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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

APPALACHIAN POWER COMPANY **CASE NO. PUR-2023-00156**

To decrease its fuel factor pursuant to
§ 56-249.6 of the Code of Virginia

REPORT OF D. MATHIAS ROUSSY, JR., HEARING EXAMINER

March 29, 2024

The Code of Virginia ("Code") entitles Appalachian Power Company ("APCo" or "Company") to recover the costs of fuel and purchased power that are prudently incurred by the Company to serve its Virginia retail electric customers. These costs are recovered from customers, on a dollar-for-dollar basis, by first setting APCo's fuel factor rate to recover projected costs, then later resetting the rate to reconcile the prior projections with actual costs.

This State Corporation Commission ("Commission") case is a proceeding to review and reset APCo's fuel factor rate. APCo seeks approval to decrease its fuel factor rate from 4.319 cents per kilowatt-hour ("¢/kWh") to 4.139¢/kWh, for the one-year period of November 1, 2023, through October 31, 2024. The proposed decrease has been in effect, on an interim basis, since November 1, 2023.

APCo's fuel factor set in prior cases has not fully recovered the Virginia jurisdictional fuel and purchased power costs incurred recently by APCo, with an approximately $277.8 million under-recovery balance remaining as of October 31, 2023. In the instant case, APCo proposes that the Commission approve a two-year recovery period of its deferred balance.[1] Recovering the deferred balance over one year would increase the monthly bill of a residential customer using 1,000 kWh by $8.11 (+5.0%). In contrast, the proposed two-year recovery would lower this bill impact to a $1.80 decrease (-1.1%), although the longer recovery period would increase the cost of financing the deferred balance.

I recommend approval of the proposed fuel factor, including the proposed two-year recovery period for APCo's deferred fuel and purchased power balance. No party or the Commission's Staff ("Staff") has opposed the proposed fuel factor and I find it is supported by the evidence in this case.

Case participants have questioned what level of carrying charge should apply to APCo's extended recovery of its deferral balance. However, it is undisputed that this issue can be considered in the upcoming biennial review of APCo's base rates that will soon be initiated, because the associated carrying charges are a base rate cost. I recommend this issue be determined in the upcoming biennial review, rather than in the instant fuel factor case.

[1] More specifically, APCo's proposed rates are designed to recover over two years approximately $273.1 million, which was the Company's estimate when the Application was filed.

The Commission's *2022 Fuel Order*[2] directed Staff to investigate APCo's coal procurement activities in 2021 and 2022 and report the results of Staff's investigation in the instant fuel factor case. Staff provided the results of its investigation as part of its testimony in this case. Staff found APCo's coal procurement activities to be reasonable and prudent and recommended that the Commission make a final determination on fuel expenses incurred by APCo through 2022. APCo endorsed Staff's recommendation, but all three respondents in this case recommended that the Commission not yet make such a final determination. While the Commission could find the evidence in this case supports a final determination on the costs incurred during 2021 and 2022, I recommend the Commission wait to make a final determination on these costs, which were at or near historically high levels. Deferring a final determination at this time would be more consistent with the Commission's typical timeline for reviewing fuel factor costs and would allow the respondents, and the Commission, the opportunity to further evaluate the underlying coal procurement activities.

HISTORY OF THE CASE

On September 14, 2023, APCo filed with the Commission an Application[3] seeking approval to revise the Company's fuel factor pursuant to Code § 56-249.6 and 20 VAC 5-204-80 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities.[4] The Application proposed to decrease the Company's fuel factor from 4.319¢/kWh to 4.139¢/kWh.

The proposed fuel factor consists of two components. First, a 3.148¢/kWh "in-period" component is designed to recover projected fuel costs over November 1, 2023, through October 31, 2024. Second, a 0.991¢/kWh "prior-period" component is designed to recover over November 1, 2023, through October 31, 2025, a $273.1 million under-recovered fuel balance.[5]

On October 5, 2023, the Commission issued its Order Establishing 2023-2024 Fuel Factor Proceeding ("Procedural Order"), which, among other things, docketed the Application; directed Staff to investigate and file testimony on the Application; provided opportunities for interested persons to file comments on the Application or to participate in this matter as respondents; scheduled a public hearing on the Application for January 17, 2024; and appointed a Hearing Examiner to conduct all further proceedings in this matter. The Procedural Order also directed APCo to place the proposed fuel factor rate into effect, on an interim basis, for service rendered on and after November 1, 2023.

