



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

September 22, 2017

M. Lynn Jarvis, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

Re: Docket No. E-22, Sub 546

Dear Ms. Jarvis:

In connection with the above-captioned docket, I transmit herewith for filing the Public Staff's Motion to Compel.

Pages 3 – 4; 8 – 10; and 12 of the Motion contain confidential information. By copy of this letter, I am forwarding a copy of the redacted version to all parties of record by electronic delivery. The confidential pages will be provided to those parties that have entered into a confidentiality agreement with Dominion North Carolina Power.

Yours very truly,

Electronically submitted  
s/ Lucy E. Edmondson  
Staff Attorney  
[lucy.edmondson@psncuc.nc.gov](mailto:lucy.edmondson@psncuc.nc.gov)

Attachment

Executive Director (919) 733-2435	Communications (919) 733-2810	Economic Research (919) 733-2902	Legal (919) 733-6110	Transportation (919) 733-7766
Accounting (919) 733-4279	Consumer Services (919) 733-9277	Electric (919) 733-2267	Natural Gas (919) 733-4326	Water (919) 733-5610

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Sep 22 2017

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-22, SUB 546

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Virginia Electric and Power )	
Company d/b/a Dominion North Carolina Power )	
Pursuant to G.S. 62-133.2 and Commission )	MOTION TO COMPEL
Rule R8-55 Relating to Fuel and Fuel Related )	
Charge Adjustments for Electric Utilities )	

NOW COMES the Public Staff, by and through its Executive Director, Christopher J. Ayers, and moves the Commission to compel Dominion Energy North Carolina (Dominion or the Company) to fully respond to the Public Staff's Eighth Data Request to Dominion and provide the Public Staff with unredacted copies of Root Cause Evaluations regarding two outages at the Company's nuclear generating plants during the test year in the above-captioned docket. In support of this motion, the Public Staff respectfully shows the Commission:

1. On August 5, 2016, in Docket No. E-22, Sub 534 (Sub 534) , Dominion filed an application pursuant to G.S. 62-133.2 and Commission Rule R8-55 to adjust the fuel component of its rates effective January 1, 2017. The test year for the proceeding is the twelve months ended June 30, 2016. On July 13, 2016, prior to the filing of the application, the Public Staff sent Dominion via email a data request asking for information regarding outages at the Company's Surry Power Station in July and October 2015.

2. Sub 534 Data Request 2-4 asked for information regarding a July 2015 outage at Surry Unit 1. Item 4b requested the following items related to this July 2015 Surry Unit 1 outage:

- i. Incident/Condition Report.
- ii. Root Cause Analysis/Report

3. Data Request 2-5 asked for information regarding an October 2015 outage at Surry Unit 1. Item 5a requested the following items related to this October 2015 Surry Unit 1 outage:

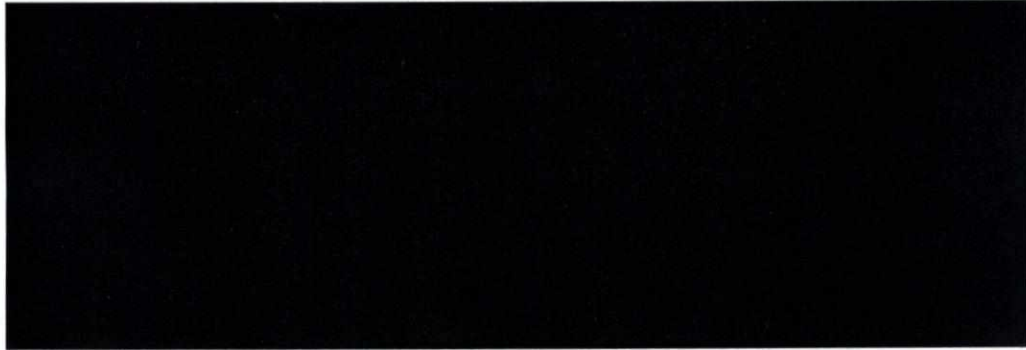
- i. Incident/Condition Report.
- ii. Root Cause Analysis/Report

4. Data Request 2-6 asked for information regarding a July 2015 outage at Surry Unit 2. Item 6b requested the following items related to this July 2015 Surry Unit 2 outage:

- i. Incident/Condition Report.
- ii. Root Cause Analysis/Report

5. On August 26, 2016, Dominion provided responses to Items 4, 5, and 6 of Data Request 2. In response to Item 4b, the Company provided the table below.

