COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 25, 2022

APPLICATION OF

KENTUCKY UTILITIES COMPANY
d/b/a OLD DOMINION POWER COMPANY

CASE NO. PUR-2021-00171

For an adjustment of electric base rates

FINAL ORDER

On August 31, 2021, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") requesting authority to adjust its electric base rates pursuant to Chapter 10 of Title 56 of the Code of Virginia ("Code")[1] and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities.[2]

On September 23, 2021, the Commission issued an Order for Notice and Hearing that, among other things, (i) suspended the Company's proposed increase in rates until the Commission entered its Final Order in this proceeding; (ii) required the Company to provide notice of its Application; (iii) provided any interested person an opportunity to file comments on the Application or to participate in the case as a respondent by filing a notice of participation; (iv) scheduled a telephonic hearing for the receipt of testimony from public witnesses on the Company's Application; (v) scheduled a public evidentiary hearing to receive the testimony and evidence of the Company, any respondents, and the Staff of the Commission ("Staff"); and

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[1] Code § 56-232 *et seq.*

[2] 20 VAC 5-204-5 *et seq.*

(vi) appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission, including filing a final report.

On November 5, 2021, the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed a notice of participation. On November 12, 2021, Appalachian Voices filed a notice of participation. On January 7, 2022, Consumer Counsel and Appalachian Voices prefiled testimony in accordance with the Commission's Order for Notice and Hearing.[3] On January 18, 2022, Appalachian Voices filed a motion requesting leave to file supplemental testimony accompanied by the supplemental testimony of its witness, Justin Barnes.[4] On January 21, 2022, KU/ODP filed a motion requesting leave to file supplemental testimony accompanied by the supplemental testimony of its witness Andrea M. Fackler.[5]

On February 11, 2022, Staff filed its testimony addressing the issues raised in the Company's Application including those related to rate design; the Company's terms and conditions for tariffed service in Virginia; AMI; DSM;[6] accounting adjustments; depreciation; return on equity ("ROE"); and overall cost of capital, resulting in a recommended increase in revenue lower than the increase proposed by KU/ODP.[7]

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[3] Ex. 16 (Watkins Direct) (opposing KU/ODP's proposed increase to the residential basic service charge); Ex. 14 (Barnes Direct) (addressing KU/ODP's proposals regarding the residential basic service charge, Advanced Metering Infrastructure ("AMI"), energy efficiency and demand side management ("DSM"), and the Company's cost of service methodology).

[4] Ex. 15 (Barnes Supplemental).

[5] Ex. 12 (Fackler Supplemental).

[6] *See* Ex. 20 (Boehnlein Direct).

[7] *See* Ex. 17/17C (Gerner Direct); Ex. 18 (Gleason Direct); Ex. 19 (Hunt Direct).

On March 1, 2022, KU/ODP filed rebuttal testimony in which the Company described points of agreement and dispute with the prefiled testimony of Staff, Consumer Counsel, and Appalachian Voices.[8]

On March 11, 2022, KU/ODP, Staff, and Appalachian Voices ("Stipulating Participants") filed a Partial Stipulation and Recommendation ("Partial Stipulation")[9] and Joint Motion to Accept Stipulation and Recommendation. Although not a signatory to the Partial Stipulation, Consumer Counsel supported Commission approval of the Partial Stipulation.[10] The Stipulating Participants recommend that the Commission approve increasing KU/ODP's operating revenues by $6.5 million, effective for service rendered on and after June 1, 2022, as a fair, just, and reasonable resolution of the revenue requirement and cost of capital issues in this proceeding.[11] The Partial Stipulation provides that the recommended increase in operating revenues was the product of compromise and settlement based upon the evidence in the record and represented a settlement as to a specific revenue number, but not on a specific determination of ROE, accounting adjustments, or ratemaking methodologies, except as otherwise provided therein.[12]

