

FINANCIAL BENEFITS TO PUBLIC AUTHORITIES FROM THE WORK OF THE VML/VACo APCo STEERING COMMITTEE

The work of the VML/VACo APCo Steering Committee has resulted in substantial financial benefits to the localities and other Public Authorities in APCo's Virginia service area ("PAs") as outlined below. This work consists of two major components. The first relates to the Steering Committee's negotiation of contracts with APCo for the sale of electricity to the PAs. The second relates to the Steering Committee's participation in significant rate cases and other important regulatory proceedings filed by APCo in the Virginia State Corporation Commission ("SCC"). Some of the financial benefit highlights over the last 10 years are set forth below.

A. Contract Negotiations Between the Steering Committee and APCo

With respect to the negotiation of contracts with APCo, the Steering Committee's counsel works with outside consultants to analyze the voluminous and highly complex cost-of-service ("COS") studies prepared by APCo at the beginning of the process, identifies the key contractual issues and formulates strategies for resolving them favorably for the PAs, works closely with the outside consultants to evaluate the accuracy, reasonableness, and validity of APCo's cost-of-service studies, tariffs/riders, and negotiation positions, negotiates the contractual terms with APCo for the benefit of the PAs, and explains and recommends the terms of the contract to the Steering Committee membership.

During the last three contractual negotiation cycles, the Steering Committee was successful in negotiating savings of more than **\$26 million** for the PAs on the one issue of surcharge/surcredit savings alone. There have been many other financial benefits to the PAs from these contracts, but, unlike surcharges/surcredits, they are not easily quantifiable. Nevertheless, the existence of these financial benefits is clear. The highlights of each of the last three contract negotiations with APCo are as follows:

1. Negotiation of 2026-2029 Contract:

- (a) During the most recent negotiation period, the Steering Committee's counsel and outside consultants concluded that APCo's PA COS study, which is used to determine if APCo is entitled to a surcharge or the PAs are entitled to a surcredit, was more accurate and reasonable than APCo's COS studies in prior contract negotiations. Indeed, APCo agreed at the outset that the PAs were entitled to a surcredit, though the Steering Committee was able to negotiate a surcredit that was nearly \$600,000 more than what APCo initially proposed over the 4-year term of the contract. The Steering Committee believes that APCo's COS study was more favorable this contractual cycle because of the multitude of deficiencies that the Steering Committee identified in APCo's COS studies in prior contractual cycles (see pp. 2-3 below);

- (b) The Steering Committee negotiated an annual surcredit for the PAs of \$2.054 million in the new contract, meaning that the PAs will receive a total surcredit amount of \$8.216 million from APCo over the 4-year term of the contract, which is believed to be the highest surcredit that the Steering Committee has ever negotiated with APCo. The new contract also includes an extension of the surcredit in the event that another contract has not been negotiated as of the December 31, 2029 expiration of the new Agreement – a provision that APCo refused to include in the past;
- (c) The new contract has much more favorable provisions for PAs with respect to outdoor lighting and street lighting than prior APCo contracts, including more lighting options, substantial limitations on APCo's ability to impose LED conversion charges, significantly reduced LED conversion charges (30% reductions) in the now rare instance where applicable, and more robust repair service obligations on the part of APCo;
- (d) The new contract provides PA access to all APCo electric service programs and options that are available now or will be made available to jurisdictional customers by statute or SCC order over the next four years, including those relating to net metering, renewable energy, and electric vehicles;
- (e) APCo agreed in the new contract that the PA Customers' generation base rate will stay flat over the 4-year term of the new contract, which ensures no increases of that particular rate and brings more stability and certainty to the PAs' budgeting processes; and
- (f) APCo agreed in the new contract that the PAs may pay their mandatory share of APCo's unusually high but valid storm recovery costs from Hurricane Helene and other major storms in 2024 and early 2025 over a 4-year period instead of the typical 1-2 years through rate proceedings. This longer recovery period will allow the PAs to spread out these costs in a much more cost-efficient way than the standard recovery method.

