

**Virginia State Corporation Commission
eFiling CASE Document Cover Sheet**

220530078

Case Number (if already assigned) PUR-2022-00070

Case Name (if known) Petition of Virginia Electric and Power Company for authority to suspend a rate adjustment clause, designated Rider RGGI, under § 56-585.1 A 5 e of the Code of Virginia, and for alternate recovery mechanism of certain compliance costs

Document Type RPNS

Document Description Summary Response of Environmental Respondent

Total Number of Pages 9

Submission ID 24841

eFiling Date Stamp 5/19/2022 4:53:33PM

May 19, 2022

VIA ELECTRONIC FILING

Mr. Bernard Logan, Clerk
c/o Document Control Center
State Corporation Commission
Tyler Building – First Floor
1300 East Main Street
Richmond, Virginia 23219

RE: Petition of Virginia Electric and Power Company for authority to suspend a rate adjustment clause, designated Rider RGGI, under § 56-585.1 A 5 e of the Code of Virginia, and for alternate recovery mechanism of certain compliance costs.

Case No. PUR-2022-00070

Dear Mr. Logan:

Attached please find the Response of Appalachian Voices (“Environmental Respondent”) in the above-referenced docket. This notice is being filed electronically, pursuant to the Commission’s Electronic Document Filing system.

As authorized by Rule 140 of the Commission’s Rules of Practice and Procedure, Environmental Respondent is providing, and agrees to accept, service of documents in this case exclusively via email unless parties request otherwise.

If you should have any questions regarding this filing, please do not hesitate to contact me at (434) 977-4090.

Regards,



Nathaniel Benforado

cc: Parties on Commission’s Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF)
VIRGINIA ELECTRIC AND POWER)
COMPANY)

*For authority to suspend a rate adjustment)
clause, designated Rider RGGI, under)
§ 56-585.1 A 5 e of the Code of Virginia, and)
for alternate recovery mechanism of certain)
compliance costs)*

Case No. PUR-2022-00070

ENVIRONMENTAL RESPONDENT’S RESPONSE

Pursuant to the Order Expediting Response and Reply issued May 13, 2022, Appalachian Voices (“Environmental Respondent”) files the following response.

In its petition, Virginia Electric and Power Company (“Dominion”) requests the Commission suspend its Rider RGGI rate adjustment clause (“RAC”) on July 1, 2022, and that any unrecovered balances incurred through July 31, 2022, be recovered through base rates.¹ Rider RGGI consists of costs incurred pursuant to Dominion’s compliance with Virginia’s emissions reduction program pursuant to 9 VAC 5-140-6010 *et seq.*

Dominion’s filing is a politically motivated request with two goals: (1) to provide fodder to the current administration’s efforts to repeal Virginia’s emissions reduction program and (2) to mask the total impact of Dominion’s over-reliance on fossil fuels, which has already resulted in a single-year under-recovery of \$1.02 billion.

¹ *Petition of Virginia Electric and Power Company for Suspension of Rider RGGI and for Alternate Recovery Mechanism of Certain Compliance Costs*, Case No. PUR-2022-00070 (May 5, 2022) (“Petition”) at 1.

The petition makes clear that Dominion believes it could save customers money by putting unrecovered balances associated with Virginia's emissions reduction program into base rates.² According to Dominion, suspending the rate adjustment surcharge will immediately reduce customer bills.³ In fact, moving emissions reduction program costs into base rates may mean that customer costs never increase directly due to Virginia's emissions reduction program, depending on Dominion's level of earnings during its next triennial review.

This admission is striking. Dominion's request proves that it could comply (and always could have complied) with the emissions reduction program without raising customer costs at all.⁴ In fact, this petition shows that Dominion had every opportunity to put these costs into base rates from the beginning but instead, at its own election, decided to raise customer bills through a rate adjustment clause.⁵

Moreover, by recovering these costs as a surcharge in a RAC, Dominion continues to provide fodder to the current administration, which has made clear its intention to repeal Virginia's program regardless of whether such repeal is lawful. For example, after Dominion elected to recover costs through a surcharge, it then elected to request an increase to the rider on December 6, 2021.⁶ Just two days later, then Governor-elect Youngkin announced his intention to withdraw Virginia from its participation in the Regional Greenhouse Gas Initiative, citing Dominion's costs

² *Id.* at 1-2.

³ *Id.* ¶ 16.

⁴ *See id.* ¶ 17.