On November 21, 2023, APCo filed proof of notice and service.[6]

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[2] *Application of Appalachian Power Company, To increase its fuel factor pursuant to § 56-249.6 of the Code of Virginia*, Case No. PUR-2022-00139, Order Establishing 2022-2023 Fuel Factor (Mar. 6, 2023) ("2022 Fuel Case" or "*2022 Fuel Order*", as applicable).

[3] Exs. 2 and Ex. 2C (Application). Coincident with its Application, APCo filed a Motion for Protective Ruling to govern the treatment of confidential information in this proceeding. Protective Rulings issued on October 5, 2023, and December 5, 2023, established procedures for the protection of confidential information and certain extraordinarily sensitive information, respectively.

[4] 20 VAC 5-204-5 *et seq.*

[5] Ex. 2 (Application) at 3.

[6] Ex. 1 (proof of notice).

On January 11, 2024, APCo filed an unopposed Motion to Establish Remote Testimony Procedures. On January 12, 2024, based on APCo's representation of extreme winter weather forecasts, a Hearing Examiner's Ruling was issued, permitting certain witnesses who would otherwise need to travel to appear at the evidentiary hearing in the Commission's courtroom using Microsoft Teams.

The following filed notices of participation in this case: the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Steel Dynamics, Inc. ("Steel Dynamics"); and the Old Dominion Committee for Fair Utility Rates ("Committee").[7]

The hearing was convened on January 17, 2024, in the Commission's courtroom. James G. Ritter, Esquire, represented APCo. Shaun C. Mohler, Esquire, appeared on behalf of Steel Dynamics. Timothy G. McCormick, Esquire, and Christian F. Tucker, Esquire, represented the Committee. C. Meade Browder, Jr., Esquire, and Carew S. Bartley, Esquire, appeared on behalf of Consumer Counsel. C. Austin Skeens, Esquire, and Simeon Brown, Esquire, represented Staff. No public witnesses signed up or appeared at the hearing to testify.

On February 21, 2024, the case participants filed post-hearing briefs.

PUBLIC COMMENTS

Eight written public comments were submitted on the Application, most of which opposed higher rates. SM Wohlford characterized APCo's distribution costs as high, and he would prefer better tree maintenance instead of 4% dividends paid to shareholders. Kari Roberts detailed her past efforts to contact American Electric Power ("AEP") regarding other recent rate increases and the impact such increases have had on people in her community. Nicolas Sharp focused on what he described as APCo's high monthly bills for electric service, compared to electric service in areas neighboring Virginia. Julie Lawson expressed her dissatisfaction as a customer and focused on hardships from APCo's recent rate increases. She indicated that customers are choosing between food, medicine, or electricity. Pamela Stiltner requested the Commission look into ways to lower APCo's prices and highlighted most customers' reliance on electricity for heating and cooking. Donald Stacy found recent increases to APCo's rates unjustified, expressed consternation about executive compensation, and inquired as to why the Company does not offer senior discounts similar to other companies. Leon East questioned the Commission's authority to approve another rate increase. Sylvia Sadler stated that monthly bills have doubled and described the hardship this creates for customers on a fixed income.

SUMMARY OF THE RECORD

APCo – Direct Testimony

In support of its Application, the Company presented the prefiled direct testimonies of **John A. Stevens**, Regulatory Consultant Staff – VA/TN for APCo; **Shelli A. Sloan**, Director Financial Support and Special Projects for American Electric Power Service Corporation

[7] Parts of this Report refer to these three intervening parties collectively as "respondents," although Consumer Counsel may technically not be a respondent due to its statutory nature.

("AEPSC"); **Kimberly K. Chilcote**, Coal Procurement Manager, Commercial Operations for AEPSC; and **Clinton M. Stutler**, Natural Gas and Fuel Oil Manager for AEPSC.

