



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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February 18, 2011

BY HAND DELIVERY

The Hon. Thomas K. Norment, Jr., Chairman
Commission on Electric Utility Regulation
Room 426
General Assembly Building
Richmond, VA 23219

RE: Commission's Review of Electric Utility Regulation

Dear Sen. Norment:

I write in response to your invitation that interested parties submit issues for the Commission on Electric Utility Regulation to review over the next 12 months. Specifically, I ask that the Commission review ways to stagger the biennial reviews of the Commonwealth's largest investor-owned utilities ("IOUs"), Dominion Virginia Power and Appalachian Power.

As you know, under the re-regulation law passed in 2007, IOUs are scheduled to appear before the SCC in base-rate cases every two years in what are known as biennial reviews. The first of the biennial review cases will occur this year. In fact, both Dominion Virginia Power and Appalachian Power are scheduled to file their respective biennial review cases by March 31, 2011.

By statute, my Office serves as Consumer Counsel, representing the interests of ratepayers, in these cases. With both cases being filed and conducted at the same time, the attorneys in the Division of Consumer Counsel will be forced to simultaneously litigate these two rate cases, while the utilities will be focused only on their respective case. This will inure to the benefit of the utilities in these cases.

My office is not the only group disadvantaged by simultaneous cases. Any other citizen or group that participates in both rate cases, including the SCC staff, is similarly disadvantaged.

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As you are aware, the 2007 law did not require that the biennial reviews occur in the same year, but rather, permitted the SCC to “stagger” the cases by allowing a Phase II Utility (Dominion Virginia Power) to have its first biennial review in 2012. *See* Va. Code § 56-585.1(A)(1). In fact, it appears that the General Assembly expected for this result to occur because Va. Code § 56-585.1(A)(6) provides that, for any biennial review that is conducted in 2018, the SCC may reduce “any enhanced rate of return on common equity previously applied” if certain benchmarks regarding generation facilities are not met. Without moving the initial review to 2012, there cannot be a biennial review in 2018 because the biennial reviews will all occur in odd-numbered years (2011, 2013, 2015, 2017, 2019, etc).

Regardless of expectations, the cases were not staggered as allowed by the statute. Given that the SCC was only given the ability to stagger the initial biennial review, this means that there is no longer a mechanism to stagger the reviews. Accordingly, unless there is a change in the statute, the biennial review cases of the two largest IOUs in Virginia will always occur at the same time.

In order to allow both Consumer Counsel and any other interested parties to fully participate in the biennial review process, I ask that the Commission study statutory changes that would, at the very least, allow the cases to be staggered going forward. Ideally, the Commission would find a method for allowing the cases to occur in different years. However, even if the cases were set in the same year but with different starting points, the ability of Consumer Counsel and others to fully participate in both cases would be greatly enhanced.

Thank you for your willingness to review this issue. As always, if my office can be of any assistance to the Commission as it goes about its work, please do not hesitate to let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in cursive.

Kenneth T. Cuccinelli, II
Attorney General of Virginia