

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, MARCH 25, 2021

REGISTRAR'S OFFICE  
REGISTRATION CONTROL CENTER

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PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2020-00197

For approval of broadband capacity pilot projects pursuant to § 56-585.1:9 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider RBB, under § 56-585.1 A 6 of the Code of Virginia

ORDER APPROVING BROADBAND PILOT PROJECTS

On October 1, 2020, Virginia Electric and Power Company ("Dominion" or "Company") filed a petition ("Petition") with the State Corporation Commission ("Commission") pursuant to § 56-585.1:9 of the Code of Virginia ("Code") and Code § 56-585.1 A 6 for (i) approval of pilot programs to make available and provide broadband capacity to unserved areas in Surry County, Botetourt County, and the Northern Neck region of Virginia ("Surry Pilot," "Botetourt Pilot," and "Northern Neck Pilot" respectively, and collectively the "Pilot Projects"); and (ii) establishment of a rate adjustment clause ("RAC") for the Surry Pilot and Botetourt Pilot, designated Rider RBB, for the rate year commencing August 1, 2021, through July 31, 2022 ("Rate Year").<sup>1</sup> The Company asserts that it will partner with nongovernmental internet service providers RURALBAND, BARC Connects, and All Points Broadband (collectively, "ISPs") to extend broadband capacity in unserved areas.<sup>2</sup> Pursuant to Code § 56-585.1:9 I, the Company

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<sup>1</sup> Ex. 3 (Petition) at 1. On November 19, 2020, the Company filed a corrected Petition, in public, confidential and extraordinarily sensitive versions.

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

requests that the term of the Pilot Projects be extended three years beyond the three-year minimum provided in the Code, for a total of six years.<sup>3</sup>

Dominion also is seeking approval of Rider RBB for the Rate Year pursuant to Code § 56-585.1 A 6. The Company states that it will use the lease revenues it receives from the ISPs to offset the costs of the Pilot Projects.<sup>4</sup> For the Rate Year, the Company is requesting recovery of a total revenue requirement of \$1.2 million.<sup>5</sup> The Company states that its revenue requirement includes the Projected Cost Recovery Factor.<sup>6</sup> The Company further states that no Actual Cost True-Up Factor is included in this initial proceeding because this filing represents the initial request for cost recovery.<sup>7</sup> The Company states it is utilizing a rate of return on common equity of 9.2% in this proceeding consistent with the Commission's Final Order in Case No. PUR-2019-00050.<sup>8</sup>

On October 15, 2020, the Commission entered an Order for Notice and Hearing that, among other things, (i) docketed the Petition; (ii) directed Dominion to publish notice of the Petition; (iii) provided any interested person an opportunity to file comments on the Petition or to participate in the case as a respondent by filing a notice of participation; (iv) directed the Staff of the Commission ("Staff") to investigate the Petition and file testimony and exhibits containing its

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

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

<sup>5</sup> *Id.* at 12; Ex. 13 (Ingram Direct) at 8.

<sup>6</sup> Ex. 3 (Petition) at 11; Ex. 13 (Ingram Direct) at 3.

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

<sup>8</sup> Ex. 3 (Petition) at 10-11. *See Application of Virginia Electric and Power Company, For the determination of the fair rate of return on common equity pursuant to § 56-585.1:1 C of the Code of Virginia*, Case No. PUR-2019-00050, 2019 S.C.C. Ann. Rept. 400, Final Order (Nov. 21, 2019).

findings and recommendations; (v) scheduled a public hearing for February 16, 2021, to receive the testimony of public witnesses and the evidence of the Company, any respondents, and the Staff; and (vi) appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission, including filing a final report.

On December 9, 2020, Alexander F. Skirpan, Jr., Chief Hearing Examiner, issued a ruling stating that, due to the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, the hearing in this matter would be conducted virtually, with no party present in the Commission's courtroom.

