calculate the RAC revenue requirement in each case; and (ii) delaying the provision of these schedules for 10 business days, or requiring that they be obtained through discovery, is contrary to the need for the Rules to provide important information at the beginning of the case given tight statutory deadlines.¹⁷

Schedule 8

Schedule 8 requires an applicant to file its proposed capital structure and cost of capital statement in various rate proceedings. Joint Commenters propose to make Schedule 8 optional for triennial reviews and RAC proceedings, arguing that the Code requires the use of end-of-test period capital structure, and the information is duplicative of information provided in Schedule 3.¹⁸ Staff argued, however, that Schedule 8 has value because it "provides clarity as to the specific capital structures and overall cost of capital used to compute various components of an applicants' proposed revenue requirement."¹⁹ In addition, Staff notes that, compared to Schedule 3, Schedule 8 provides a simplified presentation of the proposed capital structure and cost of capital, providing greater transparency, and assists Staff in auditing the applicant's revenue requirement calculations.²⁰ Weighing the burden of producing Schedule 8 against its value in triennial reviews and RAC proceedings, we find that Schedule 8 should be a required schedule and not optional.

¹⁷ See Staff Report at 17-18.

¹⁸ Joint Commenters Comments at 13.

¹⁹ Staff Report at 19.

²⁰ *Id.* at 18-19.

Schedules 10, 13, 20, 23 and 44

The Rules modify the way an applicant presents the removal of prospective RACs and the associated impact on base rates cost of service. Under the Proposed Rules, applicants would remove the impact of both current and future RACs in Schedules 10, 13, 20, and 23. Schedule 44 will present detailed information for each current and future RAC removed through Schedules 10, 13, 20, and 23. The Joint Commenters state a preference to continue existing practice. Currently, future RAC activity is eliminated in the earnings test and ratemaking schedules through regulatory accounting adjustments.²¹ Staff, however, represents that elimination of RAC costs and revenues consumes a lot of Staff's time when auditing and states that Schedules 10, 13, 20, 23, and 44 are intended to increase transparency.²² We agree with Staff that these revised schedules will increase transparency and will adopt Schedules 10, 13, 20, 23 and 44 with only minor revisions. In doing so, we are mindful of the 8-month statutory deadline applicable to triennial review proceedings.

Schedules 18 and 28 – Balance Sheet Analysis Section of the Lead/Lag Study

Schedules 18 and 28 provide details of all balance sheet accounts included in the balance sheet analysis section of the applicant's lead/lag study. Associated Accumulated Deferred Income Taxes ("ADIT") are required to be included in the balance sheet analysis in both Schedules 18 and 28. Joint Commenters opposed including the ADIT information in Schedules

²¹ Joint Commenters Comments at 15.

²² Staff Report at 20.

18 and 28, stating it is redundant, as this information is already included as cost-free capital in Schedules 12 and 22, respectively.²³

Staff acknowledged that for utilities that complete a lead/lag study, the inclusion of ADIT-related information in Schedules 18 and 28 is a matter of presentation.²⁴ For a utility that does not complete a lead/lag study, however, Staff states that ADIT associated with the accounts included in the balance sheet analysis are only appropriate to include in rate base if an applicant completes a lead/lag study.²⁵ Staff states that for audit and tracking, it prefers the balance sheet analysis-related ADIT to be included within the balance sheet analysis itself.²⁶ We agree and will retain the proposed language in Schedules 18 and 28 related to inclusion of ADIT-related information.

Schedule 45 – Peer Group Information

We grant the Motion and adopt the Joint Commenters' proposed revisions to Schedule 45 to reflect the passage of Senate Bill 731.

Schedule 46 – Filing Requirements for RACs and Prudency Determinations

The Proposed Rules included significant changes to broaden existing Schedule 46 to address all the currently permissible types of RACs and prudency determinations. Joint Commenters proposed to reorganize Schedule 46 into (i) transmission RACs; (ii) initial RAC

²³ Joint Commenters Comments at 18.

²⁴ Staff Report at 21.

²⁵ *Id.* at 22.

