

Approved

VML/VACo APCo Steering Committee
Minutes of the Committee
October 28th, 2022
Via Zoom

Members in attendance were:

Carol Davis, Acting Chair; Laura Carini, Executive Board; Jeff Shawver, Vice Chair Executive Board member; Dean Lynch, Executive Director of Virginia Association of Counties; John Walker, Legal Counsel; Anna Birkenheier, Legal Counsel; Ashley King, Roanoke County, Michelle Gowdy, VML Executive Director

Additional attendees: Sue Mellen, VML Staff support, Barry Moore, City of Galax

Carol Davis welcomed everyone and invited the members and VML staff to introduce themselves. She reviewed the agenda and mentioned this meeting will prepare members to make a vote in Spring 2023 about anticipated dues.

John Walker wanted to touch base on a few APCo cases the steering committee should know about and are currently participating in.

In the APCo 2020 Triannual Review case, APCo was able to offset their income by \$88.3 million through the new statutory scheme, Virginia Code Section 56 – 585.1. The State Corporation Commission ruled against APCo’s rate increase due to APCo classifying coal mining plants that closed in 2015, as impaired units in 2019. APCo appealed SCC’s decision to the Supreme Court of Virginia in August 2022, which resulted in the SCC’s ruling being reversed. Under the new scheme, if earnings drop more than 70 points, below or above the ROE the SCC approves (9.2%), the commission must do rate review to determine how rates must be adjusted. APCo argued for the \$88.3M to be included in their books to claim they underearned, resulting in a rate increase of 7%. The Supreme Court reasoned APCo were allowed to claim the \$88.3M offset since the statutory scheme’s language is not specific. Mr. Walker expressed the concern of the Supreme Court letting APCo charge their rate payers unreasonably. Ms. Davis explained that the committee does not have any power to challenge due to bi-laws that the committee does not engage in legislation and lobbying.

In the Fuel Factor case, APCo has applied to increase its fuel factor by 87%, which they are entitled to by statute. APCo is seeking to recover \$361 million for under-recovered deferred fuel balance. Instead of 1 year, APCo wanted to mitigate the recovery by spreading it over 2 years.

The Renewable Portfolio Standard Cost Recovery case will determine costs that are allocated and recovered, recovery mechanisms and methodologies for all future RPS plan cases. This case

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has been a big issue since the Virginia Clean Economy Act was passed in 2020. A hearing has not been set for this case, but Mr. Walker predicts it will be set within Q1 or Q2 of 2023, within the current fiscal year. Mr. Walker argues cost recovery should be based on your traditional cost causation principles. APCo is trying to change this principle to value stream methodology that relies on long term commodity and energy price forecasts, which are high speculative and grossly unreliable.

Cases that are coming up soon are the 2023 RPS Plan case, the 2023 Triannual Review, and other miscellaneous rate cases. The 2023 RPS Plan case is typically filed at the end of the calendar year. Mr. Walker predicts the hearing to be set during Q2 of 2023, within the current fiscal year. Prior to March 31st, 2023, APCo will file its 2023 Triannual Review with the hearing likely to happen late Summer, early Fall. The steering committee reviews 15-20 kinds of miscellaneous APCo cases and chooses which one to participate in due to limited resources. Ms. Davis explains to members that we are highly cognizant of the which cases to challenge since bandwidth comes from members' yearly dues. Mr. Walker effectively chooses what the steering committee should engage in by how consequential the case is to its members and if another group is tackling the same case.

Mr. Walker expresses the committee should think about negotiation of the next APCo contract due to budgeting purposes. By March 31st, 2024, APCo will provide the cost-of-service analysis to kick off the next round of contractual negotiations. APCo provide the committee with a complex cost-of-service analysis that takes a long time to review. The committee hires expert consultants to look through and analyze to find (GGS consultants) all sorts of deficiencies within APCo's study and adjustments that appear inappropriate. Mr. Walker thinks the negotiation will take up majority of 2024 due to APCo's flaws within their analysis. There will be an extensive amount of legal work needed to protect the Steering Committee's interest between now and end of 2024. Mr. Walker shared numbers to give members an idea of financial needs going forward. He started off with the annual assessment that pays the committee's legal bills for decades. Each locality and public authority's share are determined by their pro rata electricity status.

Ms. Davis explained that if the committee decided to seek legislative remedy to restore the SCC's oversight, the costs can potentially level out or lower because the committee will not be playing as much defense as it is now.

Sue Mellen went over the finance report, as of end of September. It showed activity from the beginning of the fiscal year until September. She mentioned the annual assessment went out in May and was due in August. Ms. Mellen pointed out that the outstanding accounts receivable is from those localities and public entities that have not paid their dues for this fiscal year. Notices and follow-ups have been sent out. If they pay, then she believes the committee will reach collection rate that was set during the budget process.

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Ms. Davis thanked everyone for their time and explained the steering committee is looking for more voices, particularly ones from rural localities due to lack of representatives. Those who are interested, please reach out to Ms. Davis or Ms. Mellen for any further conversation.

Ms. Davis then ended the meeting.