The Partial Stipulation further provides that an ROE of 9.40% will be used to evaluate earnings for purposes of the Commission's review of earnings tests filed under Code § 56-234.2 and an ROE range of 9.00% to 10.00% will be used for purposes of the Commission's review of going-forward earnings filed under the Commission's Rules Governing Rate Applications and

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[8] *See* Ex. 21 (Arbough Rebuttal); Ex. 22 (Bellar Rebuttal); Ex. 23 (Bevington Rebuttal); Ex. 24 (Conroy Rebuttal); Ex. 25 (Fackler Rebuttal); Ex. 26 (Garrett Rebuttal); Ex. 27 (McKenzie Rebuttal); Ex. 28 (Wilson Rebuttal).

[9] *See* Ex. 29 (Partial Stipulation).

[10] *See* Tr. 20.

[11] Ex. 29 (Partial Stipulation) at 1.

[12] *Id.* at 1-2.

Annual Informational Filings, 20 VAC 5-201-10 *et seq.*,[13] beginning in the 2022 calendar year and continuing thereafter until KU/ODP's ROE is changed by the Commission.[14]

The Partial Stipulation also provides that the terms and conditions and special charges proposed in KU/ODP's tariffs are reasonable and should be approved, and that the residential basic service charge will remain at $12.00 per month as of the change of base rates on June 1, 2022.[15]

Under the Partial Stipulation, KU/ODP is required to file a comprehensive DSM plan and surcharge by June 1, 2023, in which the Company will propose DSM programs targeting at least a 0.02% decrease in total retail jurisdictional sales, and (1) will not include revenues from a Lost Sales component; (2) will address future Evaluation, Measurement, and Verification plans; and (3) will include a low-income customer program similar to the WeCare program Kentucky Utilities Company offers customers in Kentucky.[16] KU/ODP also commits to initiate the stakeholder process for the DSM plan within 30 days following the Final Order in this case.[17]

Under the Partial Stipulation, the Stipulating Participants agree that KU/ODP will propose Time of Day rates for Residential Service ("RS") and General Service ("GS") customers in Virginia in its next base rate case application; that such rates will be similar to the Time of

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[13] On November 23, 2020, the Commission adopted the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities, 20 VAC 5-204-5 *et seq.*, effective January 1, 2021. *See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter adopting new rules of the State Corporation Commission governing utility rate applications by investor-owned electric utilities*, Case No. PUR-2020-00022, 2020 S.C.C. Ann. Rept. 439, 443, Order Adopting Regulations (Nov. 23, 2020). As a result, 20 VAC 5-204-5 *et seq.* now governs investor-owned electric utilities, and 20 VAC 5-201-10 *et seq.* now governs investor-owned gas and water utilities. *See id.* at 443.

[14] Ex. 29 (Partial Stipulation) at 2.

[15] *Id.*

[16] *Id.* at 2-3.

[17] *Id.* at 3.

Day rates Kentucky Utilities Company currently offers RS and GS customers in Kentucky with an AMI meter; and that KU/ODP's proposal to roll out AMI beginning in 2024 is reasonable and does not require a Commission-issued certificate of public convenience and necessity.[18]

The Partial Stipulation further states that coal combustion residuals ("CCR") amortization expense associated with active plants will be fully amortized for booking and ratemaking purposes by May 31, 2041; amortization expense will be prospectively reviewed and adjusted every two years as appropriate to ensure that such costs will be fully amortized for booking and ratemaking purposes by May 31, 2041; and amortization of CCR costs associated with retired plants will be completed for booking and ratemaking purposes by May 31, 2022.[19]

The Partial Stipulation further provides that for Generally Accepted Accounting Principles ("GAAP") purposes, depreciation expense for Brown Unit 3 will be booked effective July 1, 2021.[20] The Stipulating Participants further agree that the issue of whether a regulatory asset for Brown Unit 3 depreciation expense from July 1, 2021, to May 31, 2022, in the amount of $1.6 million should be established, amortized, and recovered in future rates is reserved for hearing and decision by the Commission.[21]

The Senior Hearing Examiner convened the hearing on March 17, 2022.[22] KU/ODP, Appalachian Voices, Consumer Counsel, and Staff participated in the hearing, during which the

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[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 3.

