COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 12, 2023

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY CASE NO. PUR-2022-00070

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

FINAL ORDER

On May 5, 2022, Virginia Electric and Power Company ("Dominion" or the "Company") petitioned the State Corporation Commission ("Commission") to suspend, effective July 1, 2022, its rate adjustment clause ("RAC" or "Rider"), designated Rider RGGI, that was approved in Case No. PUR-2020-00169 ("Suspension Petition"). The Rider recovers the Company's costs related to the purchase of allowances through the Regional Greenhouse Gas Initiative ("RGGI") market-based trading program for carbon dioxide emissions.

In Case No. PUR-2020-00169, the Commission approved projected allowance costs of $167,759,000 for the period ending July 31, 2022, subject to true-up for the actual costs subsequently approved by the Commission for that period.[1]

On June 15, 2022, the Commission granted the Company's Suspension Petition, ordering that Rider RGGI be suspended, and the Rider RGGI Projected Cost Recovery Factor be reset to $0.00/kilowatt-hour, effective July 1, 2022. The Commission further directed that Dominion recover pre-July 31, 2022 RGGI costs through both Rider RGGI and base rates (subject to

[1] *Petition of Virginia Electric and Power Company For approval of a rate adjustment clause, designated Rider RGGI, under § 56-585.1 A 5 e of the Code of Virginia*, Case No. PUR-2020-00169, 2021 S.C.C. Ann. Rept. 273, Order Approving Rate Adjustment Clause (Aug. 4, 2021); 2021 S.C.C. Ann. Rept. 279, Order on Reconsideration (Nov. 17, 2021).

further review in a future Rider RGGI actual cost true-up proceeding, and in the Company's 2024 triennial review proceeding).

On December 14, 2022, the Company filed a Petition seeking Commission approval to reinstate and revise Rider RGGI ("Petition"). According to the Petition, the Company seeks to account for allowance costs incurred and recovered through Rider RGGI prior to the Rider's July 1, 2022 suspension.[2] Additionally, the Company seeks to reinstate Rider RGGI to recover deferred RGGI compliance costs incurred after July 31, 2022, and those projected to occur over the period of September 1, 2023 through August 31, 2024 (the "Rate Year").[3] For purposes of this proceeding, the Company states that it has assumed that Virginia will withdraw from RGGI on December 31, 2023, and accordingly has not projected any RGGI-related compliance costs to be incurred after that date.[4]

Section 56-585.1 A 5 e of the Code of Virginia ("Code") permits a utility to seek approval of a rate adjustment clause for recovery of:

> 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 carbon dioxide emissions. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations.

In its Petition, Dominion states that for the period August 1, 2022 through December 31, 2023, it will require approximately 31,000,000 carbon dioxide ("CO_2") allowances

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[2] Ex. 2 (Petition) at 5.

[3] *Id.*

[4] *Id.*

to cover CO_2 emissions from its Virginia-based generation fleet, with approximately 7,000,000 CO_2 allowances for the Rate Year.[5] The Company states that it intends to follow a programmatic approach by purchasing most of its required allowances in the RGGI quarterly auction, using the secondary market to fulfill any deficiencies.[6] The Company states that it assumed a weighted average price of $13.52 per allowance, based on futures contracts for 2022 and 2023.[7]

The Company states that its aggregate Virginia jurisdictional revenue requirement for RGGI-related costs from the time Virginia joined RGGI in 2021 through December 31, 2023 is expected to be approximately $640 million.[8] For the period prior to August 1, 2022, the total revenue requirement was $267 million on a Virginia jurisdictional basis. The Company states that it recovered $84 million of the $267 million through the initial Rider RGGI in effect from January 1, 2022 through June 30, 2022, and that the remaining amount of $183 million is being recovered through base rates in effect as incurred.[9] For the period from August 1, 2022 through December 31, 2023, the Company projects a revenue requirement of approximately $373 million on a Virginia jurisdictional basis, which the Company is proposing to recover during the Rate Year through the reinstated Rider RGGI.[10]

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[5] *Id.*

[6] *Id.*

[7] *Id.* at 6.

