

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 30, 2018

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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2018-00066

For approval of a rate adjustment clause pursuant
to § 56-585.1 A 4 of the Code of Virginia

ORDER ON RECONSIDERATION

On May 4, 2018, Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion" or "Company"), pursuant to Virginia Code § 56-585.1 A 4 ("Subsection A 4"), filed an application ("Application") with the State Corporation Commission ("Commission") for approval of a rate adjustment clause designated as Rider T1.

On August 2, 2018, the Commission issued a Final Order in this case. On August 20, 2018, Dominion filed a Limited Petition for Reconsideration and Rehearing ("Petition for Reconsideration").

On August 21, 2018, the Commission issued an Order Granting Reconsideration that suspended the Final Order for the purpose of continuing jurisdiction over this matter, established a schedule for additional pleadings on the Petition for Reconsideration, and extended the currently effective Rider T1 at the existing rate of recovery pending reconsideration of the Final Order.

On September 7, 2018, the following participants filed responses to the Petition for Reconsideration: the Office of the Attorney General's Division of Consumer Counsel; the Virginia Committee for Fair Utility Rates; and the Commission's Staff. On September 14, 2018, the Company filed a reply to the responses.

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

Code of Virginia

Rider T1 includes transmission services under rates, terms and conditions approved by the Federal Energy Regulatory Commission ("FERC"). Specifically, Subsection A 4 states as follows:

4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by [FERC], and (ii) costs charged to the utility that are associated with demand response programs approved by [FERC] and administered by the regional transmission entity of which the utility is a member. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

Tax Cuts and Jobs Act of 2017

In the Final Order, the Commission reduced the Company's proposed revenue requirement to reflect the reduced federal corporate income tax rates contained in the federal Tax Cuts and Jobs Act of 2017 ("TCJA"), which became effective January 1, 2018.¹ The Commission found "that Dominion's Subsection A 4 revenue requirement in this proceeding shall include the correct federal income tax rate, which will ensure its customers promptly

¹ Pub. L. No. 115-97 (2017).

receive the benefits of the federal tax cut to which they are entitled."² Based on the evidentiary record at that time, the Commission's finding reduced Dominion's requested revenue requirement by \$112,030,463.³ In its Petition for Reconsideration, the Company seeks leave to update the record for purposes of calculating the lower revenue requirement attributable to the TCJA.⁴ None of the participants oppose this request.

We herein grant Dominion's request that the Commission "accept its information as presented in the [Petition for Reconsideration] and approve revenue requirement reductions attributable to the TCJA that aggregate to \$114,248,369, rather than \$112,030,463 as ordered, without the need for further evidentiary hearing."⁵ We further grant the Company's "request for the Commission to *expressly* adjust its revenue requirement reduction attributable to the TCJA as summarized above so that the Company can avoid being in jeopardy of a Normalization Rules violation."⁶

² Final Order at 7 (footnote omitted).

³ *Id.* at 7 n.23.

⁴ Petition for Reconsideration at 6-11. In requesting to update the record, the Company has not waived its objection to the Commission's decision to reflect the TCJA in Rider T1. *Id.* at 16. For example, Dominion contends that: (1) the "Final Order ... sets a dangerous precedent"; (2) the "Commission has granted to itself ... authority and jurisdiction"; (3) the Commission's "logic essentially puts the cart before the horse"; and (4) the Commission cannot set rates based on "what it believes will happen in a future true-up." *Id.* at 15-16. The Commission again observes, as discussed in the Final Order, that the rates set herein follow the precedent established by Appalachian Power Company in a prior proceeding and, moreover, are based on what *Dominion* believes and conceded would occur. *See, e.g.*, Final Order at 5-7.

⁵ Dominion's Reply at 2.

⁶ *Id.* (emphasis in original).

PJM Transmission Tariff

Dominion is a member of PJM Interconnection, LLC ("PJM"), a regional transmission entity.⁷ PJM's rates, terms and conditions are approved by FERC and are included in PJM's federal Open Access Transmission Tariff ("PJM Transmission Tariff").⁸ Pursuant to the PJM Transmission Tariff, Dominion has continued to operate Yorktown Units 1 and 2 solely to maintain transmission service reliability.⁹ For this transmission service, Dominion incurs PJM costs and receives PJM revenues. Dominion included these PJM transmission costs in Rider T1 but excluded the PJM transmission revenues.¹⁰ Instead of Rider T1, the Company proposed to include the concomitant PJM transmission revenues in base rates.¹¹

Put simply, Dominion seeks to charge customers dollar-for-dollar for these transmission *costs* through Rider T1 but opposes crediting customers in the same manner for transmission *revenues* received *for the exact same service*. In the Final Order, the Commission found that these PJM transmission costs and revenues, just like other PJM transmission costs and revenues, should be included in Rider T1. In its Petition for Reconsideration, the Company now asks the Commission to split the PJM transmission revenues and include a portion in Rider T1 and a portion in base rates.¹²

⁷ Ex. 2 (Application) at 4.

⁸ *Id.*

⁹ See, e.g., Ex. 10 (Jackson Direct) at 20-22; Ex. 16 (Jackson Rebuttal) at Rebuttal Schedule 1; Ex. 17 (Gaskill Rebuttal) at 2-5, Rebuttal Schedule 1; Tr. 130-31, 203-4.