⁵ Provisions in Virginia law deprive the Commission of discretion to choose the most ratepayer-beneficial cost recovery mechanism, so while the Commission may still review the costs in accordance with the applicable standard, the Commission was bound by Dominion's preferred cost recovery option. *See* Va. Code § 56-585.1 A 7 ("Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility.").

⁶ Petition ¶ 6.

as the basis for doing so.⁷ A few weeks after the Governor-elect's announcement, on January 10, 2022, Dominion then requested to *withdraw* its request to increase the surcharge, citing the Governor-elect's announcement and the resulting "uncertainty surrounding the timeline for the Commonwealth's participation in RGGI."⁸ This circular sequence of events demonstrates Dominion's willingness to play political games using customers' wallets to achieve the policy outcome it desires.

With this petition, however, the game is up. The Governor's basis to repeal Virginia's emissions reduction program is a proclaimed "emergency" arising out of the costs imposed by Dominion on its customers.⁹ Dominion, however, has now admitted that such an "emergency" only exists because of the cost recovery mechanism Dominion voluntarily chose to impose on its customers. In reality, the current petition makes clear that Dominion can comply with Virginia's emissions reduction program without increasing bills at all.

The political gamesmanship is further demonstrated by the fact that Dominion filed this petition on the same day it filed a request to increase its fuel surcharge to cover a \$1.02 billion shortfall due to rising fossil fuel prices.¹⁰ Dominion also expects to require \$2.278 billion in fuel expenses for just the next rate year alone. A typical residential customer may face bill increases of

⁷ *Id.* ¶ 7.

⁸ Virginia Electric and Power Company's Motion to Withdraw Application, Petition of Virginia Electric and Power Company for revision of rate adjustment clause: Rider RGGI, pursuant to SEC 56-585.1 A 5 e of the Code of Virginia, Case No. PUR-2021-00281 (Jan. 10) ("Motion to Withdraw"), par. 4.

⁹ See Governor Youngkin, Executive Order 9 (Jan. 11, 2022) at 1-2.

¹⁰ *Application of Virginia Electric and Power Company to revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUR-2022-00064 (May 5, 2022) ("Fuel Factor Application").

up to \$24.12 per month¹¹—an order of magnitude greater than Rider RGGI—as a direct result of Dominion’s over-investment in fossil fuel generation.

Instead of owning up to its poor investments that has left customers vulnerable to fossil fuel prices, however, Dominion attempts to leverage these high fossil fuel costs as a reason to get rid of Virginia’s emissions reduction program. In its petition, Dominion offers to fold the unrecovered balances from Rider RGGI into base rates to help offset fossil fuel prices,¹² while simultaneously stating that it may once again elect to raise customer bills if the program is not repealed.¹³ In other words, if Dominion does not achieve its policy outcome in repealing RGGI, it will voluntarily and unnecessarily re-raise customer rates.

Dominion has it backwards. Virginia’s emissions reduction program is the precise program that will help avoid and mitigate ratepayer exposure to fuel price volatility in the future. The Regional Greenhouse Gas Initiative has a proven track record of reducing emissions and fossil fuel reliance in cost-effective ways, a fact shown in the Governor’s own report on the program: between 2010 and 2020, states participating in RGGI reduced power plant emissions by 30 percent, while Virginia power plant emissions remained flat.¹⁴ As a result, customers in these other states are far better insulated from rising fossil fuel prices. In Virginia, however, which only just began its participation in 2021, Dominion customers now face a \$1.020 billion shortfall—in just a single year—due to Dominion’s over-reliance on risky fossil fuels. The best way to protect customers is to maintain Virginia’s emissions reduction program, not repeal it.

¹¹ Testimony of Timothy P. Stuller, Fuel Factor Application, p. 9.

¹² See Petition ¶ 18.

¹³ *Id.* ¶ 19.

¹⁴ Virginia Department of Environmental Quality, EO-9 Report (Mar. 11, 2022), *compare* 10 (describing Virginia’s actual emissions as “fairly constant” over this period) *with* 13 (Figure 8 showing RGGI states 30% reduction from 2010 to 2020).