[8] *Id.*

[9] *Id.*

[10] *Id.*

The revenue requirement for Rider RGGI includes a Projected Cost Recovery Factor ("Projected Factor"). According to the Petition, the Projected Factor reflects the revenue requirement necessary for recovery of amortization expense for CO_2 allowances as well as projected financing costs on the unamortized purchased CO_2 allowance balance.[11] Additionally, the Company states that the Projected Factor includes the amortization of deferred costs, including financing costs, incurred prior to the Rate Year.[12] The Company states that no Actual Cost True-Up Factor is included in this proceeding because all differences between costs incurred and amounts recovered through Rider RGGI through July 31, 2022 will be recovered through base rates.[13] In this proceeding, the Company seeks approval of a total revenue requirement of $373,214,000 for the Rate Year.[14]

On January 24, 2023, the Commission issued an Order for Notice and Hearing in this proceeding that, among other things, established a procedural schedule; directed Dominion to provide notice of its Petition to the public; provided interested persons an opportunity to comment on the Petition or participate in the proceeding as a respondent by filing a notice of participation; scheduled public witness and evidentiary hearings; directed the Staff of the Commission ("Staff") to investigate the Petition and file testimony and exhibits containing its findings and recommendations thereon; and appointed a Hearing Examiner to conduct all further proceedings in this matter.

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[11] *Id.*

[12] *Id.*

[13] *Id.* at 6-7.

[14] *Id.* at 7.

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Appalachian Voices, the Virginia Committee for Fair Utility Rates and the Office of the Attorney General, Division of Consumer Counsel each filed notices of participation. On March 21, 2023, Appalachian Voices filed its direct testimony. On April 4, 2023, Staff filed its testimony. On April 18, 2023, Dominion filed rebuttal testimony.

No one registered to speak as a public witness in this proceeding; as a result, the May 1, 2023 portion of the hearing was not convened. On May 4, 2023, an evidentiary hearing was convened before Hearing Examiner M. Renae Carter.

On June 1, 2023, the Hearing Examiner issued a thorough, detailed Report, which summarized and analyzed the evidence and issues in this proceeding. Based thereon, the Hearing Examiner directed Dominion to make a compliance filing, to be filed with its comments to the Report, incorporating adjustments to remove two errors related to the number of allowances Dominion projected it would need involving the Clover facility and three biomass facilities (the "Biomass and Clover Adjustments").[15] The Hearing Examiner directed that this compliance filing should include adjusted Rider RGGI rates and accompanying workpapers that include the recalculation of expense, re-amortization of allowances, and re-computation of rate base and revenue requirement, with associated cost allocation and rate design documentation.[16] The Hearing Examiner directed Staff to verify these calculations as soon as possible after the compliance filing is made.[17] In the Report, the Hearing Examiner also made the following findings and recommendations for the Commission's consideration:

[15] Report at 44.

[16] *Id.*

[17] *Id.*

I FIND that:

1. As to proposed Self-Scheduling Adjustments 1 and 2, APV's self-scheduling analysis and proffered cost disallowances related to uneconomic dispatch, on an hourly or 24-hour basis, of Dominion's coal units over the period August 1, 2022, through January 31, 2023:

    - are inconsistent with the 2022 Fuel Order,
    - ask the Commission to judge prudence not on the circumstances at the time a decision is made but instead based on after-the-fact determinations; and
    - misconstrue Dominion's strategy to comply with its DEQ biomass permit for VCHEC;

2. As to the proposed Over-Forecast Adjustment, under the circumstances of this case, updating the revenue requirement to reflect actual, not forecasted, emissions data for the first quarter of 2023 is not reasonable or prudent at this time;

3. As to the proposed Clover and Biomass Adjustments, the cost to purchase allowances to cover [Old Dominion Electric Cooperative]'s share of emissions from the Clover facility and the cost to purchase allowances to cover emissions related to start-up power at Dominion's biomass plants are not "necessary" for Dominion "to comply" with RGGI pursuant to Code § 56-585.1 A 5 e;

4. With the condition that the Biomass and Clover Adjustment are made, the projected and actual Rider RGGI costs as proposed in the Petition and updated by Commission Staff are "necessary" for Dominion "to comply with state or federal environmental laws or regulations" pursuant to Code § 56-585.1 A 5 e and are reasonable and prudent pursuant to Code § 56- 585.1 D;

5. The Rider RGGI revenue requirement of approximately $356.6 million, once modified for the Clover and Biomass Adjustments, is necessary, reasonable, and prudent;

6. To the extent the Commission disagrees with the analysis in this Report of what costs are "necessary" for Dominion "to comply" with environmental laws or regulations, and/or believes that Code § 56-585.1 A 5 e permits the Biomass and Clover Adjustments to be made through a true-up instead of being made now, the Commission could adopt the revenue requirement of

approximately $356.6 million as calculated by Staff and agreed to by the Company;

