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STATE CORPORATION COMMISSION

July 3, 2013

Hon. Joel H. Peck, Clerk
State Corporation Commission
c/o Document Control Center
Tyler Building, First Floor
1300 East Main Street
Richmond, Virginia 23219

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STATE CORPORATION COMMISSION
DOCUMENT CONTROL CENTER

130710115

RE: *Application of Virginia Electric and Power Company, For approval and certification of the proposed Brunswick County Power Station and related transmission facilities pursuant to §§ 56-580 D, 56-265.2, and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider BW, pursuant to § 56-585.1 A 6 of the Code of Virginia, Case No. PUE-2012-00128*

Dear Mr. Peck:

Please file the original and fifteen (15) copies of the enclosed "Staff's Comments to Report of A. Ann Berkebile, Hearing Examiner" with the other papers in the above captioned matter.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Pouille', with a long horizontal line extending to the right.
Alisson O. Pouille
Attorney

AOP:kam
Enclosure

cc: Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

130710115

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2012-00128

For approval and certification of the proposed Brunswick County Power Station and related transmission facilities pursuant to §§ 56-580 D, 56-265.2, and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider BW, pursuant to § 56-585.1 A 6 of the Code of Virginia

Staff's Comments to Report of A. Ann Berkebile, Hearing Examiner

Pursuant to Rule 120 C of the Rules of Practice and Procedure of the State Corporation Commission of Virginia ("Commission"), 5 VAC 5-20-120 C, and the Report of A. Ann Berkebile, Hearing Examiner, dated June 13, 2013 ("Report"), the Staff of the State Corporation Commission ("Staff") hereby submits its comments to the Report.

BACKGROUND

On November 2, 2012, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the Commission an application and supporting documents ("Application") for approval of a generating plant and associated transmission investments and for approval of a rate adjustment clause. More specifically, pursuant to §§ 56-580 D and 56-46.1 of the Code, the Company seeks a certificate of public convenience and necessity as well as approval to construct and operate the Brunswick County Power Station, an approximate 1,358 megawatt (nominal) natural gas-fired combined-cycle electric generating plant in Brunswick County, Virginia.¹ Dominion Virginia Power, pursuant to §§ 56-265.2 and 56-46.1 of the Code, seeks a separate certificate of public convenience and necessity and approval to

¹ Ex. 2 (Application) at 1, 28.

construct and operate new 500 kilovolt transmission lines, two new switching stations, and transmission infrastructure in Brunswick and Greensville Counties, Virginia.² In connection with these two requests, the Company requests approval of approximately \$1.27 billion of project costs, including approximately \$89.1 million in transmission-related costs, and excluding financing costs.³

Pursuant to § 56-585.1 A 6 of the Code ("Subsection A 6"), Dominion Virginia Power also requests approval of a rate adjustment clause, designated as Rider BW, to recover the costs of the project.⁴ In this proceeding, Dominion Virginia Power's proposed \$43.485 million revenue requirement is comprised of the following: (1) financing costs on average rate year construction expenditures, including actual projected transmission expenditures;⁵ and (2) a rate year level of amortization of allowance for funds used during construction.⁶ Specifically, the Company seeks a 100 basis-point increase to its general rate of return on common equity for the

² *Id.* at 1-2, 28.

³ *Id.* at 9, 16. The Company states that its \$89.1 million estimate for interconnecting the Brunswick County Power Station to the grid was provided by PJM on October 19, 2012, in the Interconnection Facilities Study Report. The estimate includes a maximum cost of \$250,000 to be payable by the Company to Progress Energy Carolinas ("Progress Energy") for certain relay coordination work to be performed by Progress Energy at its Wake Substation. The Company states that in advance of PJM's issuance of the Interconnection Facilities Study Report, the Company estimated the cost payable to Progress Energy to be \$1 million. The Company states that it included this \$1 million estimate in its \$1.27 project cost estimate. The Company represents that the impact on the 2013-2014 Rider BW of the reduced transmission estimate would be minor and could be handled through subsequent Rider BW true-ups. Dominion Virginia Power's Post Hearing Brief at 65, fn. 47.

⁴ Ex. 2 (Application) at 2, 28.