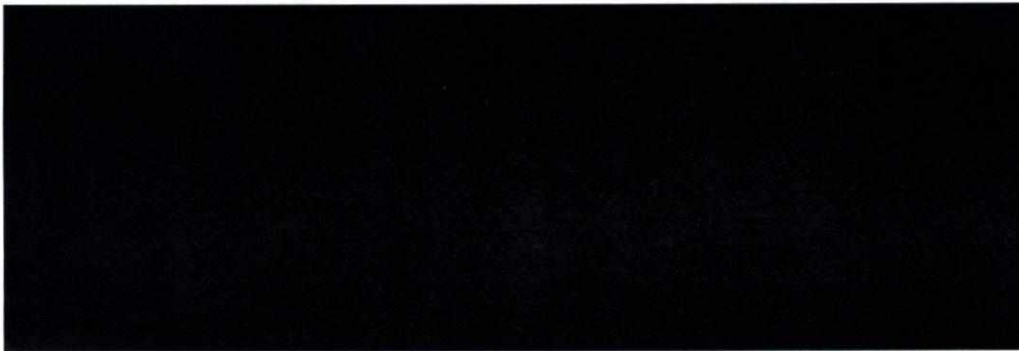
Begin information marked "**Confidential**" by the Company



End information marked "**Confidential**" by the Company

6. In response to Item 5a, the Company provided the table below:

Begin information marked "**Confidential**" by the Company

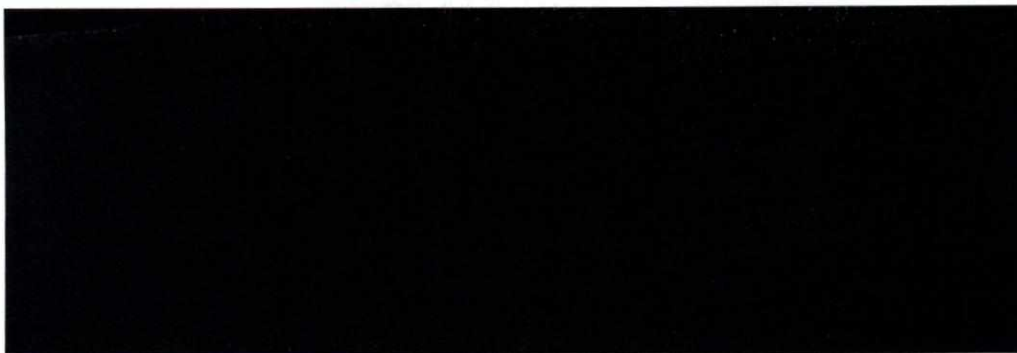


End information marked "**Confidential**" by the Company

7. In response to Item 6b, the Company provided the table below:



Begin information marked "**Confidential**" by the Company



End information marked "**Confidential**" by the Company

8. No Incident/Condition Reports or Root Cause Analyses/Reports were provided for any of the three outages.

9. Following its receipt of these responses, the Public Staff requested a conference call with Dominion to discuss the matter. At the beginning of this call, which took place on September 8, 2016, the Public Staff again asked for copies of the Incident/Condition Reports or Root Cause Analyses/Reports requested in Sub 534 Data Requests 2-4, 2-5, and 2-6. The Company indicated that it had not provided such evaluations to the Public Staff in past fuel cases and was not willing to provide them in this case. The Public Staff asked if the Company would consider allowing the Public Staff to review the reports at the Raleigh offices of McGuireWoods, the Company's local attorneys. Dominion indicated that it would consider the request. The Public Staff ended the call at this point so that it could review Root Cause Evaluations of the three outages before having further discussions with Dominion personnel.

