

## STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 4, 2021

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PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2020-00169

For approval of a rate adjustment clause,  
designated Rider RGGI, under  
§ 56-585.1 A 5 e of the Code of Virginia

ORDER APPROVING RATE ADJUSTMENT CLAUSE

On November 9, 2020, Virginia Electric and Power Company ("Dominion" or "Company") filed with the State Corporation Commission ("Commission") a petition ("Petition") for approval of a rate adjustment clause, designated Rider RGGI, pursuant to § 56-585.1 A 5 e of the Code of Virginia ("Code").<sup>1</sup> Through its Petition, Dominion requested approval to recover projected and actual costs related to the purchase of allowances through the Regional Greenhouse Gas Initiative ("RGGI") market-based trading program for carbon dioxide ("CO<sub>2</sub>") emissions.<sup>2</sup>

In May 2019, the Virginia Department of Environmental Quality ("DEQ") issued a final rule establishing a state carbon regulation program linked to RGGI (the "DEQ Carbon Rule" or "Rule"). Although the DEQ Carbon Rule was finalized in 2019, language in the state budget bill prohibited DEQ from continued work on the Rule. During its 2020 Regular Session, the General Assembly passed the Clean Energy and Community Flood and Preparedness Act, which authorized Virginia to become a full participant of RGGI and authorized DEQ to implement the DEQ Carbon Rule.<sup>3</sup> The legislation became effective July 1, 2020. With the passage of this

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<sup>1</sup> On December 4, 2020, the Company filed an updated Schedule 46, completing its Petition.

<sup>2</sup> Ex. 2 (Petition) at 1.

<sup>3</sup> 2020 Va. Acts Ch. 1219 and 1280.

legislation, DEQ revised the DEQ Carbon Rule to clarify that the Commonwealth will join RGGI in 2021.

The revenue requirement for Rider RGGI in the instant proceeding includes only a Projected Cost Recovery Factor ("Projected Factor").<sup>4</sup> Beginning with the next filing, which the Company expects to make in 2021, the total revenue requirement will include both a Projected Factor and an Actual Cost True-Up Factor ("True-Up Factor"). No True-Up Factor is included in this proceeding because this filing represents the initial request for cost recovery.<sup>5</sup> In this proceeding, the Company seeks approval of a total revenue requirement of \$168,260,000 for the rate year of August 1, 2021, to July 31, 2022 ("Rate Year").<sup>6</sup>

If the proposed Rider RGGI for the Rate Year is approved as filed, the impact on customer bills would depend on the customer's rate schedule and usage. According to Dominion, implementation of its proposed Rider RGGI on August 1, 2021, would increase the monthly bill of a residential customer using 1,000 kilowatt-hours per month by approximately \$2.39.<sup>7</sup>

On December 11, 2020, the Commission issued an Order for Notice and Hearing that, among other things: docketed the Petition; required the Company to publish notice of the Petition; gave interested persons the opportunity to comment on, or participate in, the proceeding; scheduled public evidentiary hearings to convene on April 27 and 28, 2021; and directed the Commission Staff ("Staff") to investigate the Petition and file testimony and exhibits containing its findings and recommendations. The Virginia Committee for Fair Utility Rates

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<sup>4</sup> Ex. 2 (Petition) at 5.

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

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

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

("Committee"); Appalachian Voices; the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); and the Board of Supervisors of Culpeper County filed notices of participation.

On March 11, 2021, the Commission entered an Order appointing a Hearing Examiner to conduct all further proceedings on behalf of the Commission. On March 24, 2021, a Hearing Examiner's Ruling directed that the April 28, 2021 hearing would be convened virtually due to the ongoing COVID-19 emergency.

On April 27, 2021, a hearing was convened to receive public witness testimony telephonically, as scheduled. One member of the public signed up to testify but did not answer his phone to provide testimony.

On April 28, 2021, a hearing to receive the testimony and evidence of the parties and Staff was convened, as scheduled, using Microsoft Teams. The Company, Appalachian Voices, the Committee, Consumer Counsel and Staff participated in the hearing. On May 19, 2021, Dominion, Appalachian Voices, Staff, Consumer Counsel, and the Committee filed post-hearing briefs.