7. If the Commission believes more process is needed to address the Clover and/or Biomass Adjustments, the Commission could issue an interim order remanding the case for the limited purpose of taking additional evidence thereon;

8. The projected and actual allowance prices that form the basis of Rider RGGI (a weighted average of allowance costs of $12.92 each for October through December 2022 and $13.66 each for January through December 2023) are reasonable for purposes of this case;

9. The capital structure proposals for both deferred costs and the Projected Cost Recovery Factor are reasonable; and

10. The Company's proposed cost allocations and rate design are reasonable, including the calculation of allocation factors on a monthly basis and the allocation of RGGI costs only to Virginia jurisdictional customers, provided that updates are made as needed for the Clover and Biomass Adjustments.

Accordingly, I RECOMMEND the Commission enter an Order that:

1. ADOPTS the findings and recommendations of this Report;

2. REJECTS Self-Scheduling Adjustments 1 and 2 and the Over-Forecast Adjustment;

3. APPROVES a Rider RGGI revenue requirement of $356.6 million, as further modified for the Clover and Biomass Adjustments;

4. CAPS any adjustment to the revenue requirement based on the Biomass and Clover Adjustments at $373,214,000, which is the amount that was requested in the Petition and noticed to the public in this case;

5. APPROVES the capital structure proposals for both deferred costs and the Projected Cost Recovery Factor;

6. APPROVES the Company's proposed cost allocations and rate design for use in this case, provided that updates are made as needed for the Clover and Biomass Adjustments;

7. REINSTATES Rider RGGI effective for the Rate Year beginning September 1, 2023;

8. REQUIRES the Company, if it does not already do so, to note in its self-scheduling records those occasions in which a reason for self-scheduling VCHEC relates to compliance with biomass permitting requirements;

9. REQUIRES Dominion to file a Rider RGGI update in 2023 or as soon as possible in 2024: (i) to true-up RGGI-related recovery with actual RGGI costs for 2022; and (ii) if Virginia remains in RGGI, to propose a Projected Cost Recovery Factor based on just twelve months of costs, or as few months beyond twelve as possible; and

10. CONTINUES this case to the extent necessary for further process related to the Clover and/or Biomass Adjustments.[18]

On June 16, 2023, Dominion, Appalachian Voices, and Staff each filed comments on the Report. Dominion's comments included the compliance filing directed by the Hearing Examiner, which calculated a revised revenue requirement, incorporating the Biomass and Clover Adjustments, of approximately $355.8 million.[19] In its comments, Staff stated that it "has reviewed the compliance information to be provided by the Company and has verified the Company's revised revenue requirement of $355,798,812, which includes the changes required to comply with the Hearing Examiner's Report."[20]

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.[21]

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[18] *Id.* at 44-46.

[19] Dominion Comments at Attachment 1.

[20] Staff Comments at 3, n. 7.

[21] The Commission has fully considered the evidence and arguments in the record. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

The Commission concludes that the Hearing Examiner's findings and recommendations are supported by law and the evidence, have a rational basis, and are adopted herein.[22] In addition, the Commission will further address certain findings of the Hearing Examiner to which Dominion or Appalachian Voices objects.

First, Dominion objects to the Hearing Examiner's recommendation to approve the Biomass and Clover Adjustments. The Company asserts that the costs removed by these adjustments are "[s]imply ... over-projections just like any other kind of over- or under-projection that routinely occurs in RAC proceedings."[23] As explained by the Hearing Examiner, however, the specific costs excluded by these adjustments are not simply over-projections. Rather, all participants – including Dominion – agree that these specific costs were included in error; that is, these costs admittedly do *not* fall within the Company's RGGI compliance obligations.[24]

Further in this regard, the Supreme Court of Virginia has clearly determined that costs are recoverable under Code § 56-585.1 A 5 e if "they are necessary to comply with [Dominion's] statutory duty to purchase allowances for every short ton of CO_2 emitted from its power plants."[25] Yet, as succinctly stated by the Hearing Examiner, "there are no circumstances under which the costs at issue in the Biomass and Clover Adjustments would be necessary for

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[22] *See* Report. The only exception is Recommendation 9 (Report at 45); the Commission does not herein direct a specific date for Dominion's next RGGI filing, for which the Company shall determine the contents thereof in the first instance.

[23] Dominion's Comments at 5.

[24] *See, e.g.*, Report at 35-38.

[25] *Appalachian Voices v. State Corp. Comm'n*, ___ Va. ___, ___, 879 S.E.2d 35, 38 (2022).