As a final point, while the political game is clear, the lawfulness of the regulatory repeal is not. The regulatory repeal underpinning Dominion's instant petition has not occurred and may never survive legal scrutiny. In 2020, the General Assembly enacted the Clean Energy and Community Flood Preparedness Act, which requires Virginia's participation in RGGI.¹⁵ Neither the Governor nor the Air Board has the authority to act contrary to law, which is exactly what repealing the regulation implementing this law would do. In fact, at a meeting of the Air Pollution Control Board in April, a board member explained that she had asked the attorney general's office about the Air Board's authority to repeal the program and she "received an opinion from the attorney general's office back in March that it's not the responsibility of the board, that it's the responsibility of the General Assembly."¹⁶ The General Assembly has refused to repeal the 2020 law.¹⁷

While Environmental Respondent takes issue with Dominion's political games, Environmental Respondent does not object to Dominion's proposal to move unrecovered balances incurred through July 31, 2022 into base rates in theory—but such a determination requires additional clarity from Dominion. In particular, Dominion should be required to explain when these costs would be treated as recovered. The specific timing of this recognition and recovery could have a significant impact on potential carrying costs and the overall customer cost.

¹⁵ 2020 Va. Acts, ch. 1280 (§ 10.1-1330 (B)) (requiring DEQ Director to seek to sell 100 percent of allowances at auction, requiring state treasury to use allowance proceeds for specified purposes, requiring state agencies "to prepare a joint annual report describing the Commonwealth's participation in RGGI").

¹⁶ Patrick Wilson, The mystery of the secret air board document, Richmond Times-Dispatch (May 13, 2022), https://richmond.com/news/state-and-regional/govt-and-politics/the-mystery-of-the-secret-virginia-air-board-document/article_4bc77dff-7562-53c8-a65b-eabb1af3c34d.html.

¹⁷ Sarah Vogelsong, As Virginia nets another \$74 million, RGGI uncertainty lingers, Virginia Mercury (March 14, 2022), <https://www.virginiamercury.com/2022/03/14/as-virginia-nets-another-74-million-rggi-uncertainty-lingers/> ("Legislation to pull Virginia out [of RGGI] stalled this session after Democrats in the Senate blocked proposals to repeal the 2020 act authorizing RGGI participation.").

In addition, the Commission should confirm that while this mechanism may be approved, the costs themselves will still be reviewed in the triennial, applying the appropriate standard, to ensure that these costs are in fact appropriate for recovery. In fact, Dominion appears to acknowledge that review will be required in the next triennial proceeding.¹⁸

Finally, Environmental Respondent has concerns over the lack of specificity in Dominion's petition about costs incurred after July 31, 2022. In the event that a repeal does not happen, or the issue is being litigated in courts, Dominion may still need to incur compliance expenses after July 31, 2022, and it may start deferring cost recovery of those expenses leading to potentially substantial carrying costs. To protect customers from this possibility, Environmental Respondent recommends the Commission in this proceeding make clear that allowance costs incurred after July 31, 2022, and prior to approval of any new rate adjustment clause pursuant to Va. Code § 56-585.1 A 5 e ("A 5 e rider"), must also be treated as immediately recovered through base rates, subject to review during the next triennial. This will prevent significant rate shock that might otherwise occur if Dominion attempts to defer RGGI allowance costs for months (or even years) while the repeal process plays out. We respectfully request that the Commission enter an order clarifying that as a consequence of Dominion's voluntary action here, Dominion must recover *all* RGGI-related expenses incurred between July 31, 2022 and the effective date of a new A 5 e rider, through its base rates.

¹⁸ See Petition ¶ 17 n.12.

May 19, 2022

Respectfully submitted,

/s/ Nate Benforado

Nate Benforado (VSB #89000)
SOUTHERN ENVIRONMENTAL LAW CENTER
120 Garrett Street, Suite 400
Charlottesville, VA 22902
Tel: (434) 977-4090
Fax (434) 977-1483

Counsel for Environmental Respondent

220530078

CERTIFICATE OF SERVICE

I hereby certify that the following have been served with a true and accurate copy of the foregoing via electronic service:

Arlen Bolstad
Frederick D. Ochsenhirt
Office of General Counsel
STATE CORPORATION COMMISSION
1300 E. Main Street – 10th Floor
Richmond, VA 23218

Paul E. Pfeffer
David J. DePippo
DOMINION ENERGY SERVICES, INC.
Law Department, Riverside 2
120 Tredegar Street
Richmond, VA 23219

Joseph K. Reid, III
Elaine S. Ryan
Timothy D. Patterson
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916

C. Meade Browder, Jr.
OFFICE OF THE ATTORNEY GENERAL
202 N. Ninth Street
Richmond, VA 23219



Nathaniel Benforado
SOUTHERN ENVIRONMENTAL LAW CENTER

DATED: May 19, 2022