10. On September 16, 2016, Dustin Metz, a Utilities Engineer with the Public Staff's Electric Division, and James McLawhorn, Director of the Electric Division, went to McGuireWoods to review Root Cause Evaluations for the three outages but were provided only portions of the reports, which appeared to have been redacted. Other portions were withheld in their entirety. In one instance, the report referenced nine attachments, and only Attachments 1, 4, and 9 were actually attached. In a second instance, the report identified four possible causes of the outage, but only provided a discussion of one of the causes. In addition, the page numbers were removed from all the reports, and there were numerous blank pages labeled Confidential. At Mr. Metz's request, copies of portions of the reports were made by McGuireWoods, but he was not allowed to take those copies back to his office.

11. On September 21, 2016, the Public Staff again requested, through counsel, that Dominion provide unredacted copies of these Root Cause Evaluations. On September 22, 2016, the Public Staff and Dominion arranged the unredacted versions of the three reports to be brought to Mr. Metz's office on Friday, September 23, 2016, for his review from 7:30 a.m. to 12:00 p.m. The unredacted versions viewed by Mr. Metz on September 23 totaled approximately 300 pages, three times the volume of the redacted versions he viewed on September 16. Mr. Metz was allowed to make notes from the reports. However, due to the volume of the reports, it was impossible for Mr. Metz to copy all portions of the reports that he believed were needed for his investigation. Dominion,

through counsel, indicated that it was willing to allow Mr. Metz to make copies of select few pages only if absolutely necessary.

12. Counsel for the Public Staff drafted a Motion to Compel and shared the preliminary draft with counsel for Dominion. After further discussion between counsel for the Public Staff and counsel for Dominion, Dominion agreed to provide the Public Staff with a paper copy of each of the RCEs, as long as: (1) Dominion could redact the names of employees; (2) the Public Staff would not make any copies of the RCEs; and (3) the Public Staff would not include any portions of the RCEs in testimony without first consulting with Dominion. Dominion provided the RCEs on September 26, 2017, on a confidential basis.

13. The Public Staff submitted data requests of the RCEs on October 7, 2016, and held a conference call with the Company on October 13, 2016, to discuss the data request. Due to the complexity of the issues surrounding the outages, the delays in obtaining the RCEs, and the workload of the Public Staff, the Public Staff asked Dominion if it would agree to allowing the Public Staff to continue its investigation into these three outages and propose any adjustment in the experience modification factor in the 2017 Dominion fuel case, Docket No. E-22, Sub 546. Dominion consented to this treatment of the three outages

14. Dominion provided responses to the Public Staff's October 7, 2016, data requests and met with the Public Staff. The Public Staff shared its findings with Dominion and had further discussion. At this time, Dominion and the Public Staff have not been able to resolve their differences regarding the Sub 534 outages



and the Public Staff intends to present its findings and conclusions in this proceeding.

15. Another point of disagreement that has arisen between the Public staff and Dominion in both the Sub 534 case and the present case is the calculation of replacement power costs. The Public Staff learned in its investigation during the Sub 534 proceeding that the Company reduces its annual replacement power cost by a forecasted forced outage rate of 2% for each year. To calculate replacement power costs, Dominion calculates a system replacement power cost and then reduces it by the 2% forced outage allowance. If replacement power costs are less than the forced outage allowance, the Company contends that it does not have replacement power costs. The Public Staff disagrees with the application of the 2% forced outage allowance. The Public Staff intends to present testimony on this issue in this proceeding.

