COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 5, 2019

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PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2018-00195

For approval of a rate adjustment clause, designated Rider E, for the recovery of costs incurred to comply with state and federal environmental regulations pursuant to § 56-585.1 A 5 e of the Code of Virginia

FINAL ORDER

On December 14, 2018, pursuant to Code § 56-585.1 A 5 e and the State Corporation Commission's ("Commission") Rules Governing Utility Rate Applications and Annual Informational Filings,[1] Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion" or "Company") filed with the Commission a petition ("Petition") for approval of a rate adjustment clause, designated Rider E, for the recovery of costs incurred to comply with state and federal environmental regulations.

The Company seeks cost recovery for certain environmental projects located at the Company's Chesterfield Power Station ("Chesterfield"), Clover Power Station ("Clover"), and Mt. Storm Power Station ("Mt. Storm") (collectively, "Power Stations").[2] The Petition states that the environmental projects are required for Dominion to comply with the United States Environmental Protection Agency's ("EPA") "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities; Final Rule" ("CCR Rule").[3] The

[1] 20 VAC 5-201-10 *et seq.*

[2] Ex. 2 (Petition) at 3-4.

[3] *Id.* at 4.

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Company states that to comply with the CCR Rule, it is required to close or retrofit certain coal ash ponds and certain water treatment basins and flue gas desulfurization sludge ponds that contain coal ash at its coal-fired power stations.[4] In addition, the Company asserts that compliance with the EPA's Steam Electric Power Generating Effluent Guidelines ("ELG Rule") is also a driver of certain of the environmental projects.[5]

The Company seeks recovery of three general categories of costs: (i) actual costs associated with closure of existing assets (such as a coal ash pond) at the Power Stations; (ii) actual and projected costs associated with newly constructed assets necessary to allow the Power Stations to continue to operate in compliance with environmental laws and regulations; and (iii) actual and projected costs associated with asset retirement obligations for the newly constructed assets.[6]

Dominion asks the Commission to approve Rider E for the rate year beginning November 1, 2019, and ending October 31, 2020 ("2019 Rate Year").[7] The Company states that the components of the revenue requirement are: the Projected Cost Recovery Factor; the Allowance for Funds Used During Construction Cost Recovery Factor; and the Actual Cost True-Up Factor.[8] Dominion originally requested a total revenue requirement of $113,650,000 for service rendered during the 2019 Rate Year; after making certain adjustments and corrections during the course of this proceeding, the Company now supports a revised total revenue

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[4] Ex. 3 (Taylor Direct) at 4.

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

[6] Ex. 2 (Petition) at 3; Ex. 3 (Taylor Direct) at 3.

[7] Ex. 2 (Petition) at 5; Ex. 6 (Givens Direct) at 2.

[8] Ex. 2 (Petition) at 5; Ex. 6 (Givens Direct) at 3.

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requirement of $107,354,000.[9] In addition, for purposes of calculating the revenue requirement in this case, Dominion utilized a rate of return on common equity of 9.2%, which was approved by the Commission in its Final Order in Case No. PUR-2017-00038.[10]

On January 8, 2019, the Commission issued an Order for Notice and Hearing that, among other things: established a procedural schedule; set an evidentiary hearing date; directed Dominion to provide public notice of its Petition; and provided interested persons an opportunity to file comments on the Petition or to participate in the case as a respondent by filing a notice of participation. Notices of participation were filed by: Sierra Club; Virginia Committee for Fair Utility Rates ("Committee"); and the Virginia Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel").[11]

On June 10, 2019, Sierra Club filed a Motion *in Limine*.[12]

On June 11-12, 2019, the Commission convened an evidentiary hearing on the Petition. The Company, Sierra Club, the Committee, Consumer Counsel, and Commission Staff ("Staff") participated at the hearing.[13] On June 26, 2019, each of these participants filed an issues list as directed by the Commission.

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

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[9] *See* Ex. 2 (Petition) at 7; Ex. 18 (Davis Supp.) at 2; Tr. 14.

[10] Ex. 2 (Petition) at 5; *Application of Virginia Electric and Power Company, For the determination of the fair rate of return on common equity to be applied to its rate adjustment clauses,* Case No. PUR-2017-00038, 2017 S.C.C. Ann. Rept. 475, Final Order (Nov. 29, 2017).