⁵ Ex. 50 (Pre-filed Testimony of Carol B. Myers) Appendix at 8-9, Response to Staff's Fourth Set of Interrogatories, Question No. 26.

⁶ *See, e.g.* Dominion Virginia Power's Post Hearing Brief at 10, 68. The Company accepted Staff's adjustment reducing the revenue requirement for the 2013 rate year by \$1.12 million to treat the indirect overhead allocation methodology in this case consistent with the stipulations accepted by the Commission in the 2012 Riders W, S and B update proceedings, Case Nos. PUE-2012-00067, PUE-2012-00071, and PUE-2012-00072. *See, e.g., id.* at 68, fn. 49 (citing Ex. 50 (Pre-filed Testimony of Carol B. Myers) at 9-10).

first 15 years of the Brunswick County Power Station's service life.⁷ The Company has thus used an 11.4% enhanced rate of return on equity to calculate the entire revenue requirement for Rider BW.⁸

On March 15, 2013, Staff filed its Motion for Ruling ("Motion") requesting that the Commission rule that the enhanced rate of return on equity available to a utility pursuant to Subsection A 6 applies only to the "facility," *i.e.*, the generating plant, and not to the "infrastructure associated therewith." On April 4, 2013, Dominion Virginia Power filed its Response of Virginia Electric and Power Company to State Corporation Commission Staff Motion for Ruling ("Response") opposing Staff's Motion. Also on April 4, 2013, the Office of the Attorney General, Division of Consumer Counsel and the Virginia Committee for Fair Utility Rates filed responses supporting Staff's Motion.⁹ On April 18, 2013, Staff filed its Reply rebutting the arguments in the Company's Response and re-asserting its arguments in support of a ruling that per Subsection A 6 the enhanced return applies only to the "facility" and not to the "infrastructure associated therewith."

⁷ Staff concurs with the Hearing Examiner's conclusion that, if the Application is approved, an enhanced return should apply only to the first 10 years of the Brunswick County Power Station's service life.

⁸ *See, e.g.*, Ex. 2 (Application) at 20. The 11.4% enhanced rate of return on equity is comprised of the 10.4% rate of return on equity, as approved in the Company's 2011 Biennial Review, plus a 100 basis point increase to the rate of return on equity as prescribed by Subsection A 6. *Application of Virginia Electric and Power Company, For a 2011 biennial review of the rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2011-00027, 2011 S.C.C. Ann. Rept. 456, Final Order (Nov. 30, 2011). The Company filed its 2013 Biennial Review on March 28, 2013. *Application of Virginia Electric and Power Company, for a 2013 biennial review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2013-00020, Doc. Con. Cen. No. 130340101, Application (filed Mar. 28, 2013). Dominion Virginia Power states that any change in the Company's rate of return on equity as a result of the 2013 Biennial Review can be addressed in subsequent Rider BW true-ups assuming the Commission approves the Application. *See, e.g.*, Ex. 2 (Application) at 20.

⁹ *See* Response to Motion for Ruling of Office of the Attorney General, Division of Consumer Counsel; Response of the Virginia Committee for Fair Utility Rates to the Motion for Ruling of the Staff of the State Corporation Commission.

On June 13, 2013, Hearing Examiner A. Ann Berkebile issued her Report in this proceeding. In her Report, the Hearing Examiner summarizes the history of the case and the record, and presents her Findings and Recommendations to the Commission. In part, the Hearing Examiner recommended that the Commission deny Staff's Motion, stating in relevant part, "[b]ecause I conclude that Subsection A 6 contemplates infrastructure costs as costs of a generating facility and because, in my view, the statute authorizes an enhanced [return on equity] on all of a facility's costs, I recommend denial of the Staff's [] Motion."¹⁰ Further, in the Report's primary recommendations, the Hearing Examiner found that Dominion Virginia Power: (1) failed to adequately consider third party market alternatives to the project; (2) failed to establish that the project is required by the public convenience and necessity; and (3) failed to establish that the project is not contrary to the public interest.¹¹ The Hearing Examiner then also recommended that (1) the Company's request for a certificate of public convenience and necessity and for approval of Rider BW be denied; and (2) Dominion Virginia Power be directed to re-file its Application if, after conducting an evaluation of actual third party market alternatives to the project, the Company determines that the Brunswick County Power Station is the best option for ratepayers.¹² The following comments relate solely to the Hearing Examiner's recommendation to deny Staff's Motion.