16. On August 23, 2017, in this docket, Dominion filed an application pursuant to G.S. 62-133.2 and Commission Rule R8-55 to adjust the fuel component of its rates effective January 1, 2018. The test year for the proceeding is the twelve months ended June 30, 2017. On August 31, 2017, the Public Staff sent Dominion its Data Request No. 8. Item 2.a. of Data Request 8 stated:

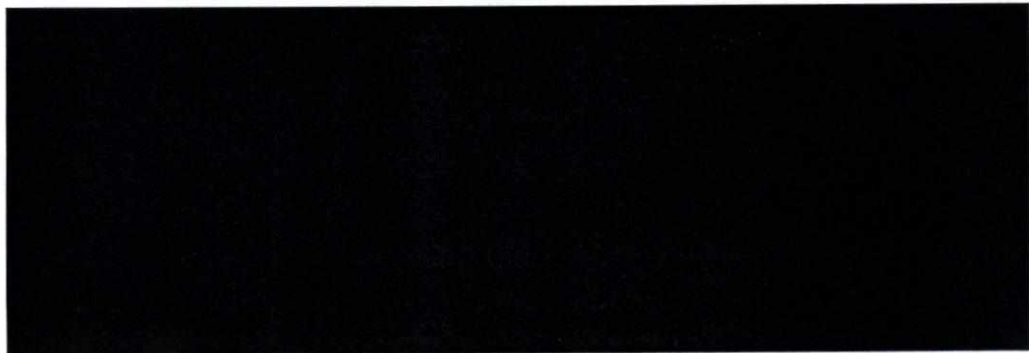
2. For any outages for which a Root Cause Evaluation was ordered or prepared, or is in process:

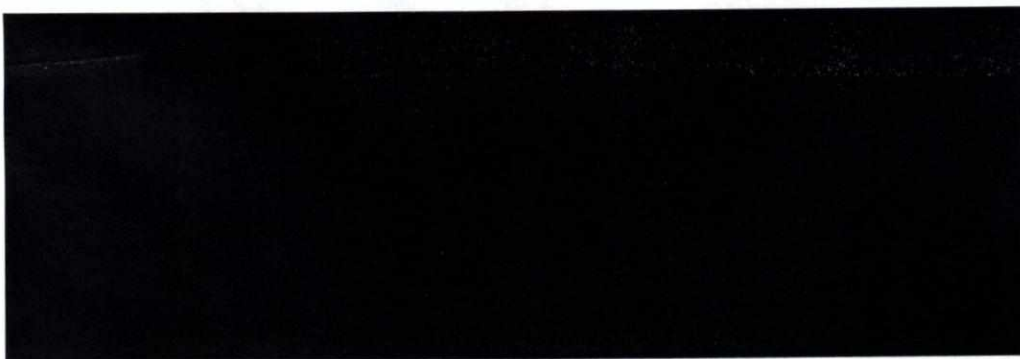


a. Please provide the Root Cause Evaluation, or if not available, the status of the evaluation and the expected date when it will be available;

Data Request No. 8 was due pursuant to the discovery guidelines set in this case on September 11, 2017. The Company requested two additional days to provide an answer to the data request, to which the Public Staff consented.

17. On September 13, 2017, Dominion provided the following answer to Data Request No. 8-2.a. (marked as **Confidential** by the Company):