2. Negotiation of 2021-2025 Contract:

- (a) APCo began negotiations by claiming that the PAs owed APCo an annual surcharge of \$2.34 million per year based on APCo's COS analyses relating to the localities.
- (b) The Steering Committee challenged the accuracy of APCo's COS study and its conclusions, contending, among other things, that the COS study improperly failed to make numerous accounting

adjustments that were made for APCo's jurisdictional customers, overstated the PAs' share of costs, improperly factored in costs that APCo had previously recovered, and failed to account for deferred income taxes that should have been returned to the PAs over three years as the result of the Tax Cuts and Jobs Act of 2017.

- (c) As the result of the Steering Committee's efforts, APCo moved from demanding a \$2.34 million annual surcharge from the PAs to agreeing to pay the PAs an annual surcredit of \$1.34 million per year – a swing of \$3.68 million annually in favor of the PAs and a total savings of \$18.4 million over the five-year term of the contract.
- (d) In addition, the Steering Committee pushed hard to get APCo to agree to give the PAs more renewable energy and higher efficiency options under the contract, including much greater net metering capacity, access to the statutory PPA Pilot Program, access to the statutory Municipal/Schools Net Metering Program, access to APCo's Rider WWS (Wind/Water/Solar) for 100% renewable energy, an electric vehicle tariff, and new street lighting and outdoor lighting options.

3. Negotiation of 2017-2020 Contract:

- (a) APCo began negotiations by acknowledging that the PAs were entitled to an annual surcredit of approximately \$2.5 million but then adjusted the figure downward to \$1.2 million. Thereafter, APCo took the position that, based upon its updated COS study, the localities were not entitled to any surcredit but rather owed an annual surcharge of approximately \$1 million to APCo. The Steering Committee pushed back hard, contending that the vast amount of data and figures produced by APCo in support of its underlying calculations were deficient. Working with its utility regulatory accounting experts, the Steering Committee argued that the return on equity figure upon which APCO's study was based was much higher (over 13%) than the 9.7% figure that the SCC had previously approved.
- (b) As the result of the negotiations, APCo ultimately agreed to waive the \$1 million annual surcharge against the PAs and instead credit them \$4 million in surcredits spread over 4 years and refund them \$218,000 for a total savings of over \$8 million for the localities.
- (c) In addition, the Steering Committee obtained APCo's agreement to include a net metering tariff allowing the PAs to receive credit for producing energy and an REO Rider allowing the PAs to obtain more energy from renewable resources.

B. The Steering Committee's Participation in Significant APCo Cases Before the SCC

As noted above, the second major component of the Steering Committee's work is participating in regulatory proceedings before the SCC that are of particular importance to the Steering Committee. Since the Steering Committee's inception, its outside counsel has handled approximately 200 rate cases and other regulatory proceedings involving APCo in the SCC. In doing so, the Steering Committee's outside counsel has developed strong relationships with SCC Staff and counsel for the other parties, and, where appropriate, coordinated strategic alliances with the other parties for the Steering Committee's benefit.

In addition, the Steering Committee has benefited from its counsel's credibility with the SCC Commissioners. On multiple occasions, the Commissioners have commented on the importance of the PAs' participation in APCo's rate cases and related proceedings before the SCC. Highlights from these cases in recent years include the following:

1. Opposition to APCo's Claims in APCo's 2024 Base Rate Case (Biennial Review): APCO originally sought a rate increase of \$95 million, which, by the start of the 5-day evidentiary hearing in this case, had been voluntarily reduced to \$64 million as the result of deficiencies uncovered in APCo's Application during the discovery phase. Staff recommended a rate increase of \$47 million, but \$21 million of that number was a depreciation expense increase based on Staff's additional recommendation that APCo accelerate the retirement of the Amos and Mountaineer coal plants from 2040 to 2036 because of new EPA regulations. Every other party, including APCo and the Steering Committee, opposed the early retirement of the coal plants since the new EPA regulations were brand new and subject to numerous legal challenges.