[22] No one signed up to testify as a public witness; therefore, the public witness hearing scheduled for March 9, 2022, was cancelled.

Senior Hearing Examiner received testimony from witnesses on behalf of the participants and admitted evidence on the Application.

On April 5, 2022, the Report of Michael D. Thomas, Senior Hearing Examiner ("Report") was issued. In the Report, the Senior Hearing Examiner reviewed the record, including the written comments received, and the testimony, exhibits, and statements presented by KU/ODP, Appalachian Voices, Consumer Counsel, and Staff. The Hearing Examiner found that based on the evidence received in this case, the Partial Stipulation is fair, reasonable, and in the public interest.[23] Additionally, the Senior Hearing Examiner found that the Company met the Commission's requirements for the establishment of a regulatory asset for the increased depreciation expense for Brown Unit 3 from July 1, 2021, through May 31, 2022.[24] The Senior Hearing Examiner recommended that the Commission (i) adopt the Partial Stipulation and the proposed revenue increase, revenue allocation, and rates set forth therein; and (ii) approve the establishment of a regulatory asset for the increased depreciation expense in the amount of approximately $1.6 million for Brown Unit 3 from July 1, 2021, through May 31, 2022, subject to an annual earnings test.[25]

On April 27, 2022, KU/ODP, Staff, Appalachian Voices, and Consumer Counsel each filed comments on the Report, addressing aspects of the findings and recommendations contained therein.

NOW THE COMMISSION, upon consideration of this matter, finds as follows. The Commission finds the Partial Stipulation to be reasonable and in the public interest and therefore

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[23] Report at 1, 43.

[24] *Id.* at 1, 46.

[25] *Id.*

should be approved. Notably, the Partial Stipulation approves a revenue increase of $6.5 million effective June 1, 2022, which is less than the $12.2 million increase originally requested. In approving this rate increase, the Commission notes its awareness of the ongoing COVID-19 public health issues, which have had negative economic effects that impact all utility customers. We are sensitive to the effects of rate increases, especially in times such as these. The Commission, however, must follow the applicable laws, as well as the findings of fact supported by the evidence in the record. This is what we have done herein.

The Partial Stipulation leaves one issue to be resolved by the Commission regarding the Company's request for a regulatory asset to recover increased depreciation expense for Brown Unit 3 booked prior to the implementation of new base rates.[26] As discussed further below, the Commission denies the Company's requested treatment under the circumstances of this case.[27]

KU/ODP proposes to implement new depreciation rates in this case based on an updated depreciation study.[28] Among other things, the Company's proposed depreciation rates reflect an updated retirement date for Brown Unit 3 of 2028 rather than 2035.[29] As a result of the updated retirement date for Brown Unit 3, the depreciation rates for Brown Unit 3 have increased in the updated depreciation study.[30] In the Partial Stipulation, the Company agreed that for GAAP purposes, depreciation expense for Brown Unit 3 will be booked effective July 1, 2021.[31] The

[26] Ex. 29 (Stipulation) at 3.

[27] The creation of a regulatory asset for separate amortization represents an exercise of the Commission's discretion.

[28] Ex. 9 (Garrett Direct) at 1, 23.

[29] *Id.* at 23-26. The Company asserts that its analysis showed that scheduled major maintenance at Brown Unit 3 in 2026 or 2027 is no longer economic or cost-effective and updating the expected economic life of Brown Unit 3 to 2028 is expected to result in cost savings to the Company's customers. Ex. 22 (Bellar Rebuttal) at 2.

[30] Ex. 30.

[31] Ex. 29 (Stipulation) at 3.