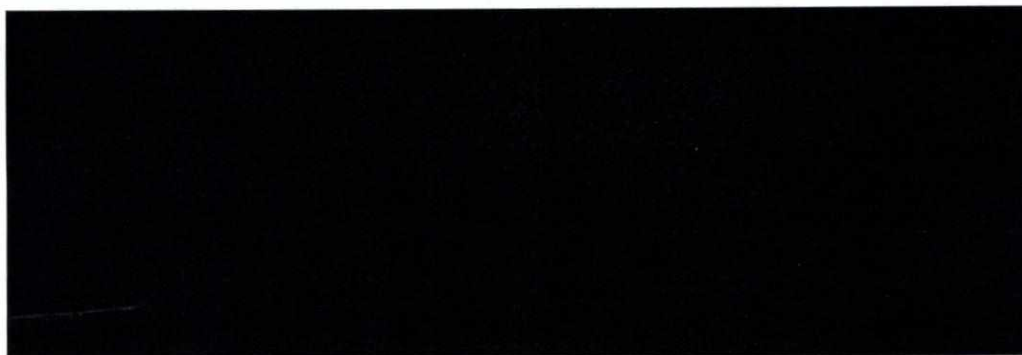
End

information marked as "**Confidential**" by the Company

18. The Public Staff's data request asked for available Root Cause Evaluations; none was provided by the Company. With the negotiations in the Sub 534 case, the Company knew or should have known that the phrase "Root Cause Evaluation", especially as capitalized, referred to a specific type of document. The Company's response did not affirmatively state whether any Root Cause Evaluations were conducted, but provided a brief description of two outages (no dates), and a two to three sentence description of the direct cause and the root cause.

19. On September 13, 2017, the undersigned sent the attached email to counsel for Dominion:

Begin **Confidential**



End **Confidential**

No response was received and the Company did not produce any RCEs.

20. On September 14, 2017, the undersigned contacted counsel for Dominion about the issue and had a conference call. Counsel for Dominion agreed to discuss the issue with management, but because the management person

involved was out for the week, Dominion would not be able to respond to the Public Staff until the middle of the week beginning September 18, 2017.

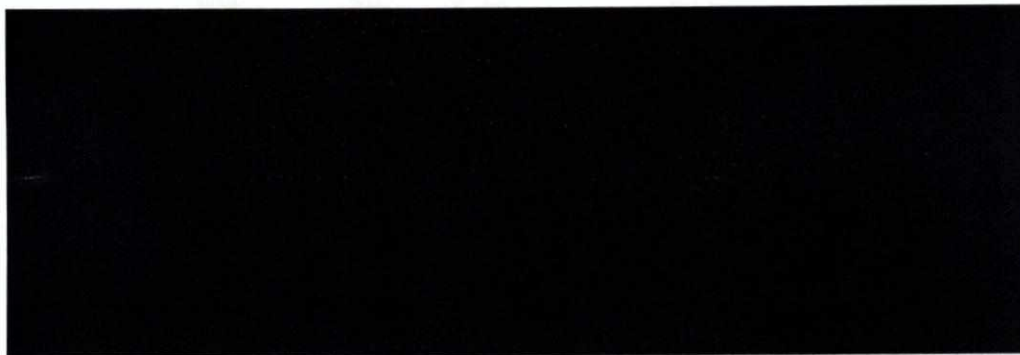
21. On September 21, 2017, because Dominion had not contacted the Public staff about this matter, the undersigned contacted counsel for Dominion about the decision on providing the RCEs. The Public Staff and counsel for Dominion discussed this matter on September 21 and 22, 2017, and Dominion continues to refuse to provide the RCEs.

22. It is the Public Staff's understanding that Dominion contends that the replacement power for the two outages in the Sub 536 case falls below the 2% outage allowance and therefore, there are no replacement power costs in this case. Under this theory, as there are no replacement power costs under Dominion's method of calculating these costs, then the RCEs for these outages are not relevant.

23. As stated previously, the Public Staff disagrees with the Company's method of calculating replacement power costs. The Public Staff contends there are replacement power costs included in the costs Dominion seeks to recover. Specifically, in Sub 536 Data Request 8-2b, the Public Staff asked for the replacement power costs for outages for which a Root Cause Evaluation was ordered or prepared, and the Company responded:

Marked as **Confidential** by the Company





End information marked as **Confidential** by the Company

24. Dominion has not indicated that it is willing to provide the Public Staff with copies of any RCEs in the Sub 546 case. No further justification has been offered for Dominion's refusal to provide the documents as requested, and the Company cannot object that the documents contain information asserted to be "confidential," as it has entered into a comprehensive confidentiality agreement with the Public Staff. The Public Staff requires actual copies of the reports to investigate and prepare data requests and testimony.