On June 2, 2021, the Report of D. Mathias Roussy, Jr., Hearing Examiner ("Report") was issued. In the Report, the Hearing Examiner recommended that the Company's proposed Rider RGGI be approved, with an initial Rider RGGI rate designed to recover \$167.76 million.<sup>8</sup>

The Hearing Examiner made the following additional findings and recommendations:

- (1) By the close of the record, Dominion had spent approximately \$40 million (\$32 million Virginia jurisdictional) to purchase CO<sub>2</sub> allowances that effectively cover the Company's regulated emissions for the first three months of 2021.

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<sup>8</sup> Report at 35.

- (2) Dominion will need to purchase many more CO<sub>2</sub> allowances through the end of the [R]ate [Y]ear (July 31, 2022), although the exact prices or quantities of such additional purchases cannot be known at this time.
- (3) Record evidence, including actual CO<sub>2</sub> allowance prices in 2021, indicates the \$6.84 allowance price used to calculate the proposed Rider RGGI revenue requirement could be too low. However, CO<sub>2</sub> allowance prices fluctuate and any price differentials (higher or lower) can be trued-up in future Rider RGGI proceedings.
- (4) Dominion's proposed use of weighted averages to calculate the cost of allowance consumption reasonably incorporates the actual prices of CO<sub>2</sub> allowance purchases by Dominion.
- (5) Like CO<sub>2</sub> allowance price differentials discussed above, adjustment clause recovery allows any quantity differentials (higher or lower) to be trued-up in future Rider RGGI proceedings.
- (6) Dominion will not incur any costs through the end of the [R]ate [Y]ear to build a CO<sub>2</sub> allowance bank. An allowance bank, if implemented temporarily at the end of a control period, generally appears to be a reasonable measure to ensure CO<sub>2</sub> compliance and avoid significant penalties for non-compliance. However, Dominion should provide sufficient support for any cost recovery associated with an allowance bank in any future proceeding in which it seeks to recover such costs.
- (7) Dominion will incur financing costs associated with a CO<sub>2</sub> allowance inventory, cash working capital, and deferred balances.
- (8) The Commission has previously authorized adjustment clause recovery under Code § 56-585.1 A 5 e for financing costs associated with an emissions allowance inventory, cash working capital, and deferred balances.
- (9) Legislation enacted in 2020 does not appear to limit RGGI compliance costs to only the "sticker price" of allowances, but the Commission has not previously interpreted this legislation. Should the Commission interpret this legislation to include such a limitation, approximately \$4.95 million (3%) of the proposed \$167.76 million revenue requirement request should be recoverable through base rates, rather than Rider RGGI.
- (10) It is reasonable for Dominion to obtain CO<sub>2</sub> allowances from both the RGGI auctions and the secondary market.
- (11) While Dominion's RGGI compliance approach generally appears to be a reasonable way to manage operational facilities in the short-term, Dominion's Petition was not presented with analysis indicating such short-term compliance is part of a least-cost strategy that integrates the requirements of RGGI and other legal requirements, including new

mandatory [Renewable Energy Portfolio Standards ("RPS")] requirements that could affect CO<sub>2</sub> emissions. The Commission recently directed Dominion to conduct and present this type of analysis in separate proceedings and the instant proceeding offers the Commission the opportunity to provide guidance on whether such analysis should also be presented in Rider RGGI proceedings.

- (12) The Commission can approve a projected cost Rider RGGI revenue requirement in the instant case, based largely on projected need and prices forecasted at the outset of a three-year compliance period, without foreclosing the Commission's authority to review, in future Rider RGGI proceedings, the reasonableness or prudence of expenditures once they have actually been incurred and are known.
- (13) If RGGI compliance cost recovery is not approved until a future Rider RGGI proceeding, Dominion's ongoing CO<sub>2</sub> allowance costs would accumulate and could result in a significant deferral balance with a larger ratepayer impact.
- (14) The energy allocation and rate design for Rider RGGI are reasonable.<sup>9</sup>

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.