²⁶ *Id.*

applications; (iii) RAC update applications; and (iv) prudence determination Filings,²⁷ which Staff did not oppose.²⁸

Joint Commenters also proposed to delete certain categories of information required by Schedule 46 including (i) materials used by senior management to make major cost decisions; (ii) long-term revenue requirements on a total company basis; and (iii) transaction-level details to facilitate Staff's sampling and audit of actual costs.²⁹

With respect to materials used by senior management to make major cost decisions, Staff explained that these materials, which have been provided through the discovery process in the past, are valuable in a RAC or prudency determination proceeding because they provide insight into the justification for a proposed project or major cost decision.³⁰ The Joint Commenters, on the other hand, state this type of material is competitively sensitive and will add an unnecessary administrative burden to ensure appropriate protection.³¹ They also assert this language is vague and subjective and could inject unnecessary dispute regarding the meaning of "major."³² In response to these concerns, and to avoid future disputes, Staff suggested the Commission clarify this requirement by adding "as determined by the applicant."³³

²⁷ Joint Commenters Comments at 25.

²⁸ Staff Report at 24.

²⁹ Joint Commenters Comments at 26-28.

³⁰ Staff Report at 25.

³¹ Joint Commenters Comments at 26.

³² *Id.*

³³ Staff Report at 26.

We find that the senior management materials should be required by Schedule 46. The Commission has protocols in place to protect confidential and extraordinarily sensitive material. Moreover, provision of this information at the outset of a proceeding will allow for a more streamlined review of applications and audit of financial information.

With respect to providing the long-term revenue requirement on a total company basis in RAC proceedings, Joint Commenters state that it creates an unnecessary administrative burden to provide this information as part of a filing that is not justified by the usefulness of the information.³⁴ Staff disagreed, stating, among other things, that the long-term revenue requirement is valuable information because it provides an estimate of the all-in cost of a program or project, including financing costs.³⁵ We agree this information should be required by the Rules and will include this requirement in Schedule 46.

Joint Commenters also objected to providing "transaction-level details to facilitate the sampling and audit of [] actual costs electronically to [UAF]" within five business days of an application filing date.³⁶ The Joint Commenters suggest that the Proposed Rules contain insufficient description of what sort of details the applicant must provide based on the type of case to facilitate this sampling and audit.³⁷ Staff disagreed, stating this language requires an applicant to provide detailed, actual cost information, at a transaction-level, such that Staff can use the information to select a sample of transactions to audit.³⁸ Moreover, Staff explained that:

³⁴ Joint Commenters Comments at 27.

³⁵ Staff Report at 27

³⁶ Joint Commenters Comments at 28.

³⁷ *Id.*

³⁸ *See* Staff Report at 29.

The purpose of this requirement is to provide Staff with a starting point for its audit and review of actually incurred costs in connection with a RAC filing. Providing this information to Staff upfront at the beginning of a proceeding is very helpful given the quantity of proceedings on-going simultaneously and tight statutory timeframes for review. Having this information within five business days will help Staff do a thorough audit and investigation of potentially very significant costs.³⁹

Balancing the burden of providing this information with its usefulness, we find that Schedule 46 should include the requirement to provide transaction level details to facilitate sampling and audit of actual costs.

For economic studies required by Schedule 46, the Joint Commenters propose to add qualifying language "to the extent required by statute." Staff and Consumer Counsel oppose inclusion of this language.⁴⁰ We agree it should not be included and so find. To the extent the Company believes an economic study is not required by a statute to support a particular resource, the Company may seek a waiver of the Rules, as appropriate.

Finally, Consumer Counsel proposes to extend the applicability of Schedule 46 to apply to new energy storage facilities.⁴¹ Staff notes that Schedule 46, as proposed, would apply to all initial RAC and prudency reviews which would encompass RACs for energy storage facilities.⁴² At this time, we find it is not necessary to include additional requirements in the Rules related to energy storage facilities.

³⁹ *Id.* at 28.

⁴⁰ *See* Staff Report at 28-29; Consumer Counsel Comments at 3-4.

⁴¹ *See* Consumer Counsel Comments at 3.

⁴² *See* Staff Report at 30-31.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas and Water Utilities, 20 VAC 5-201-10 *et seq.*, and the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Electric Utilities, 20 VAC 5-204-10 *et seq.*, as shown in Attachment A to this Order, are hereby adopted and are effective as of January 1, 2021.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Attachment A shall be made available on the Division of Public Utility Regulation's section of the Commission's website:

scc.virginia.gov/pages/Rulemaking.

(4) This docket is dismissed.

A COPY hereof shall be sent electronically 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 Commission.