25. Dominion's reluctance to provide the requested analyses and reports appears to be based partly on a concern that the Public Staff's data request is a departure from past practice and partly on a concern that the Public Staff will use the requested documents to engage in "Monday morning quarterbacking" regarding the outages without recognizing the self-critical, forwarding looking aspect of the analyses. Past practice in Dominion fuel cases does not justify withholding documents that are otherwise discoverable and are comparable to documents that have been provided to the Public Staff in past Duke Energy fuel cases. How the Public Staff uses the requested documents is an issue that is

properly addressed in rebuttal testimony, not by refusing to provide the documents in the first place.

26. G.S. 62-133.2(d) provides, in part:

The burden of proof as to the correctness and reasonableness of the charge and as to whether the cost of fuel and fuel-related costs were reasonably and prudently incurred shall be on the utility. The Commission shall allow only that portion, if any, of a requested cost of fuel and fuel-related costs adjustment that is based on adjusted and reasonable cost of fuel and fuel-related costs prudently incurred under efficient management and economic operations.

Pursuant to G.S. 62-15(d)(1), it is the duty and responsibility of the Public Staff, on behalf of the using and consuming public, to "[r]eview, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility," in this case the fuel factor proposed by Dominion. The Public Staff is investigating the performance of the Dominion's generating plants to determine whether the test year fuel and fuel-related costs were "prudently incurred under efficient management and economic operations" and whether any cost disallowance is appropriate. Review of the circumstances surrounding each nuclear plant outage, including complete and unredacted documentation pertaining to the cause of the outage, is a necessary step in making such a determination. The Public Staff's request is not burdensome as these documents are in the Company's possession and are readily available. The Public Staff requires copies of all or selected portions of the documents to review in detail in its own offices in order to conduct a thorough investigation.

27. Based on its experience reviewing Root Cause Analyses/Reports in fuel proceedings for other utilities, the Public Staff expects to spend a significant amount of time reviewing the reports requested in this case. The review of Root Cause Analyses by one engineer is a critical first step in an outage investigation, but it is only a first step. It is a certainty that members of the Public Staff besides Mr. Metz will be involved in the investigation, and further document requests will follow. The Public Staff is concerned that despite having requested these reports eight days after the case was filed, it still has not obtained them weeks later. The deadline for filing the Public Staff's testimony in this proceeding is October 23, 2017 and the deadline for discovery related to the Company's application is October 9, 2017. Without full and timely responses to discovery, the Public Staff will be unable to complete its investigation and discuss its findings with Dominion, thus potentially narrowing or clarifying the issues for decision by the Commission in this case.

28. The Public Staff also requests that the Commission consider whether these RCEs are properly designated as "Confidential" in part or in their entirety and whether it is appropriate to redact employee names from them. Additionally, the Public Staff requests that the Commission consider whether it is appropriate for the Public Staff to be forbidden from making copies of the RCEs; more than one Public Staff member, each a signatory to a confidentiality agreement with Dominion, should be able to access the RCE at a time. At this time, the Public Staff has been forced to take the Public Staff's one copy of the RCE from one staff



member to another as the Public Staff prepares data requests and reviews testimony.

29. Time is of the essence and the Public Staff requests the Commission to consider and rule on this motion as quickly as possible after receiving the Company's response.

WHEREFORE, the Public Staff prays:

1. That the Commission direct Dominion to provide complete, unredacted Root Cause Analyses/Reports, and in particular the unredacted Root Cause Evaluations for the outages under review in the Sub 546 case, as requested by Public Staff Data Request No. 8, Item 2.a.

2. That the Commission review the appropriateness of: (a) Dominion's designation of the RCEs in part or in their entirety as "Confidential"; (b) Dominion's redaction of employee names from the RCEs; and (c) Dominion's condition that the Public Staff not be allowed to make copies of the RCEs;

3. For such other and further relief as the Commission may deem just and proper.



This the 22<sup>nd</sup> day of September, 2017.

PUBLIC STAFF  
Christopher J. Ayers  
Executive Director

David T. Drooz  
Chief Counsel

Electronically submitted  
/s/ Lucy E. Edmondson  
Staff Attorney

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#### CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Motion on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 22<sup>nd</sup> day of September, 2017.

Electronically submitted  
/s/ Lucy E. Edmondson