The Commission finds that Rider RGGI meets the statutory requirements for approval of a RAC under Code § 56-585.1 A 5 e. The Commission herein approves a revenue requirement, as recommended by the Hearing Examiner, of \$167.76 million.

#### Statutory Authority

Code § 56-585.1 A 5 e states in relevant part as follows:

5. A utility may at any time, after the expiration or termination of capped rates, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the following costs:

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e. Projected and actual costs of projects that the Commission finds to be necessary . . . to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations, including the costs of allowances purchased through a market-based trading program for

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<sup>9</sup> *Id.* at 34-35.

[CO<sub>2</sub>] emissions. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations;

Allowance Bank

In its Petition, Dominion identified its plan to obtain a quantity of allowances that would be 10% to 20% above the Company's projected annual compliance obligation.<sup>10</sup> According to the Company, the purpose of this planned "bank" is "to protect customers from forecast uncertainty, price volatility, and noncompliance penalties."<sup>11</sup> Appalachian Voices agreed that it is "wise for the Company to develop a banking strategy and to consider the procurement of an appropriate amount of excess allowances as a hedge against market volatility and unexpected increases in demand for energy," but argued that a 10% to 20% level for such bank is unreasonable.<sup>12</sup>

The Hearing Examiner noted that Dominion did not plan to implement an allowance bank during the Rate Year and recommended that the Commission evaluate any banked allowances during future Rider RGGI proceedings.<sup>13</sup>

In its comments on the Hearing Examiner's Report, Appalachian Voices argued that the Company's proposed 10% to 20% allowance bank is not supported by any economic analysis. Appalachian Voices requested that the Commission find that any purchases made to establish an allowance bank are not approved in this case, and the Company must provide detailed economic analysis to support any future request for a bank.<sup>14</sup>

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<sup>10</sup> Ex. 4 (Hitch direct) at 8.

<sup>11</sup> Ex. 25 (Hitch rebuttal) at 10.

<sup>12</sup> Ex. 15 (Rábago) at 8, 15.

<sup>13</sup> Report at 25.

<sup>14</sup> Appalachian Voices Comments at 13-14.

We agree with the Hearing Examiner and will direct the Company, in any applicable future Rider RGGI proceeding, to identify and provide support for any banked allowances.<sup>15</sup>

#### Financing Costs

Dominion's Petition requested a revenue requirement, as corrected by Staff, of approximately \$168 million. The Hearing Examiner's Report notes that the actual cost of the allowances the Company projects to obtain through the end of the Rate Year is higher than this amount.<sup>16</sup> The proposed revenue requirement instead includes only the costs of allowances that would be both obtained and consumed by the end of the Rate Year, plus the financing of projected allowances that would be purchased but not yet consumed.<sup>17</sup> Dominion proposed to recover the financing costs for purchased allowances through a proposed return on a rate base that consists of: (a) allowance inventory, which is the positive or negative balance of purchased allowances minus required allowances; (b) cash working capital; and (c) deferred costs. The financing costs represent approximately \$5 million of the \$168 million revenue requirement.<sup>18</sup>

Dominion argued that financing costs are part of "the costs of allowances purchased through a market-based trading program for [CO<sub>2</sub>] emissions," and are therefore recoverable as part of Rider RGGI pursuant to Code § 56-585.1 A 5 e.<sup>19</sup>

Staff asserted that the Commission has discretion to decide whether to approve financing costs under Code § 56-585.1 A 5 e and that the statute "neither expressly forbids, nor explicitly

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<sup>15</sup> See Report at 26.

<sup>16</sup> *Id.* at 26. According to the Report, the actual costs of the allowances is approximately \$174 million, as estimated in the Petition, or \$199 million, based on updated estimates. *Id.* at n.199.

<sup>17</sup> *Id.* at 26-27.

<sup>18</sup> *Id.* at 27; See, e.g., Tr. at 150, 154.