1. A Ruling on Staff's Motion is Unnecessary if the Commission Chooses to Adopt the Hearing Examiner's Report

If the Commission chooses to adopt the Hearing Examiner's Findings and Recommendations, the Brunswick project would not ensue and the Company would not recover

¹⁰ Report at 86.

¹¹ *Id.* at 87.

¹² *Id.* While the Hearing Examiner made additional findings and recommendations in her Report, those findings and recommendations are not listed here as they are not relevant to Staff's Motion.

the costs of the project, or any associated enhanced return, pursuant to Subsection A 6. A ruling on whether or not the enhanced return on common equity applies to the associated infrastructure in this case would be unnecessary.

2. If the Commission Chooses to Reject the Hearing Examiner's Recommendations and Approve Dominion Virginia Power's Application for the Brunswick Project, the Commission Should Grant Staff's Motion

If the Commission chooses to reject the Hearing Examiner's Findings and Recommendations and approve Dominion Virginia Power's Application in this proceeding, for the reasons set forth below and in Staff's Motion and Reply, the Commission should find that, pursuant to Subsection A 6, the enhanced rate of return on equity applies only to the "facility" and not to the additional "infrastructure associated therewith."

The Hearing Examiner bases her decision to deny Staff's Motion on two erroneous conclusions. First, the Hearing Examiner erroneously concludes that Subsection A 6 contemplates infrastructure costs as constituting costs of a generating facility.¹³ Second, the Hearing Examiner erroneously concludes that the enhanced return must also apply to infrastructure costs as a component of costs of the facility because "the statute's overall purpose – to encourage the development of electricity supply – necessarily includes the goal of incentivizing the infrastructure required to facilitate the delivery of such supply."¹⁴

a. Costs of the Facility Do Not Include Costs of Infrastructure Associated Therewith

The Hearing Examiner explains the reasoning for her first conclusion, that "Subsection A 6 contemplates infrastructure costs as costs of a generating facility,"¹⁵ by quoting the following portion of Subsection A 6:

¹³ *Id.* at 86.

¹⁴ *Id.*

¹⁵ *Id.*

A utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith

In her Report, the Hearing Examiner states that she "interpret[s] this provision as providing a list of the categories of a generating facility's costs including infrastructure costs –all of which are recoverable through a Subsection A 6 [rate adjustment clause]."¹⁶ As is set forth in Staff's Motion and Reply, Staff disagrees with this interpretation. Infrastructure costs are a separate category of costs from the costs of the facility pursuant to Subsection A 6. While both categories of costs are recoverable, the enhanced rate of return pursuant to Subsection A 6 is narrower in focus and applies only to costs of the facility.

A few points bear repeating on this issue. First, if "costs of infrastructure" were merely a subset of "costs of the facility," then the term "therewith" would refer back to the "costs of the facility."¹⁷ Both the Staff and the Company agree, as stated in Dominion Virginia Power's Response¹⁸ and again in its Post Hearing Brief that "the plain, logical reading of the phrase 'costs of infrastructure associated therewith' simply means the infrastructure costs associated with *the facility*"¹⁹ As such, the "costs of infrastructure associated therewith" cannot be a subset of "costs of the facility."

Moreover, even Dominion Virginia Power concedes that if the listing of costs read "'life-cycle costs, [along with] [or] [in addition to] costs of infrastructure associated therewith,'"

¹⁶ *Id.*

¹⁷ *See* Motion at 4-5.

¹⁸ In its Response, Dominion Virginia Power states "'therewith' simply relates to the term 'facility' –*i.e.*, infrastructure costs associated with 'the facility'" Response at 7.

¹⁹ Emphasis added. Dominion Virginia Power's Post Hearing Brief at 75.

then such "infrastructure costs could be somehow distinguished from other 'costs of the facility.'"²⁰ But, no such substitution of terms is necessary. The conjunction "and," which is the term the statute actually uses, is perfectly synonymous with Dominion Virginia Power's suggested alternatives. The use of "and" here, as Dominion Virginia Power has repeatedly noted, "'join[s] two or more items of equal syntactic importance, such as . . . main clauses . . . :'"²¹ "the costs of the facility, . . . , and costs of infrastructure associated therewith," demonstrating that Subsection A 6 contemplates two separate categories of costs.