[11] The Commission also received three electronically-submitted public comments on the Petition.

[12] As the Motion *in Limine* is now moot, the Commission shall not rule thereon.

[13] No public witnesses appeared to testify at the hearing. Tr. 10.

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Code of Virginia

Code § 56-585.1 A 5 states as follows:

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

Code § 56-585.1 D further provides in part:

> The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). ....

Mt. Storm and Clover Power Stations

No party asserted that the costs of the environmental projects at Mt. Storm ($48.0 million) and Clover ($7.6 million) fail to satisfy the above statutory criteria.[14] The Commission approves the Company's request to recover the environmental project costs identified in this case attendant to these two power stations.[15]

[14] *See, e.g.*, Tr. 17, 30, 178, 478.

[15] In addition, the Commission approves an accelerated five-year recovery period for the asset retirement cost associated with the ponds at Mt. Storm and Clover, which was not opposed by the Company and will result in a lower lifetime revenue requirement to be paid by customers. *See, e.g.*, Ex. 18 (Davis Direct) at 16; Ex. 18 (Davis Supp.) at 4; Ex. 22; Ex. 25 (Givens Rebuttal) at 7.

Chesterfield Power Station

The environmental projects at Chesterfield involve Units 3, 4, 5, and 6. These projects totaled $246.9 million and are comprised of the following: Wet-to-Dry Conversion ($124.2 million); Reymet Road Landfill ("Landfill") ($66.8 million); and Low Volume Waste Water Treatment System ("Waste Water Treatment System") ($55.9 million).[16]

Consumer Counsel asserts that Dominion did not "carry its burden of proof and establish that it reasonably and prudently incurred the costs" of the environmental projects for Chesterfield Units 3, 4, 5, and 6.[17] Similarly, Sierra Club argues that the Company has not "met its obligation to demonstrate" that its investment in these environmental projects was "reasonable and prudent."[18] Sierra Club also asserts that Dominion has failed to demonstrate that the environmental projects at Chesterfield "will be used and useful going forward."[19]

The Commission has fully considered the evidence and arguments in the record supporting and opposing Dominion's requests.[20] To the extent there is conflicting evidence or differing opinions from expert witnesses, the Commission has interpreted such and decided how

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[16] *See, e.g.*, Ex. 4 (Mitchell Direct) at 7-8; Ex. 15 (Norwood) at 6.

[17] Consumer Counsel's June 26, 2019 Issues List at 1.

[18] Sierra Club's June 26, 2019 Issues List at 1-3.

[19] *Id.* at 5.

[20] *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).

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much "weight to afford it."[21] Further, the Commission has concluded that its findings in this matter are properly supported by the record.[22]

Wet-to-Dry Conversion for Units 3 and 4

In December 2018, the Company placed Chesterfield Units 3 and 4 into cold storage.[23] In March 2019, Dominion announced the retirement of Units 3 and 4 permanently.[24] As a result, the Wet-to-Dry Conversion for Units 3 and 4 is not used in providing service to the public and is not providing benefits to retail customers.[25] In addition, because these units are retired, the Wet-to-Dry Conversion is not currently necessary to comply with federal regulations.

In this instance, however, such finding does not end the analysis. The Commission will also consider the Company's assertion that it was reasonable and prudent to incur the Wet-to-Dry Conversion cost for Units 3 and 4 based on the circumstances at the time Dominion made such investment decision.[26] In this regard, the Commission finds that Dominion has failed to establish in the instant proceeding that it was reasonable and prudent to incur this environmental capital cost for Units 3 and 4 based on the circumstances existing at such time.

[21] *City of Alexandria v. State Corp. Comm'n*, 296 Va. 79, 102 (2018) ("The Commission is entitled to interpret the conflicting evidence and to decide the weight to afford it.") (citing *Board of Supervisors of Loudoun County*, 292 Va. at 458) (internal quotation marks omitted).

[22] *See, e.g., id.* ("[W]hether the Commission could have [reached a different conclusion] ... is not the standard. ... Instead, the question is whether there is sufficient evidence in the record to support the Commission's finding ....") (internal quotation marks and citations omitted).