¹⁰ See, e.g., Ex. 13 (Carr Direct) at 7-8.

¹¹ See, e.g., *id.* at 7; Ex. 16 (Jackson Rebuttal) at 2.

¹² Petition for Reconsideration at 11-13. In making this request, the Company has not waived its objection to the Commission's decision in the Final Order. *Id.* at 16. The "Company believes it was legal error for the Commission to rule that the [PJM payments] were for 'transmission service.'" *Id.* at 11.

It is uncontested that these PJM revenues should be credited to Virginia retail ratepayers. It also is uncontested that rates under Subsection A 4 include both costs paid and revenues received by Dominion for transmission services under FERC-approved tariffs.¹³ The Final Order found that if these PJM revenues are for FERC-approved transmission services, then they should be included in Rider T1.¹⁴ In this regard, Dominion likewise asserts that "the relevant inquiry is whether [these PJM revenues are] payment for *transmission* services."¹⁵ The Commission, however, need not fashion its own answer to this inquiry; it has already been answered by FERC.

The FERC-approved PJM Transmission Tariff expressly states that, in this particular instance, Dominion is providing a "transmission service" by continuing to operate Yorktown Units 1 and 2 for transmission reliability.¹⁶ The PJM Transmission Tariff further confirms that this generation is continuing to operate in order to support "the reliability of the *Transmission* System."¹⁷ That is why the PJM Transmission Tariff – explicitly – states that the generator is providing a "*transmission* service" for which PJM is assessing "an additional *transmission* charge."¹⁸ Indeed, if this was not a "transmission service," Dominion would not include the PJM costs therefor in Rider T1. Accordingly, on reconsideration, the Commission continues to find

¹³ See, e.g., Ex. 3 (Wilkinson Direct) at Sched. 1, pp. 1-4, 10, 15, 16; Ex. 13 (Carr Direct) at Stat. I-III, V, X, and XI.

¹⁴ See, e.g., Final Order at 10.

¹⁵ Dominion's July 16, 2018 Comments at 21-22 (emphasis added).

¹⁶ PJM Transmission Tariff, Part V, Section 120 (Ex. 16 (Jackson Rebuttal) at Rebuttal Schedule 3) (emphasis added).

¹⁷ PJM Transmission Tariff, Part V, Section 113.2 (Ex. 17 (Gaskill Rebuttal) at Rebuttal Schedule 1) (emphasis added). See also Ex. 10 (Jackson Direct) at 20-21.

¹⁸ PJM Transmission Tariff, Part V, Section 120 (Ex. 16 (Jackson Rebuttal) at Rebuttal Schedule 3) (emphasis added). See also Staff's Comments at 14.

that both the PJM costs and the PJM revenues, attributable to the exact same PJM *transmission* service, should be included in Rider T1.

As noted above, it is uncontested that all of these PJM revenues should be credited to retail customers. Although Dominion proposed to collect the PJM *costs* from retail ratepayers on a dollar-for-dollar basis through Rider T1, the Company does not want to credit all of the PJM *revenues* to customers in the same manner. Dominion asserts that its proposed disparate treatment is needed to avoid trapped costs and violation of the federal filed rate doctrine.¹⁹ The facts, however, do not support this assertion.

Specifically, the *Entergy Louisiana* case cited by Dominion confirms the legality of the Commission's application of the Virginia statute herein. In *Entergy Louisiana*, a state commission disallowed retail rate recovery of FERC-approved costs incurred by the utility; thus, the United States Supreme Court reversed, explaining that the state commission's "order impermissibly 'traps' costs that have been allocated in a FERC tariff."²⁰ Conversely, there are no trapped costs in the instant case because all of the Company's costs and revenues attendant to this matter are accounted for in Virginia jurisdictional retail rates. Unlike *Entergy Louisiana*, the instant case does not involve allocating costs among multiple utilities but, rather, implicates functional units within a *single* utility. The Company's generation and transmission units function separately. For cost recovery purposes, however, neither the filed rate doctrine nor Subsection A 4 distinguish between functional units within a utility. Rather, as required by both

¹⁹ Dominion's Reply at 4 n.9, 5-6 and n.16 (citing *Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm'n*, 539 U.S. 39, 42-49 (2003) ("*Entergy Louisiana*").

²⁰ *Entergy Louisiana* at 49.

the filed rate doctrine and Subsection A 4, the Commission's Final Order ensures that all of the Company's costs and revenues are included in the *utility's – i.e., Dominion's – retail rates*.²¹

In sum, the Commission finds that both the PJM transmission *costs* and the PJM transmission *revenues* – attributable to the exact same transmission service – should be included in Rider T1. The Commission further emphasizes that this result is based on the specific, unique facts of the instant case and does not stand as precedent for future cases that are not likewise based on FERC-defined and FERC-approved transmission costs and revenues.

Accordingly, IT IS ORDERED THAT:

(1) Rider T1, as approved herein, shall become effective for service rendered on and after January 1, 2019.

(2) The Company forthwith shall file with the Clerk of the Commission and the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance, the updated tariff sheets for Rider T1 as approved herein. The Clerk of the Commission shall retain such filings for public inspection in person and on the Commission's website:

<http://www.scc.virginia.gov/case>.

(3) The Final Order is no longer suspended.

(4) 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 State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be delivered to the

²¹ See also Final Order at 10-11.

Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility
Accounting and Finance.

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