As stated in Staff's Reply, this conclusion is further supported by the statute's use of the term "project" as distinguished from the term "facility" throughout Subsection A 6.²² Both the Company and the Staff agree that the term "project" includes both the "facility" and the "infrastructure associated therewith."²³ Accordingly, the following logic applies:

"costs of the project" = "costs of the facility" + "costs of infrastructure associated therewith."

And thus,

"costs of the project" ≠ "costs of the facility" alone.

As is clearly set forth in Subsection A 6, while a utility has the right to recover all prudent and reasonable costs of the project, the "enhanced rate of return shall apply *only* to the facility that is the subject of such rate adjustment clause."²⁴ To read Subsection A 6 otherwise disregards the language of the statute.

²⁰ Response at 7.

²¹ *Id.* at 7, fn. 11 (quoting [http://en.wikipedia.org/wiki/Conjunction_\(grammar\)](http://en.wikipedia.org/wiki/Conjunction_(grammar))); Dominion Virginia Power's Post Hearing Brief at 76, fn. 58 (quoting William Strunk, Jr. & E.B. White, *The Elements of Style* 91 (4th ed. 2000)).

²² Reply at 3-5.

²³ *See, e.g.*, Response at 8.

²⁴ Emphasis added.

b. The General Assembly Did Not Seek To Also Incentivize *The Delivery Of Electricity Supply With an Enhanced Return When Enacting Subsection A 6*

The Hearing Examiner also erroneously concludes that the enhanced rate of return must apply to the costs of infrastructure as a component of the costs of the facility because "the statute's overall purpose – to encourage the development of electricity supply – necessarily includes the goal of incentivizing the infrastructure required to facilitate the delivery of such supply."²⁵

It is uncontested in this case that the purpose of Subsection A 6 is to "ensure a reliable and adequate supply of electricity" ²⁶ As is explained in Staff's Reply, to achieve this purpose, Subsection A 6 permits the recovery of both categories of costs through a rate adjustment clause, but permits an enhanced return applicable *only* to the costs of the facility.²⁷ In this way, Subsection A 6 recognizes that the development of infrastructure is necessary to the successful development of a generating facility, but through the narrower application of the enhanced return, achieves the goal of promoting first and foremost, the generating facility itself. This careful scheme crafted by the General Assembly is perhaps made nowhere more apparent than when one considers the alternatives that the Commission has before it in this case.

For example, Dominion Virginia Power has requested two separate certificates of public convenience and necessity in its Application. The Commission may find that the public convenience and necessity require the development of the proposed transmission facilities, but

²⁵ Report at 86.

²⁶ Va. Code § 56-585.1 A 6.

²⁷ Reply at 10-12. Specifically, prior to the enactment of Subsection A 6 as part of the Virginia Electric Utility Regulation Act ("Act"), Virginia's electric utilities also had an obligation to serve, but were provided only *an opportunity* to earn an authorized return on their utility investments. Today, a utility that files and receives approval of a petition pursuant to Subsection A 6 has the right to recover all reasonable and prudently incurred or projected to be incurred costs associated with certain projects on a timely and current basis, which the Commission has interpreted to mean dollar for dollar recovery. *Id.* at 10-11.

not the Brunswick generating facility. In such a scenario, would Subsection A 6 permit the application of an enhanced return on the transmission construction costs? Clearly not. The Company would no longer be within the purview of Subsection A 6, as it would no longer be constructing a generating facility. Dominion Virginia Power's Application for a separate certificate of public convenience and necessity pursuant to §§ 56-265.2 and 56-46.1 of the Code would be no different than the transmission applications the Company routinely files with the Commission.²⁸

If the Application is denied by the Commission in its entirety, another possibility may be that a third party supplier constructs a new generating facility on or near the Brunswick site in the future. In this scenario, the third party supplier would still need to connect to the grid, and Dominion Virginia Power may be asked to construct the requisite transmission interconnection facilities.²⁹ Would the enhanced return pursuant to Subsection A 6 apply in such a scenario? Clearly not. An application for such transmission facilities would again fall outside the purview of Subsection A 6. As is made evident in these examples, associated infrastructure costs, such as transmission costs, may sometimes constitute recoverable project costs, but clearly are not "costs of the facility." No enhanced return can apply.