<sup>19</sup> Dominion Post-Hearing Brief at 8-9.

requires, that the costs recovered through a rate adjustment clause related to RGGI participation include the financing costs associated with such participation."<sup>20</sup> Staff noted that the Commission has previously rejected financing costs in cases conducted under Code § 56-585.1 A 4.<sup>21</sup> Consumer Counsel recognized the Commission's discretion in this area and argued that the Commission should exercise this discretion by excluding the financing costs from recovery under Rider RGGI.<sup>22</sup>

The Committee, on the other hand, stated that there is no authority to support Staff's argument that the Commission has discretion to include financing costs, arguing that Code § 56-585.1 A 5 e does not include the terms "carrying cost" or "financing cost" and arguing that the statute does not suggest that "any costs associated with, or even resulting from, an underlying compliance cost were intended to be recovered through a rider such as Rider RGGI."<sup>23</sup>

The Hearing Examiner concluded that "the legal issue of whether allowance financing costs should be approved for recovery in this case does not appear to implicate Commission discretion."<sup>24</sup> The Hearing Examiner further concluded that financing costs of allowances procured are a part of the costs of allowances recoverable under the Code, noting that Code § 56-585.1 A 5 e

has provided rate adjustment clause recovery of environmental compliance expenses and a return on environmental compliance rate base items. For adjustment clause recovery under this statute, environmental compliance rate base items have included, among other things, environmental allowance inventory, cash working capital, and deferred balances. These and other costs have been considered the "cost of [compliance] projects" upon a finding that they were

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<sup>20</sup> Staff Post-Hearing Brief at 2.

<sup>21</sup> Tr. at 160-162.

<sup>22</sup> Consumer Counsel Post-Hearing Brief at 5-7.

<sup>23</sup> Committee Post-Hearing Brief at 3.

<sup>24</sup> Report at 28.



necessary to comply with environmental laws or regulations, unless the applicant utility failed to demonstrate (1) the actual level of compliance costs, or (2) the prudence or reasonableness of costs.<sup>25</sup>

We agree with Consumer Counsel that nothing in Code § 56-585.1 A 5 e expressly forbids the costs recovered through a rate adjustment clause related to RGGI participation from including the financing costs associated with such participation. We agree with the Hearing Examiner and Staff that these financing costs are "costs of allowances purchased through a market-based trading program for [CO<sub>2</sub>] emissions" and are therefore part of the Company's costs of complying with the DEQ Carbon Rule.<sup>26</sup> We will, therefore, approve recovery of the approximately \$5 million in financing costs as part of the Rider RGGI revenue requirement.

#### Statutory Standards

Appalachian Voices requested that the Commission reject the Petition, arguing that the Petition "was not presented with analysis indicating such short-term compliance is part of a least-cost strategy that integrates the requirements of RGGI and other legal requirements, including new mandatory RPS requirements that could affect CO<sub>2</sub> emissions."<sup>27</sup> Appalachian Voices further argued that "[a] sophisticated, vertically-integrated utility like the Company, seeking \$167 million from its customers, should be required to perform sophisticated economic analysis to develop and support an optimized procurement strategy."<sup>28</sup>

The Company responded that the focus of this proceeding is short-term. While long-term planning occurs in the Company's Integrated Resource Plan and RPS proceedings, this

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<sup>25</sup> *Id.* at 29 (internal footnotes omitted).

<sup>26</sup> *See id.* at 30; Ex. 18 (Carr) at 4.

<sup>27</sup> Ex. 15 (Rábago) at 12; Appalachian Voices Post-Hearing Brief at 8-12.