[23] *See, e.g.*, Ex. 21 (Myers) at 2; Ex. 23 (Abbott) at Attachment GLA-1.

[24] *See, e.g.*, Ex. 9 (Fisher) at 7; Ex. 23 (Abbott) at Attachment GLA-1.

[25] The incremental portion of the Wet-to-Dry Conversion cost attributable to Units 3 and 4 is $18.4 million. *See, e.g.*, Tr. 17; Ex. 21 (Myers) at 1-2, 4-6.

[26] *See, e.g.*, Tr. 19-20, 470-71.

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The Company made the investment decision at issue herein in the June 2015 timeframe.[27] In June 2015, however, the Company's own analyses showed that Units 3 and 4 were expected to be either retired, or retrofitted to burn natural gas, by 2020. In June 2014, the EPA issued its proposed Clean Power Plan ("CPP") to regulate carbon emissions from existing power plants.[28] When Dominion subsequently filed its 2015 Integrated Resource Plan ("2015 IRP") with the Commission on July 1, 2015, the Company concluded that "it is *prudent* to begin planning *now* for implementation of a final [CPP] rule substantially similar to the proposed [CPP] released in 2014."[29]

In accordance with this assertion, Dominion's 2015 IRP presented four possible CPP-compliant resource plans that "represent[ed] long-term plausible paths for compliance with the [CPP]."[30] Under each of these plans, Units 3 and 4 were either retired, or retrofitted to burn natural gas, by 2020.[31] It is undisputed that the Company had these 2015 IRP results when it decided to make the environmental investment for Units 3 and 4.[32] In addition, Dominion prepared a subsequent analysis in 2015, which similarly concluded that Units 3 and 4 should

[27] The Company executed the contract for the Wet-to-Dry Conversion in June 2015. *See, e.g.*, Ex. 26 (Mitchell Rebuttal) at 6. The Company obtained two bids for the Wet-to-Dry Conversion, one including and one excluding Units 3 and 4. *Id.* at 10. The Wet-to-Dry Conversion went into service in December 2017. *See, e.g.*, Ex. 4 (Mitchell Direct) at 7.

[28] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34830 (proposed June 18, 2014). *See also* Ex. 8 (Glick) at 19 n.32; Ex. 15 (Norwood) at 8.

[29] 2015 IRP (*see* Ex. 15 (Norwood) at SN-2 p.2) (emphasis added).

[30] *Id.*

[31] *See, e.g.*, Ex. 15 (Norwood) at 10 and SN-4. Dominion's 2015 IRP also presented a least-cost plan that would not comply with CPP emissions standards, under which Units 3 and 4 would continue to operate. The Company acknowledges, however, that this least-cost plan was not presented as a resource planning alternative but, rather, was only included for reference purposes to compare against the CPP-compliant plans. *See, e.g.*, Ex. 15 (Norwood) at 10, SN-2 p.3, and SN-4.

[32] *See, e.g.*, Tr. 266-268, 304.

continue operation only in the "short term," and that life extension capital expenditures for these units should be "avoid[ed]."[33] Indeed, consistent with its own internal analyses, Dominion's operating team at Units 3 and 4 successfully sought out reasonable alternatives to repair these units without incurring life extension capital expenditures and, furthermore, reasonably "avoided other major capital investments" for these units.[34] Yet, with all of this information in hand, the Company's management contemporaneously chose to proceed with investing additional long-term environmental compliance capital into these units.[35]

The Commission further finds that other evidence presented by Dominion in support of its decision does not alter our conclusion herein regarding Units 3 and 4. For example, Dominion relies upon a one-page May 2015 retirement summary, which lists a $50 million net present value benefit for Units 3 and 4.[36] This one-page summary, however, does not identify the detailed assumptions, analyses, modeling parameters, or sensitivity studies that may have been utilized to reach (and to establish the reasonableness of) the summarized results for Units 3 and 4.[37] In short, the Commission finds that the analyses presented by Dominion in support of

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[33] Ex. 30 (Kelly Rebuttal) at 15-16. *See also* Ex. 29; Tr. 313-317. Dominion also notes that its 2015 IRP eventually proved incorrect (because CPP was not implemented as assumed therein), and that Units 3 and 4 were retired for other reasons. *See, e.g.*, Tr. 207-208, 482. As argued by the Company, however, the Commission must evaluate the circumstances as they existed at the time such decision was made in 2015, not in "hindsight." *See, e.g.*, Tr. 470.