Notices of participation were filed by the Board of Supervisors of Culpeper County, Virginia; the Virginia Committee for Fair Utility Rates ("Committee"); the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and the Virginia Cable Telecommunications Association ("VCTA").

On January 15, 2021, Staff filed testimony documenting the results of its investigation of Dominion's Petition and the Staff's recommendations in this proceeding. In addition, the Commission received numerous written comments in support of the Petition from individuals, organizations, and local governments.

The Chief Hearing Examiner convened a public hearing as scheduled on February 16, 2021. Two public witnesses testified by telephone at the hearing. Dominion, Consumer Counsel, VCTA, the Committee, and Staff participated in the hearing, the evidentiary portion of which was convened via Microsoft Teams. At the hearing, Dominion presented the terms of a

Stipulation signed by Dominion, Staff, and the Committee.<sup>9</sup> Consumer Counsel and the VCTA represented that while not signatories, they do not oppose the Stipulation.<sup>10</sup>

On March 4, 2021, the Report of Alexander F. Skirpan, Chief Hearing Examiner ("Report") was filed. In the Report, the Chief Hearing Examiner thoroughly summarized the record, the testimony and exhibits presented during the evidentiary hearing, and the applicable law. The Chief Hearing Examiner found that the Commission should approve the Stipulation including a Rider RBB revenue requirement for the Rate Year of \$1.2 million.<sup>11</sup> The Chief Hearing Examiner further found, as provided in the Stipulation, that:

1. The proposed Pilot Projects meet the requirements of Code § 56-585.1:9 ("Broadband Statute");
2. The Company has appropriately identified RURALBAND as the non-governmental ISP for the Surry Pilot, BARC Connects for the Botetourt Pilot, and All Points Broadband for the Northern Neck Pilot, to which it will lease broadband capacity;
3. For purposes of this proceeding, the areas covered by the Pilot Projects are unserved as defined by the Broadband Statute;
4. The annual costs of the Pilot Projects do not exceed the statutory limit;
5. The Company should remove the approximately four miles of fiber extending into Sussex County from the Surry Pilot and should exclude costs associated with the fiber extending into Sussex County from the projected and true-up cost recovery associated with the Surry Pilot;
6. The Company should annually provide to Staff the information agreed to in the Stipulation, until such time as administratively relieved by the Director of the Division of Public Utility Regulation. The agreed to information includes: (i) miles of fiber installed and miles of fiber remaining to be installed; (ii) a tabular breakdown of the number of poles replaced and rationale for replacement (*e.g.* pole too short, pole has deteriorated, etc.); (iii) a tabular breakdown of customers for each ISP, by

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<sup>9</sup> See Ex. 1 (Stipulation). The Committee signed the Stipulation as to Paragraph 11 only and took no position on the remainder of the Stipulation.

<sup>10</sup> Tr. 22-23.

<sup>11</sup> Report at 34.

the speed offerings, rate of offerings, the number of fiber residential subscribers, wireless residential subscribers, fiber business subscribers, and wireless business subscribers ("ISP Proprietary Information"); (iv) a tabular breakdown of economic benefits resulting from each Pilot Project as suggested by the Company, such as impacts to businesses, educational institutions, health clinic industry, ecotourism industry, and household income; and (v) copies of all pilot related reports given to the counties being served by the Company and its partnering entities. The annual reports will be publicly available subject to the Hearing Examiner's Protective Rulings issued on October 19, 2020, and November 10, 2020, in this proceeding, and the protections of Rule 170 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-170, which permits confidential commercial information such as ISP Proprietary Information to be withheld from public disclosure;