<sup>28</sup> Appalachian Voices Comments at 15-16.

proceeding is limited to the projected and actual costs of compliance with the DEQ Carbon Rule during the Rate Year, subject to true-up annually.<sup>29</sup>

The Hearing Examiner concluded that "Dominion's RGGI compliance approach, in general, [is] a reasonable way to manage operational facilities in the short-term" but agreed with Appalachian Voices that the Petition did not include analysis that this compliance was part of a long-term, least-cost strategy.<sup>30</sup> The Hearing Examiner recommended that the "instant proceeding offers the Commission the opportunity to provide guidance on whether such analysis should likewise be presented in Rider RGGI proceedings."<sup>31</sup>

We find that the Code provides the standard for review of Rider RGGI costs. In each case, the Company must establish that the costs included in the requested revenue requirement are reasonably and prudently incurred and are "costs of allowances purchased through a market-based trading program for [CO<sub>2</sub>] emissions. . . . necessary to comply with [state or federal] environmental laws or regulations."<sup>32</sup> We agree with the Hearing Examiner that the Company's compliance approach, as presented in the record of this case, is "a reasonable way to manage operational facilities in the short-term."<sup>33</sup> Consequently, we find that the costs requested by the Company in this proceeding comply with this statutory requirement. The Company will continue to bear the burden of establishing that this standard has been met in future proceedings.

In addition, the Commission recognizes that Dominion's RGGI compliance is not isolated from its RPS plans, which are also required by statute. Indeed, in Dominion's recent RPS

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<sup>29</sup> Dominion Comments at 6-8.

<sup>30</sup> Report at 31.

<sup>31</sup> *Id.* at 32.

<sup>32</sup> See Code §§ 56-585.1 A 5 e, 56-585.1 D.

<sup>33</sup> Report at 31, 35.

proceeding, the Commission expressly directed the Company to include in future RPS filings a least-cost plan that meets applicable carbon regulations, including Virginia's participation in RGGI.<sup>34</sup> Similarly, we herein direct the Company to include in future Rider RGGI filings an analysis of how its RGGI compliance corresponds to its RPS plan filings.

Based on the foregoing, we find that the statutory requirements for a rate adjustment clause under Code § 56-585.1 A 5 e have been met. We further agree with the Hearing Examiner that the revenue requirement for the initial Rate Year should be \$167.76 million, subject to actual cost true-up in future cases that may include an evaluation of the reasonableness and prudence of actual allowance costs incurred by the Company.<sup>35</sup>

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations set forth in the Hearing Examiner's Report are adopted, as modified herein.

(2) Rider RGGI is approved, as discussed herein, with a revenue requirement of \$167,759,000 for the Rate Year.

(3) Rider RGGI, as approved herein, shall be effective for usage on and after September 1, 2021.

(4) The Company forthwith shall file a revised Rider RGGI and supporting workpapers with the Clerk of the Commission and with the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance, as is necessary to comply with the directives set forth in this Order. The Clerk of the Commission shall retain such filings for public inspection in person and on the Commission's website: [scc.virginia.gov/pages/Case-Information](https://scc.virginia.gov/pages/Case-Information).

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<sup>34</sup> *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Virginia Electric and Power Company*, Case No. PUR-2020-00134, Doc. Con. Ctr. No. 210440236, Final Order at 6 n.15 (Apr. 30, 2021).

<sup>35</sup> See Report at 32-33.

(5) This case is dismissed.

JAGDMANN, Commissioner, concurs:

I agree in all respects with the majority opinion. A least-cost plan for compliance with RGGI and RPS requirements should be included in future Rider RGGI and RPS plan filings. While there may be reasons for a utility's deviation from a least-cost plan for either or both programs, additional information on the cost of compliance with these requirements will be informative.

This discussion, however, raises the question of the need for two separate and distinct modes for achieving carbon reduction. RGGI is a CO<sub>2</sub> emissions cap-and-trade program<sup>36</sup> that currently is expected to cost Dominion's Virginia jurisdictional ratepayers approximately \$3 billion through 2045.<sup>37</sup> While there tends to be much discussion of the revenues RGGI "generates" for various programs,<sup>38</sup> RGGI does not create this money. Rather, RGGI directly

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<sup>36</sup> Code § 10.1-1329 defines RGGI as "the program to implement the memorandum of understanding between signatory states dated December 20, 2005, and as may be amended, and the corresponding model rule that established a regional carbon dioxide electric power sector cap and trade program." RGGI defines itself as "a cooperative, market-based effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia to cap and reduce CO<sub>2</sub> emissions from the power sector." See <https://www.rggi.org/>.