[34] *See, e.g.*, Ex. 28 (Bennett Rebuttal) at 9-10.

[35] At the same time, Dominion also supported specific Virginia legislation in 2015 to address the Company's claimed expectations (which included early retirement of Units 3 and 4) for implementation of the CPP. *See, e.g.*, Tr. 173-177.

[36] *See, e.g.*, Ex. 30 (Kelly Rebuttal) at 13; Tr. 483-84; Ex. 15ES (Norwood) at 12.

[37] *See, e.g.*, Ex. 15 (Norwood) at 12; Tr. 125-131. The Company also presented a March 2015 analysis examining whether to co-fire Units 3 through 6 on natural gas. *See, e.g.*, Ex. 30 (Kelly Rebuttal) at 9-11. This co-fire analysis is not a substitute for detailed retirement or cold storage analyses for Units 3 and 4 that are not in the record. *See, e.g.*, Ex. 10ES.

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its decision (and the Company's testimony thereon) are insufficient to establish that it was reasonable and prudent to incur the Wet-to-Dry Conversion cost for Units 3 and 4 based on the specific facts in this record attendant to those units at the time.

Finally in this regard, Dominion asserts that based on the history of electric utility regulation in the Commonwealth, it would represent "a very extraordinary finding" if the Commission concludes that a utility's capital investment was not reasonable and prudent.[38] The Company further states that such decisions by the Commission represent "a very situational inquiry" that must be made on a case-by-case basis.[39] We agree and that is what we have done herein.

In conclusion, the Wet-to-Dry Conversion for Units 3 and 4 is not being used to serve customers. Pursuant to Code § 56-585.1 D, the Commission finds that Dominion has not established that the "cost incurred" for this project was reasonable and prudent at the time such cost was incurred. The Company likewise has not established that such cost was "necessary" under Code § 56-585.1 A 5 e. Accordingly, the Wet-to-Dry Conversion for Units 3 and 4 shall not be reflected in the revenue requirement for Rider E.

Wet-to-Dry Conversion for Units 5 and 6; Landfill; Waste Water Treatment System

The Commission finds that the Wet-to-Dry Conversion for Units 5 and 6, the Landfill, and the Waste Water Treatment System shall be reflected in the revenue requirement for Rider E.

In stark contrast to Units 3 and 4, Chesterfield Units 5 and 6 continue to serve native load customers. Although the nature of that service may continue to evolve over time, these units

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[38] Tr. 472.

[39] Tr. 474.

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provide a reasonable benefit to customers by remaining available for service when needed.[40] Moreover, not only are these units in-service and reasonably available for the benefit of customers, those customers will continue to pay the historical capital costs therefor in base rates over the remaining useful lives thereof.[41] In light of the foregoing and based on the record in this proceeding, the Commission finds these units are reasonably utilizing the Wet-to-Dry Conversion, the Landfill, and the Waste Water Treatment System.[42] Indeed, no party in this case established a legal basis upon which the Commission would be required to reject specific Rider E environmental costs, sought to be recovered in the 2019 Rate Year, when such costs are "used and useful" in serving native load customers as found herein.[43]

Next, also unlike the Wet-to-Dry Conversion for Units 3 and 4, the Commission finds that Dominion reasonably and prudently incurred these specific environmental costs at the time such cost was incurred. In contrast to Units 3 and 4 at that time, Units 5 and 6:

(i) were newer, larger, and more efficient facilities;

(ii) were not expected to transition to intermediate or peaking status;

(iii) were not recommended for operation only in the "short term";

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[40] *See, e.g.*, Ex. 15ES (Norwood) at 5 (listing 2018 capacity factors). Dominion also testified that, based on a 2019 analysis, Units 5 and 6 should continue to operate for another decade under various market scenarios. *See, e.g.*, Ex. 30 (Kelly Rebuttal) at 24-25.