The purpose of **Mr. Stevens'** testimony was to support the Company's proposed fuel factor. He sponsored seven schedules that calculated the proposed fuel factor and identified sample bill impacts from the proposed fuel factor.[8]

Mr. Stevens summarized APCo's current[9] fuel factor rate of 4.319¢/kWh, which includes a two-year amortization of a $361 million under-recovery balance, as proposed by the Company and approved in the 2022 Fuel Case.[10] Mr. Stevens explained that the Company's proposed fuel factor rate of 4.139¢/kWh again proposes to amortize and recover an under-recovery balance over a two-year period.[11] When the Application was filed, APCo's projected fuel recovery position as of October 31, 2023, was an under-recovery of $273.1 million. Mr. Stevens indicated that APCo proposes to amortize and recover this balance over two years because recovery of the $361 million used to calculate the current fuel factor has occurred at a slower pace than was originally estimated.[12] He explained that the Company's pending two-year recovery proposal would result in a 1.1% decrease in a typical residential customer's monthly bill, rather than a 5.0% increase that would result from a one-year recovery period.[13]

Mr. Stevens' Schedule 1 shows the Company's actual fuel costs from July 2022 through June 2023, excluding costs associated with APCo's renewable portfolio standard ("RPS") program that are recoverable through the fuel factor. His Schedule 2 contains, among other things, RPS-related costs for this period, in addition to projected costs through October 2023.[14]

Mr. Stevens addressed the development of the in-period component of the proposed fuel factor. The in-period component consists of Virginia jurisdictional fuel costs that APCo projected would be incurred during the period existing from November 1, 2023, through October 31, 2024. The in-period projection of Virginia jurisdictional fuel costs was further adjusted to include non-incremental costs associated with certain wind power purchase agreements ("PPAs"); a credit for 75% of projected off-system sales margins; PJM Interconnection, LLC ("PJM"), load serving entity transmission losses; PJM congestion charges; 100% of incremental transmission line loss margins; and financial transmission right revenues. This total amount of $433,839,311 was then divided by the projected energy sales for the fuel factor period (13,781,153,457 kWh), which resulted in an in-period component of 3.148¢/kWh.[15]

Mr. Stevens also identified the second component of the proposed fuel factor, which is a true-up component, designed to recover the $273.1 million deferred fuel balance. He divided the

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[8] Ex. 3 (Stevens direct) at 2. These schedules include APCo's proposed tariff revision. *Id.* at attached Sched. 5.
[9] In this context, the "current" fuel factor refers to the fuel factor approved in the 2022 Fuel Case, which was in place before the interim fuel factor went into effect for service rendered on and after November 1, 2023, pursuant to the Procedural Order.
[10] *Id.* at 3.
[11] *Id.* at 2.
[12] *Id.* at 5.
[13] *Id.*
[14] *Id.* at 2, 4, and attached Sched. 2. *See also* Ex. 2 (Application) at 4.
[15] Ex. 3 (Stevens direct) at 6 and attached Schedule 3.

total deferred fuel balance in half – consistent with the Company's proposal to recover the balance over a two-year period – to arrive at an annual amortization amount of $136,562,698. The annual amortized amount of the deferred fuel balance was divided by the projected Virginia jurisdictional energy sales for the fuel factor period to establish the proposed prior-period component of 0.991¢/kWh.[16]

Mr. Stevens discussed the revenue and customer bill impacts of the Company's proposed fuel factor. The lower proposed fuel factor results in a $24.8 million net revenue decrease for the Company.[17] His Schedule 6 shows that this net decrease is attributable to a $43.7 million decrease in the prior-period component (compared to this component of the preceding fuel factor), with the in-period component proposed to increase by $18.9 million.[18]

Mr. Stevens presented his Schedule 7 to identify the impact of the proposed fuel factor on customer monthly bills at various usage levels and for various rate schedules.[19] The table below shows some of that information as it pertains to residential, commercial, and industrial customer classes.[20]

Tariff Schedule	Monthly Bill Impact ($)	Percent Change
Residential		
1,000 kWh	-$1.80	-1.1%
1,500 kWh	-$2.70	-1.1%
General Service		
Secondary - 40 kW/10,000 kWh	-$18.00	-1.2%
Primary - 1,000 kW/200,000 kWh	-$360.00	-1.3%
Large Power Service		
Secondary - 1,000 kW/450,000 kWh	-$810.00	-1.5%
Primary - 3,500 kW/2,000,000 kWh	-$3,600.00	-1.8%
Subtransmission - 10,000 kW/5,000,000 kWh	-$9,000.00	-1.8%

Consumer Counsel confirmed with Mr. Stevens that, at the time of the Application, residential monthly bills based on 1,000 kWh usage were $161.77, and that such bills would be reduced to $159.97 by the Application's proposed fuel factor. Mr. Stevens also acknowledged that a base rate increase scheduled for January 2024 would increase such monthly bills by $16.03.[21]

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[16] *Id.* at 7 and attached Sched. 3.
[17] *Id.* at 8.
[18] *Id.*
[19] *Id.*
[20] *Id.* at attached Sched. 7.
[21] Tr. at 33-34 (Stevens). Mr. Stevens also, among other things, authenticated APCo's definitional framework for its fuel factor expenses. Ex. 4; Tr. at 31 (Stevens).