7. The Pilot Projects should be approved for six years, three years beyond the three-year minimum set forth in the Broadband Statute;
8. The Company should establish a rate adjustment clause denoted as Rider RBB, to recover the costs of the Botetourt and Surry Pilots;
9. For purposes of this specific proceeding, the Company's incremental costs for the Surry and Botetourt Pilots will be used to calculate the revenue requirement for Rider RBB;
10. The Company may defer incremental costs of the Northern Neck Pilot until a future rate adjustment clause proceeding. The Commission will determine whether such costs are reasonable and prudent in a future rate adjustment clause proceeding;
11. RBB-related costs should be recovered from customers in the GS-2, GS-3, and GS-4 rate classes using per-kilowatt ("kW") demand charges, and not the per-kilowatt-hour ("kWh") energy charges proposed by the Company's Petition subject to the following: (i) Schedule 5 customers and Schedule DP-2 customers in the GS-2 class shall have costs recovered through a per-kWh charge; (ii) Schedule 6, 6TS and 10 customers in the GS-3 and GS-4 classes shall have costs recovered through a per-kWh charge; (iii) GS-3 and GS-4 customers, including those on MBR and SCR rate schedules, shall have costs recovered through a per-kW demand charge applicable to On-Peak Electricity Supply Demand for GS-3 customers and On-Peak Electricity Demand for GS-4 customers; and (iv) for Schedule GS-2 and Schedule GS-2T customers, if the monthly load factor is less than or equal to 50%, the kWh charge applies; otherwise, the kW charge applies to the kW of Demand for Schedule GS-2 customers and the On-Peak Electricity Supply Demand for Schedule GS-2T customers;
12. The revenue requirement for Rider RBB is \$1.2 million for the Rate Year of August 1, 2021, through July 31, 2022. Any difference between the Company's projections and the actual costs incurred will be addressed through a future Rider RBB True-Up Factor; and

13. Consistent with Subsection D of the Broadband Statute, the Commission should condition approval of the Company's Petition to require construction to commence within three years of the Commission's final order.<sup>12</sup>

The Chief Hearing Examiner recommended that the Commission issue an order adopting the findings in the Report and approving the Company's Petition and Rider RBB consistent with the recommendations in the Report.<sup>13</sup> On March 11, 2021, Dominion, Consumer Counsel, and Staff filed comments to the Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed Pilot Projects meet the requirements of the Broadband Statute. We approve the proposed Pilot Projects for a period of six years, effective as of the date of this Order, subject to the reporting requirements agreed to in the Stipulation and the Company's removal of the approximately four miles of fiber extending into Sussex County (and associated costs) from the Surry Pilot. We also condition approval of the Pilot Projects upon the requirement that the Company commence construction within three years of the date of this Order. The Company may defer incremental costs of the Northern Neck Pilot until a future rate adjustment clause proceeding, at which time the Commission will determine whether such costs are reasonable and prudent.

The Company requested approval of the proposed Pilot Projects under Code § 56-585.1:9, which directs the Commission to enter a final order no later than six months after the date of filing of the Petition, *i.e.*, April 1, 2021. The Company requested approval of its proposed rate recovery mechanism for the Pilot Projects – Rider RBB – pursuant to Code § 56-585.1 A 6. We note that Code § 56-585.1 A 7 states the following (emphasis added):

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<sup>12</sup> *Id.* at 34-35.

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

The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, *the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order*, or upon the expiration or termination of capped rates, whichever is later.

The revenue requirement agreed to in the Stipulation is based on a Rate Year beginning August 1, 2021, which is four months after the April 1, 2021 deadline for the final order regarding the proposed Pilot Projects. Accordingly, the Commission will address the Company's request for approval of Rider RBB in a later order. In future cases where the final order deadlines under Code §§ 56-585.1 A 6 and 56-585.1:9 do not line up, we encourage the Company to synchronize the beginning of the rate year to be within 60 days of the earlier deadline.

Accordingly, IT IS ORDERED THAT:

- (1) Dominion's Pilot Projects are approved as described herein for an initial period of six years.
- (2) The approval is conditioned upon Dominion beginning construction within three years of the date of this Final Order.
- (3) Dominion shall submit annually a report to Staff containing the information described herein.
- (4) The Company's Petition for approval of a RAC, designated Rider RBB, will be addressed in a subsequent order.
- (5) This case is continued.

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.

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