Company, however, requests the Commission approve a regulatory asset for the increased depreciation expense for Brown Unit 3 over the period of July 1, 2021, through May 31, 2022, of approximately $1.6 million.[32] This 11-month period is the time between the effective booking date of the new depreciation rates and the date new base rates are scheduled to go into effect as a result of this proceeding.

The Commission has previously permitted the deferral of costs for future recovery under limited circumstances. The Commission has stated that such deferral of costs is "unusual and should be allowed for ratemaking purposes only rarely and in an extreme situation."[33] We also explained that "such costs are generally large and nonrecurring and may cause a utility's financial results to be materially and negatively affected when they are currently expensed."[34]

The Commission has a long-standing policy of requiring changes in costs, including depreciation expense, to be recorded in the appropriate accounting period coincident with the change.[35] The Commission is unpersuaded to permit KU/ODP to do indirectly what it is not permitted to do directly. That is, regulatory asset treatment would in effect permit the Company to delay timely implementation until a future change in base rates, contrary to the provisions of

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[32] Ex. 26 (Garrett Rebuttal) at 1-8.

[33] *Application of Appalachian Power Company, For an expedited increase in base rates*, Case No. PUE-1994-00063, 1996 S.C.C. Ann. Rept. 255, 257, Final Order (May 24, 1996).

[34] *Application of Roanoke Gas Company, For annual informational filing,* Case No. PUE-1996-00102, and, *For expedited rate relief*, Case No. PUE-1996-00304, 1998 S.C.C. Ann. Rept. 327, 330, Final Order (Aug. 6, 1998).

[35] *See, e.g.*, *Application of Alpha Water Corporation, et al., For an increase in water and sewer rates*, Case No. PUE-2009-00059, 2010 S.C.C. Ann. Rept. 346, 351, Order (Oct. 29, 2010); *Application of Washington Gas Light Company and Shenandoah Gas Division of Washington Gas Light Company, For general increase in natural gas rates and charges and approval of performance-based rate regulation methodology pursuant to Va. Code § 56-235.6,* Case No. PUE-2002-00364, 2004 S.C.C. Ann. Rept. 329, 331, Order on Reconsideration (Jan. 23, 2004) ("WGL 2004 Order on Reconsideration"), *aff'd Washington Gas Light Company v. State Corporation Commission,* Record No. 040878, 2004 WL 7331918 (Va. Oct. 8, 2004) (unpublished) ("2004 WGL Opinion") ("The Commission...did not err in requiring WGL to implement new depreciation rates as of the date immediately following the most recent depreciation study.").

the Partial Stipulation and the Commission's long-standing policy referenced above. In this regard, "[t]he Commission previously recognized that implementing new depreciation rates as of the effective date of the study does not constitute retroactive implementation, but rather proper accounting *and ratemaking*."[36]

In support of its request, KU/ODP asserts that absent regulatory asset treatment, it would not be provided an opportunity to recover its prudent depreciation expense for Brown Unit 3 for the period July 1, 2021, through May 31, 2022.[37] We have rejected this argument in the past and continue to do so here. In so rejecting, the Commission explained that:

> The fundamental problem with the Company's argument is not with the timing of the depreciation study, but rather that the Company seeks to treat depreciation expenses as fundamentally different from other types of expenses. When other expenses increase, the increase is recorded without regard to whether it is well timed for a rate case. A change in costs must be recorded in the appropriate accounting period coincident with the charge, this is true for depreciation expense as well as other costs.[38]

We likewise find the depreciation expense at issue herein not to be fundamentally different from other types of expenses. Changes to depreciation rates as a result of updated depreciation studies are not unusual.[39] Rather, the Commission expects utilities to update depreciation studies on a regular basis, and it is to be expected that the depreciation rates will change over time.

[36] *Application of Washington Gas Light Company and Shenandoah Gas Division of Washington Gas Light Company, For general increase in natural gas rates and charges and approval of performance-based rate regulation methodology pursuant to Va. Code § 56-235.6,* Case No. PUE-2002-00364, 2003 S.C.C. Ann. Rept. 383, 388-89, Final Order (Dec. 18, 2003) ("WGL 2003 Final Order") (emphasis added).