Ms. Sloan sponsored APCo's projected net energy requirement and includable cost for the July 1, 2023, through October 31, 2023 bridge period, and for the forecast period of November 1, 2023, through October 31, 2024.[22] She also described the methodologies used to derive APCo's forecasted net energy requirement of 31,836.1 gigawatt-hours ("GWh") and fuel factor includable costs of $922.7 million.[23]

According to Ms. Sloan, the data and schedules she sponsored were prepared consistent with those from the 2022 Fuel Case. She noted that the proposed fuel factor costs include, among other things, the energy value of renewable energy facilities approved in APCo's two prior RPS Plan cases.[24] The table below identifies those RPS facilities, whether each resource is Company-owned or a PPA, and the percentage of costs that are allocated to the fuel factor.[25]

Wind Facilities	Resource Type	Percentage of Costs Allocated to the Fuel Factor
Bluff Point	PPA	60.07%
Camp Grove	PPA	50.01%
Fowler Ridge III	PPA	50.08%
Solar Facilities		
Depot	PPA	40.08%
Leatherwood	PPA	74.19%
Wytheville	PPA	74.04%
Amherst	Company-Owned	47.27%
Mountain Brook	PPA	37.17%
Shifting Sands	PPA	36.51%
Sunny Rock	PPA	36.50%
River Trail	PPA	43.44%

[22] Ex. 6 (Sloan direct) at 2-3.

[23] *Id.* at 3, 5, and attached Sched. 4.

[24] *Id.* at 4 (citing *Petition of Appalachian Power Company, For approval of its 2021 RPS Plan under § 56-585.5 of the Code of Virginia and related requests*, Case No. PUR-2021-00206, 2022 S.C.C. Ann. Rep. 345, Final Order on Petition and Associated Requests, and Order Bifurcating Proceeding (July 15, 2022)).

[25] Ex. 6 (Sloan direct) at attached Sched. 4, p. 2 (identifying PPA facilities); Ex. 7 (corrected version of Schedule 5 attached to Ms. Sloan's direct testimony).

Additionally, for PPAs with two other wind farms (Beech Ridge and Grand Ridge) that are not RPS resources, the proposed fuel factor includes "non-incremental costs" calculated in the manner approved by the *2015 RPS-RAC Order*.[26]

According to Ms. Sloan, the forecast used in this case was developed over several months and the final forecast used for this proceeding was last updated in July of 2023.[27] The schedules she sponsored include APCo's forecasted net energy requirement and the includable cost. Ms. Sloan defined "net energy requirement" as APCo's internal load, including sales to ultimate customers, sales to firm wholesale customers, and losses. She defined "includable cost" as the energy cost APCo incurs to meet internal load requirements, which includes: non-incremental wind costs, the financial settlement of PJM load-serving entity transmission losses and implicit congestion charges, financial transmission rights revenues, and the off-system sales margin credit.[28]

Ms. Sloan represented that APCo meets net energy requirements through a mix of the Company's own generating sources and purchased power.[29] For the forecast period of November 1, 2023, through October 31, 2024, her schedules show that the Company expects its energy needs will be sourced as follows:[30]

Source	Forecast Period Total (GWh)
Total Fossil Generation	**22,212.2**
Amos	12,846.8
Dresden	4,682.7
Mountaineer	4,549.8
Ceredo	90.8
Clinch River – Gas	42.2
Total Hydro Generation	**495.1**
Total Purchased Power	**10,293.7**
Purchased Power	8,778.1
Renewable RPS Facilities	1,017.7
Renewable Non-RPS Facilities	498.0
PJM Marginal Losses	**756.8**
Total Sources of Energy	**33,757.8**

[26] Ex. 2 (Application) at 4; Ex. 6 (Sloan direct) at 4, 6-7; Ex. 7. *See also Petition of Appalachian Power Company, For approval of a rate adjustment clause, RPS-RAC, to recover the incremental costs of participation in the Virginia renewable energy portfolio standard program pursuant to Va. Code §§ 56-585.1 A 5 d and 56-585.2 E*, Case No. PUE-2015-00034, 2015 S.C.C. Ann. Rep. 317, Final Order (Nov. 16, 2015) ("*2015 RPS-RAC Order*").