²⁸ See, e.g., *Application of Virginia Electric and Power Company D/B/A Dominion Virginia Power, For approval and certification of electric transmission facilities in Prince William County and the City of Manassas: Cannon Branch-Cloverhill 230 kV Transmission Line and Cloverhill Substation*, Case No. PUE-2011-00011, 2011 S.C.C. Ann. Rept. 428, Final Order (Dec. 21, 2011); *Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity in King George County: Dahlgren 230 kV Double Circuit Transmission Line and 230-34.5 kV Dahlgren Substation*, Case No. PUE-2012-00113, 2012 S.C.C. Ann. Rept. 319, Final Order (Oct. 4, 2012).

²⁹ This situation occurred in 2001 when Tenaska Virginia Partners, L.P. built a facility in Fluvanna County, in Central Virginia Electric Cooperative's service territory, and requested that Dominion Virginia Power construct necessary interconnection facilities. See *Application of Virginia Electric and Power Company D/B/A Dominion Virginia Power, For a certificate of public convenience and necessity for facilities in Fluvanna County: Two parallel 500 kV transmission lines to provide service to Tenaska Virginia Partners, L.P.'s electric generating facility*, Case No. PUE-2001-00663, 2003 S.C.C. Ann. Rept. 348, Order Granting Amended Certificate (Jan. 21, 2003).

Also indicative that the General Assembly sought to promote the supply of electricity over and above the delivery of such supply, is that nowhere in the Act are transmission or distribution services separately incentivized by an enhanced return. For example, § 56-585.1 A 4 of the Code, which pertains specifically to transmission costs, like Subsection A 6, allows a utility to recover certain transmission costs, but awards no separate, enhanced return.

The enhanced return on equity available per Subsection A 6 is applicable only to the facility and not to the "infrastructure associated therewith." For these reasons and the reasons stated in Staff's Motion and Reply, the Hearing Examiner's recommendation to deny Staff's Motion should be rejected.

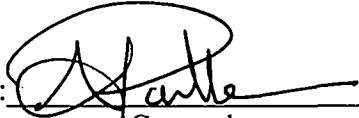
CONCLUSION

A ruling on Staff's Motion is unnecessary if the Commission otherwise adopts the Hearing Examiner's Findings and Recommendations in this case. However, if the Commission rejects the Hearing Examiner's Findings and Recommendations, for the aforementioned reasons, and for the reasons set forth in Staff's Motion and Reply, the Commission should rule that the enhanced return pursuant to Subsection A 6 "shall apply *only* to the facility that is the subject of such rate adjustment clause" and not to the "infrastructure associated therewith."³⁰

³⁰ Emphasis added. The revenue requirement impact of granting Staff's Motion in this case is \$287,000. Ex. 50 (Pre-filed testimony of Carol B. Myers) at 10. This amount is uncontested by the Company. *See, e.g.*, Dominion Virginia Power's Post Hearing Brief at 69, fn. 50.

Respectfully submitted,

STAFF OF THE STATE
CORPORATION COMMISSION

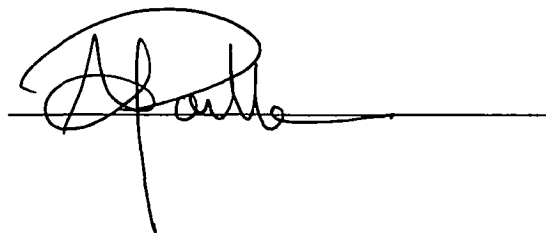
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July 3, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Staff's Comments to Report of A. Ann Berkebile, Hearing Examiner" was, on this 3rd day of July, 2013, served by first class mail, postage prepaid, to all persons on the official Service List in Case No. PUE-2012-00128.

A handwritten signature in black ink, appearing to read "A. Ann Berkebile", is written over a horizontal line. The signature is cursive and includes a large loop at the top.