<sup>37</sup> Report at 13-14 (citing Ex. 18 (Carr) at 5 and Appendix page 12) (showing total Rider RGGI required revenues for the Virginia jurisdiction of approximately \$2.946 billion, excluding financing costs). As reported to the General Assembly's Commission on Electric Utility Regulation and others in a report dated August 18, 2020, Dominion identified potential Virginia regulated entity capital investments of \$50-59 billion from 2020-2035. While this total includes items outside of the Virginia Clean Economy Act ("VCEA"), 2020 Va. Acts chs. 1193, 1194, the renewable portfolio standard program related categories of solar, onshore wind, offshore wind, and energy storage investments account for \$34-43 billion of such investment. *Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to § 56-596 B of the Code of Virginia* at 9-10 (Aug. 18, 2020), available at: <https://rga.lis.virginia.gov/Published/2020/RD282/PDF>.

<sup>38</sup> Pursuant to Code § 10.1-1330 C: (i) 45% of the revenue is allocated to assisting localities and residents affected by recurrent flooding, sea level rise, and flooding from severe weather events; (ii) 50% of the revenue is allocated to supporting Department of Housing and Community Development ("DHCD") low-income energy efficiency programs, including programs for eligible housing developments; (iii) 3% is used to cover administrative expenses and to carry out statewide climate change planning and mitigation activities; and (iv) the remaining 2% is used by DHCD, in partnership with the Department of Mines, Minerals and Energy ("DMME") to administer and implement the low-income energy efficiency programs.

charges generators, including utilities such as Dominion who in turn bill ratepayers for these very costs.

RGGI requirements and the associated costs are in addition to the requirements and associated costs of the VCEA which, among other things, requires participation by Dominion and Appalachian Power Company ("Appalachian") in RPS programs.<sup>39</sup> For Dominion, the RPS program requirements attach to 14% of total electric energy sales in 2021 (based on the energy sold in the previous calendar year), steadily increasing to 52% in 2033 and continuing to 100% in 2045.<sup>40</sup> The VCEA is highly prescriptive as to how these requirements are to be met. For example:

- By December 31, 2035, Dominion must "petition the Commission for necessary approvals to (i) construct, acquire, or enter into agreements to purchase the energy, capacity, and environmental attributes" of 16,100 megawatts ("MW") of onshore wind and solar generation.<sup>41</sup> There are interim requirements for years 2024, 2027, and 2030 for petitions of, respectively 3,000 MW, another 3,000 MW, and an additional 4,000 MW of such generation.<sup>42</sup>
- By December 31, 2035, Dominion must petition the Commission to construct or purchase one or more offshore wind facilities of up to 5,200 MW capacity.<sup>43</sup>

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<sup>39</sup> See Code § 56-585.5 C.

<sup>40</sup> *Id.*

<sup>41</sup> Code § 56-585.5 D 2.

<sup>42</sup> Code § 56-585.5 D 2 a, b, and c.

<sup>43</sup> Code § 56-585.5 D 2.

- There is similar language requiring Dominion to petition to construct or acquire 2,700 MW of energy storage capacity.<sup>44</sup>
- If the utility is unable to meet the compliance obligations of the RPS statute or if the cost of renewable energy certificates ("RECs") exceeds \$45 per megawatt-hour ("MWh"), utilities shall make \$45 per MWh deficiency payments for any shortfall.<sup>45</sup> The deficiency payments go to DMME to administer and direct to job training programs in historically economically disadvantaged communities, energy efficiency measures for public facilities, renewable energy programs located in historically economically disadvantaged communities, and administrative costs.<sup>46</sup>

Utilities subject to VCEA requirements are allowed to pass through the costs of compliance to ratepayers. Several avenues are provided for such cost recovery, namely: (i) dollar-for-dollar recovery of all costs through one or more rate adjustment clauses;<sup>47</sup> (ii) the potential to accelerate cost recovery from customers of the aggregate amount of approved capital investment in solar, onshore wind, or offshore wind generating facilities as a customer credit reinvestment offset in a Triennial Review case;<sup>48</sup> or (iii) the opportunity to recover such costs

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<sup>44</sup> Code § 56-585.5 E 2.