Dominion to comply with the RGGI program."[26] Accordingly, we agree with the Hearing Examiner that the costs excluded by these adjustments are not "necessary" under Code § 56-585.1 A 5 e.

Dominion also asserts that approving the Biomass and Clover Adjustments triggers "significant procedural and evidentiary concerns."[27] We again disagree. To the contrary, the Hearing Examiner's directive in this instance for Dominion to provide a preliminary compliance filing provides *additional* process compared to that typically found in public utility rate cases when a final order denies specific cost recovery. Specifically, when the Commission's final order in a rate case disallows or modifies any of the utility's requested costs, that utility necessarily must subsequently file revised rates based on re-computations that exclude those disallowed costs. Such post-final order compliance filing is then verified by the Commission's Staff before the approved new rates go into effect.[28]

Dominion is undoubtedly cognizant of this basic process to which it regularly participates. The Hearing Examiner, by directing a preliminary compliance filing incorporating the Biomass and Clover Adjustments (in the event the Commission approves such adjustments, as we do herein), has provided all participants an opportunity to review the Company's re-computations while the proceeding remains pending prior to a final order. In this manner, the Hearing Examiner has provided *more* process, not less.

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[26] Report at 37.

[27] Dominion's Comments at 6.

[28] Indeed, the Hearing Examiner notes this process and gives a recent example thereof. Report at 38, n.272.

Next, Appalachian Voices objects to Dominion's recovery of certain RGGI costs that, according to Appalachian Voices, are "associated with self-scheduled *uneconomic* dispatch."[29] The Company, however, testified to how it dispatched its fleet in the most economic manner "within the confines of market, regulatory, and reliability considerations."[30] Based on the evidence in the record, the Commission agrees with the Hearing Examiner's analysis, which concludes that Dominion has established its must-run decisions at issue herein are reasonable and prudent.[31] As a result, the allowance costs related to those must-run decisions are necessary to comply with the Company's statutory duty to purchase allowances for every short ton of CO_2 emitted from those power plants and, in turn, shall be included in Rider RGGI herein.

Finally, the Commission agrees with the Hearing Examiner's recommendation (to which Appalachian Voices objects) not to *lower* projected emissions for the first quarter of 2023.[32] Among other things: (1) "[i]f the alleged over-forecast results in customers overpaying RGGI-related costs during the Rate Year, customers will be refunded this overpayment, with financing costs, during a true-up proceeding"; and (2) "[t]he penalties for failing to have the

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[29] Appalachian Voices' Comments at 2 (emphasis added).

[30] Ex. 29 (Vitiello Rebuttal) at 19. *See also Appalachian Voices*, ___ Va. at ___, 879 S.E.2d at 38 ("The understanding of the necessity standard [in Code § 56-585.1(A)(5)(e)] takes into account [Dominion's] statutory duty to provide a stable and reliable power grid for all Virginians. This is not simply an aspirational goal. It is an underlying condition of [Dominion's] status as a legal monopoly and a nonnegotiable limitation on the permissible enforcement of the General Assembly's environmental goals.") (citations omitted).

[31] *See, e.g.*, Report at 25-32 (and record citations therein).

[32] *Id.* at 32-35.

required number of allowances to cover emissions is steep: the generator must forfeit three additional allowances per ton of excess emissions."[33]

In sum, the Commission finds that Rider RGGI, as approved herein, meets the statutory requirements for approval of a RAC under Code §§ 56-585.1 A 5 e and D.

In granting this approval which will result in a rate increase, the Commission notes its awareness of the economic pressures that are impacting all utility customers. We are sensitive to the effects of rate increases, especially in times such as these. The Commission, however, must follow the laws applicable to this case, as well as the findings of fact supported by the evidence in the record. This is what we have done herein.

Accordingly, IT IS ORDERED THAT:

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

(2) 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.

(3) Rider RGGI, with a revenue requirement in the amount of $355,798,812 as approved herein, shall be effective for usage on and after September 1, 2023.

(4) This case is dismissed.

[33] *Id.* at 34-35. *See also Appalachian Voices*, ___ Va. at ___, 879 S.E.2d at 39 n.5 (agreeing with a Commission Hearing Examiner that "'mathematically, additional costs from higher forecasted RGGI prices can exceed allowance savings associated with lower forecasted emissions'"), and 38 n.3 (observing "the harsh penalties that would arise if [Dominion] guessed too low on the forecasted CO_2 emissions") (citations omitted).

Commissioner Patricia L. West participated in this matter.

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.