The Steering Committee and other respondents challenged multiple components of APCo's proposed \$64 million rate increase. Specifically, the Steering Committee argued:

- (a) that APCo's proposed return on equity of 10.8% should be reduced significantly to 9.5-9.7%, which would result in a decrease to APCo's proposed rate increase of at least \$23 million;
- (b) that APCo's claim for traditional vegetation management expense should be reduced by \$12 million from \$21 million to \$9 million;
- (c) that APCo's claim for coal inventory should be reduced by \$8.3 million because APCo used the wrong burn level in calculating this line item; and

- (d) that APCo's claimed generation consumable costs of \$18.8 million should be taken out of base rates and instead recovered, if appropriate, in a subsequent proceeding for environmental costs.

After the hearing, the parties submitted post-hearing briefs based on the voluminous evidentiary record. In November, 2024, the SCC entered its Final Order, ruling that APCo was only entitled to a rate increase of \$9.7M – a mere 15% of what APCo was seeking at the hearing and approximately 10% of what APCo initially sought in its Application. Significantly, the SCC agreed with the Steering Committee on virtually every key issue, including the retirement dates of Amos and Mountaineer for depreciation purposes, return on equity, vegetation management expenses, the appropriate burn rate for coal inventory, and generation consumable costs. As a result, rate increases for APCo ratepayers, including the PAs, were substantially lower than they would have otherwise been.

2. Opposition to APCo's Claims in APCo's 2023 Base Rate Case (Triennial Review): Based upon the undisputed evidence, APCo was entitled to a base rate increase in this case. The big dispute here focused on how much of an increase was reasonable, and the Steering Committee and other respondents took the position that APCo's requested rate increase was far too high. In its Application, APCo sought a revenue requirement increase of \$212 million to be passed through to rate-payers. APCo's requested increase was based in large part on (a) a proposed return on equity ("ROE") of 10.6%, significantly higher than the previously authorized ROE of 9.4% (\$22 million issue), (b) depreciation studies reflecting a 2032/2033 retirement date for the Amos coal plant units instead of 2040, the projected retirement date in recent APCo filings (\$33 million issue), and (c) an unprecedented request for \$47 million for vegetation management expenses. The Steering Committee played a leadership role in negotiating a settlement of this case that was very favorable to rate-payers. Specifically, the parties agreed:
 - (a) that APCo's revenue requirement increase would be \$127M, approximately 40% less than the \$212 million sought by APCo;
 - (b) that APCo's authorized ROE would be 9.5%, significantly lower than the 10.6% that APCo initially sought;
 - (c) that APCo's depreciation rates for the Amos plant would be based on a 2040 retirement date, resulting in a savings of \$33 million for rate payers; and
 - (d) that Staff's recommendation regarding reasonable vegetation management expenses be adopted, resulting in a savings of more than \$22 million for rate-payers.

The SCC approved the settlement. The settlement also eliminated significant attorneys' fees for the Steering Committee that would otherwise have been incurred in a multi-day evidentiary hearing and with post-hearing briefing. As a result of the foregoing, rate increases for ratepayers, including the PAs, and the PAs' legal costs were substantially lower than they would have otherwise been.

3. Opposition to APCo's Proposed Cost-Recovery Methodology for Renewable Resources (2022-2023): During the evidentiary hearing in April, 2022 relating to APCo's 2021 RPS-Plan, the Steering Committee and other respondents argued that the SCC should order a separate proceeding to determine the most appropriate methodology for APCo to classify, to allocate, and to recover costs for renewable resources. The SCC agreed and ordered APCo to file this proceeding, which was tried before a Hearing Examiner in May, 2023.

The Hearing Examiner and ultimately the SCC adopted the arguments of the Steering Committee and others by ruling that APCo shall recover costs for renewable resources in the same way that it does for traditional generation resources, that is, based on cost-causation principles rather than APCo's proposed value stream methodology, which would be highly inaccurate and unreliable.

4. Opposition to APCo's Claims in Fuel Factor Case (2021-2022): In this case, APCo was statutorily entitled to an enormous fuel factor increase because of the soaring costs of fuel during 2021. Still, at the evidentiary hearing in December, 2022, the Steering Committee and other parties successfully challenged certain aspects of APCo's application. In its ruling, the SCC agreed with the Steering Committee and other parties that:
 - (a) APCo's request to implement a new rider for carrying costs should be denied;
 - (b) The amount of APCo's carrying costs should be determined in a subsequent proceeding after the actual costs have been incurred;
 - (c) The SCC Staff should conduct a reasonableness review of APCo's coal procurement practices and monitor a separate West Virginia proceeding investigating the same; and
 - (d) APCo should take additional steps to educate customers on ways to get bill assistance from APCo.