[41] This is not the case with Units 3 and 4. Specifically, the Company took a write-off on its books for the unrecovered base rate portion of Units 3 and 4 when it decided to retire those units. Tr. 241-242. This means that the Company will recover the remaining net book value of Units 3 and 4 through base rates in its first upcoming triennial review in 2021. *Id. See also* Code §§ 56-585.1 A 3 and A 8.

[42] *See, e.g.*, Ex. 26 (Mitchell Rebuttal) at 8; Tr. 53, 479-480.

[43] *See also Virginia Elec. and Power Co. v. State Corp. Comm'n*, 219 Va. 894, 901 (1979) ("Moreover, in determining the rate base upon which the utility is entitled to a reasonable rate of return, the Commission must decide which facilities are used and useful in providing service to the public.") (citing *Commonwealth v. Virginia Elec. and Power Co.*, 211 Va. 758, 760 (1971)).

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(iv) were not avoiding major capital investments; and

(v) were not slated for retirement by 2020 under CPP-compliant plans in the 2015 IRP.[44]

The Commission also finds that the Company has reasonably implemented a phased approach for the Landfill, which will control the spending therefor while continuing to meet environmental compliance deadlines.[45] In addition, the Waste Water Treatment System (which was required by the ELG Rule) will be further necessary throughout the life of the Landfill and during the decommissioning of retired plant at Chesterfield.[46]

In conclusion, the Commission finds that the cost of these environmental projects, which are being used to serve Units 5 and 6, are "necessary" under Code § 56-585.1 A 5 e. The Commission also finds that the "cost incurred" for these environmental projects was reasonable and prudent pursuant to Code § 56-585.1 D at the time such cost was incurred. Accordingly, the Wet-to-Dry Conversion for Units 5 and 6, the Landfill, and the Waste Water Treatment System shall be reflected in the revenue requirement for Rider E.[47]

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[44] *See, e.g.*, Ex. 28 (Bennett Rebuttal) at 2, 9; Ex. 30 (Kelly Rebuttal) at 17, 22, 24-25; Ex. 15ES (Norwood) at 5; Ex. 27; Ex. 36; Tr. 479. One of the CPP-compliant plans in the 2015 IRP reflected natural gas conversion for all four coal units at Chesterfield by 2020. *See, e.g.*, Ex. 15 (Norwood) at 10 and SN-4. Based on the specific facts in this record attendant to Units 5 and 6, the Commission also finds that it was reasonable and prudent not to decide at that time to retrofit these units for natural gas. This is further supported by the March 2015 co-fire analysis. *See, e.g.*, Ex. 30 (Kelly Rebuttal) at 9-11. Nor have we found that it was imprudent or unreasonable for the Company not to delay the planned environmental investment for Units 5 and 6. *See, e.g.*, Ex. 26 (Mitchell Rebuttal) at 9.

[45] *See, e.g.*, Ex. 26 (Mitchell Rebuttal) at 8.

[46] *See, e.g.*, *id.* Further, the Commission does not find that the Landfill and Waste Water Treatment System are oversized such that a portion of the costs thereof should be denied in the current proceeding.

[47] The Commission also approves the Company's Factor 1 (Average and Excess) for purposes of allocating the revenue requirement of Rider E at this time. *See, e.g.*, Tr. 31-34. This finding, however, does not preclude the Commission from subsequently approving other allocation methodologies for environmental projects reflected in Rider E or in other retail rates. In addition, as agreed to by Dominion, the Company's next Rider E application shall also include analyses and options attendant to the potential recovery of these costs from retail choice customers. *See, e.g.*, Tr. 403.

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Accordingly, IT IS ORDERED THAT:

(1) Dominion's Petition for approval of a rate adjustment clause, designated as Rider E, is granted in part and denied in part as set forth herein.

(2) The Company shall file, within thirty (30) days of the date of this Final Order, a revised Rider E 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 necessary to comply with the directives set forth in this Final Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: http://www.scc.virginia.gov/case.

(3) Pursuant to Code § 56-585.1 A 7, the Company may implement Rider E, as approved herein, for service rendered on and after 60 days from the date of this Final Order. Alternatively, as requested by the Company, the Company may implement Rider E, as approved herein, for service rendered on and after November 1, 2019.

(4) The Company shall file its next annual Rider E application on or after January 2, 2020.

(5) This case is dismissed.

AN ATTESTED COPY hereof shall be sent 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, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.