<sup>45</sup> Code § 56-585.5 D 5. The deficiency payment is greater, \$75 per MWh, "for any shortfall in procuring RECs for solar, wind, or anaerobic digesters located in the Commonwealth" for resources 1 MW and lower. Further, the amount of any deficiency payment increases by one percent annually after 2021. *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Code § 56-585.1 A 5 d (for recovery of the cost of complying with RPS program requirements not recoverable under Code § 56-585.1 A 6); Code § 56-585.1 A 5 e (for recovery of, among other things, the costs of allowances purchased through a market-based trading program for CO<sub>2</sub> emissions); and Code § 56-585.1 A 6 (for recovery of the costs of, among other things, solar, onshore wind, and offshore wind facilities).

<sup>48</sup> Code §§ 56-585.1 A 6 and A 8 d.

over the lives of the facilities through the utility's base rates.<sup>49</sup> In other words, customers will pay for all the utility's RPS costs, whether through a rate adjustment clause or base rates. As noted above, the cost to ratepayers for VCEA compliance, along with associated necessary transmission and distribution infrastructure builds and upgrades, will be significant.<sup>50</sup>

This is not to question the policy of the General Assembly to achieve specific carbon reductions.<sup>51</sup> Indeed on April 30th of this year, in our Final Orders on the annual RPS plans for both Dominion and Appalachian we stated, "[W]e have exercised the Commission's delegated discretion in a manner that faithfully implements the VCEA requirements that include carbon reduction, while best protecting consumers who expect and deserve reliable and affordable service."<sup>52</sup> It is appropriate, however, to note potential costly duplications that may impede realization of the General Assembly's intent. The VCEA plainly states that the RPS program requirements for Dominion shall be 100% by 2045. Thus, it remains unclear whether the significant cost required for participation in an additional cap-and-trade program – which is

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<sup>49</sup> Code § 56-585.5 D. Also pursuant to this Code provision, costs related to "the purchase of energy, capacity, or environmental attributes from facilities owned by the persons other than the utility required by the subsection" are recoverable under either base rates or the Company's fuel factor.

<sup>50</sup> See n.37, *supra*.

<sup>51</sup> See *Old Dominion Comm. for Fair Util. Rates v. State Corp. Comm'n*, 294 Va. 168, 175 (2017) ("The Commission rejected the public policy arguments against the statute . . . [and] focused instead on the purely legal issue of whether Old Dominion had carried its burden of overcoming the presumption in favor of the statute's constitutionality . . . . Thus, its 'duty in this case,' the Commission explained, 'is to decide the legal question of constitutionality without regard to our public-policy preferences and not to conflate the two.'" (affirming and quoting *Petition of The Old Dominion Committee for Fair Utility Rates v. Appalachian Power Company, For a declaratory judgment and an order requiring biennial review filings*, Case No. PUE-2016-00010, 2016 S.C.C. Ann. Rept. 357, 362, Final Order (July 1, 2016)).

<sup>52</sup> *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Virginia Electric and Power Company*, Case No. PUR-2020-00134, Doc. Con. Cen. No. 210440236, Final Order at 4 (Apr. 30, 2021); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Appalachian Power Company*, Case No. PUR-2020-00135, Doc. Con. Cen. No. 210440238, Final Order at 3 (Apr. 30, 2021).

expected to cost customers billions of dollars – are necessary for Dominion's and Appalachian's ratepayers to bear in order to achieve the General Assembly's carbon reduction objectives.<sup>53</sup>

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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<sup>53</sup> RGGI extends to more generators than the two utilities (Dominion and Appalachian) required to participate in RPS programs. An option that would move Dominion and Appalachian ratepayers closer to neutral would be for revenues associated with their RGGI compliance to be returned and then credited to ratepayers.