While the case resulted in a significant rate increase to which APCo was statutorily entitled, the increase would have been worse had the Steering Committee and others not successfully challenged certain aspects of APCo's application.

5. Opposition to APCo's Claims in APCo's 2020 Base Rate Case (Triennial Review): The SCC initially rejected APCo's multiple arguments in support of a 6.5% rate increase and instead ruled that APCo was not entitled to any rate increase as requested by the Steering Committee and other participants. Specifically, the SCC rejected (a) APCo's attempt to classify the retirement of certain coal plants in 2015 as an asset impairment in December 2019 in order to justify a rate increase, and (b) APCo's request for a "ROE" of 9.9% and instead set a lower ROE of 9.2%.

APCo appealed the SCC's rulings to the Supreme Court of Virginia, and the Steering Committee successfully opposed APCo's motions to expedite the appeal and to set increased interim rates. Unfortunately, the Supreme Court ultimately reversed the SCC's determination regarding the classification of the retired coal plants, which meant that APCo was entitled to a rate increase under the applicable statute.

The SCC's ruling on the ROE, however, was not disturbed on appeal, resulting in a lower ROE increase than APCo sought and lower rates than what would otherwise have been. Indeed, there were several rulings of the SCC that were favorable to the Steering Committee and undisturbed on appeal, which collectively resulted in a substantial decrease from APCo's original request for a \$65 million rate increase to the \$28.4 million increase that was ultimately approved – a reduction of greater than 50% that resulted in considerable savings for rate-payers, including the PAs.

6. Tax Rate Reduction Rider Case (2018, 2022): In this 2018 case regarding how much money APCo had to return to customers as the result of the Tax Cuts and Jobs Act of 2017, the SCC ruled that APCo had to credit/refund more than \$165 million to rate-payers through the implementation of a rate reduction, a rider, and a one-time credit.

In March 2022, APCo informed the SCC that it had an additional \$25 million in excess deferred income taxes on its books and moved to keep this amount as a regulatory liability for future disposition in a rate case. The Steering Committee took the lead in garnering the support of other parties, including the Office of the Attorney General, in contesting APCo's motion. The SCC ruled in favor of the Steering Committee, ordering APCo to go ahead and credit the \$25 million to customers through an extension of the existing rider.

7. Opposition to APCo's Request for a 10.22% ROE (2018): In a 2018 proceeding, the Commission agreed with the Steering Committee's

argument that APCo's ROE should be set at the lowest rate allowed by statute (9.42%), the effect of which was to keep rates lower for the PAs.

8. Opposition to APCo's Proposed Fuel Factor and RPS-RAC (2017-2018): The Steering Committee obtained favorable rulings in these rate cases, which resulted in rate reductions for APCo customers, including the PAs.
9. Opposition to APCo's Proposed Acquisition of Beech Ridge II and Hardin Wind Facilities (2018): The SCC ruled in favor of the Steering Committee and stated that "We agree with . . . the Steering Committee that the evidence demonstrates that APCo does not have a current need for capacity and is expected to continue to have sufficient capacity to serve its native load until 2026." Had the SCC ruled in favor of APCo, ratepayers, including the PAs, would have borne the substantial costs of these unnecessary facilities.
10. Opposition to Pricing for APCo's Renewable Energy Tariffs (2016-2018): The Steering Committee argued that APCo's proposed pricing for renewable energy tariffs was not fair, just, or reasonable for ratepayers. In 2016-2017, the Steering Committee played a big role in the SCC's denial of APCo's Petition which sought an 18% premium over regular rates for a renewable energy tariff. While the SCC ultimately granted the renewable energy tariff that APCo sought in 2018, the premium was only 4% over regular rates – a substantial reduction from what APCo had previously sought.