[37] KU/ODP Comments at 6. This lack of recovery, KU/ODP asserts, "will have a material, detrimental financial impact on KU/ODP." *Id.*

[38] WGL 2004 Order on Reconsideration at 331, *aff'd* 2004 WGL Opinion.

[39] Further in this regard, the record shows that the updated depreciation study included some plant items, like Brown Unit 3, that experienced increased depreciation rates, and other plant items that experienced reduced depreciation rates over the July 2021-May 2022 period. Ex. 30. KU/ODP's proposal would not only single out one type of

Finally in this regard, we do not find that KU/ODP's request for approval of a regulatory asset in this case is required by the Commission's prior decisions approving regulatory assets for the recovery of significant depreciation reserve deficiencies.[40] KU/ODP does not seek regulatory asset treatment for a depreciation reserve deficiency. Rather, KU/ODP seeks to recover, through a regulatory asset, increased depreciation expense of Brown Unit 3 for the 11-month period between the booking date of new depreciation rates and the implementation of new customer rates. As explained above, delaying implementation of new depreciation rates to coincide with a change in rates would improperly treat depreciation expense as fundamentally different from other types of expenses.[41]

Accordingly, IT IS ORDERED THAT:

(1) The Partial Stipulation filed in this case is hereby approved.

(2) KU/ODP's request for approval of a regulatory asset is denied.

(3) KU/ODP forthwith shall file revised tariffs and terms and conditions of service with the Clerk of the Commission and with the Commission's Division of Public Utility Regulation and Utility Accounting and Finance, in accordance with the findings made herein, for service rendered on and after June 1, 2022. This shall include retaining the residential service basic service charge at the current level of $12 per month. The Clerk of the Commission shall retain

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expense (depreciation), it would single out one depreciation expense among many (Brown Unit 3 depreciation expense) for different treatment than any other depreciation expense.

[40] In those cases, significant depreciation reserve deficiencies were identified in updated depreciation studies. In the 2003 WGL Final Order, for example, the Commission approved regulatory asset treatment for a significant reserve deficiency resulting from updating a depreciation study for the first time in 20 years. WGL 2003 Final Order at 389.

[41] In reaching this determination, we further find that neither the cost of the increased Brown Unit 3 depreciation expense ($1.6 million), nor the motivation for changing the retirement date of Brown Unit 3 warrants a different result.

such filings for public inspection in person and on the Commission's website: scc.virginia/pages/Case-Information.

(4) An ROE of 9.40% shall be used to evaluate earnings for purposes of the Commission's review of earnings tests filed under Code § 56-234.2, and an ROE range of 9.00% to 10.00% shall be used for purposes of the Commission's review of going-forward earnings filed under the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities (20 VAC 5-204-5 *et seq.*), beginning with the calendar year 2022 and continuing thereafter until KU/ODP's ROE is reset by the Commission.

(5) KU/ODP shall file a comprehensive demand DSM plan and surcharge, in accordance with the provisions of the Partial Stipulation, by June 1, 2023. KU/ODP shall initiate a stakeholder process for the DSM plan within 30 days following this Final Order.

(6) KU/ODP's proposed roll out of AMI beginning in 2024 is reasonable and does not require a Commission-issued certificate of public convenience and necessity.

(7) KU/ODP shall propose Time of Day rates for RS and GS customers in Virginia in its next base rate case application in accordance with the provisions of the Partial Stipulation.

(8) KU/ODP's CCR amortization expense associated with active plants shall be fully amortized for booking and ratemaking purposes by May 31, 2041; amortization expense shall be prospectively reviewed and adjusted every two years as appropriate to ensure that such costs will be fully amortized for booking and ratemaking purposes by May 31, 2041; and amortization of CCR costs associated with retired plants shall be completed for booking and ratemaking purposes by May 31, 2022.

(9) This case 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.