[27] Ex. 6 (Sloan direct) at 4-5.

[28] *Id.* at 5. Ms. Sloan detailed how the off-system sales margin credit was calculated. *Id.* at 8.

[29] *Id.* at 6.

[30] *Id.* at attached Sched. 2.

Ms. Sloan calculated a net energy requirement of 31,836.1 GWh for APCo and total Company includable costs of $922.7 million.[31] Before accounting for line losses, the estimated per-unit cost is 2.9¢/kWh.[32]

At the hearing, Consumer Counsel questioned whether the net energy requirements forecasted for November 1, 2023, through October 31, 2024, include Regional Greenhouse Gas Initiative ("RGGI") allowances in the dispatch costs associated with the Company's operation of the Clinch River units. Ms. Sloan represented that at the time the Company's forecast was developed, Virginia was still part of RGGI, and thus, such costs were included in the forecast.[33] Ms. Sloan stated that while she did not retroactively remove RGGI allowances from the completed forecast, future forecasts would not include such costs.[34]

Ms. Chilcote addressed APCo's coal purchasing strategy, provided an overview of the coal market, described the coal delivery forecast for November 1, 2023, through October 31, 2024, and discussed APCo's portfolio of coal supply agreements.[35]

According to Ms. Chilcote, APCo's coal procurement strategy is based on forecast updates and continuous market monitoring and evaluation. She explained that APCo procures coal through requests for proposals ("RFPs") and unsolicited offers. The Company relies on physical inventory during times of high consumption and to minimize supply disruptions. APCo has coal supply agreements of varying lengths.[36]

Ms. Chilcote explained volatile domestic and global coal prices that began in the latter half of 2021 persisted through 2022. She stated that coal prices reached all-time highs in September of 2022 because of limited available coal supply. Ms. Chilcote presented coal prices from January 2022 through July 2023, which showed a decline in coal prices that began in the last several months of 2022 and continued into mid-2023.[37]

Ms. Chilcote explained that domestic natural gas prices also began to decline at the start of 2023 and were expected to remain low through 2023. She expected that production from coal generation would be more expensive than from natural gas during 2023, which should result in elevated coal inventories.[38]

Ms. Chilcote testified that based on these market conditions, APCo has paid higher than historical prices for coal. She stated that the AEPSC forecast of total costs of delivered coal to APCo's plants, on a total company weighted average basis, is $78.89 per ton, or $3.56 per million British thermal units ("MMBtu") over November 1, 2023, through October 31, 2024.[39]

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[31] *Id.* at 9 and attached Scheds. 1, 2.
[32] *Id.* at 9.
[33] Tr. at 44-45 (Sloan).
[34] Tr. at 46 (Sloan).
[35] Ex. 9 (Chilcote direct) at 2.
[36] *Id.* at 3-4.
[37] *Id.* at 4-6.
[38] *Id.* at 4-5.
[39] *Id.* at 6-7.

Ms. Chilcote confirmed that the methodology used to develop this forecast is consistent with the methodology APCo used in prior fuel factor cases.[40]

Ms. Chilcote also described APCo's portfolio of coal supply agreements. She reported that as of July 1, 2022, APCo had 17 long-term agreements to deliver coal.[41] Ms. Chilcote provided some summary information regarding the coal supply agreements in an attachment to her testimony.[42]

Mr. Stutler discussed the market forces in 2022 that drove natural gas market price volatility he described as exceptional.[43] Between the first half of 2022 to June 2023, domestic natural gas supply went from being historically constrained to having a double-digit storage surplus.[44] He testified that APCo has been able to benefit from natural gas prices that are discounted compared to other market hubs around the country.[45]

Mr. Stutler discussed APCo's strategy and practices for procuring natural gas transportation and supply. Supply arrangements include daily spot purchases and monthly, seasonal, or future monthly baseload agreements. The Company uses a mix of firm and interruptible natural gas transportation agreements. Mr. Stutler indicated that these arrangements provide flexibility for reliable operations while minimizing fuel costs.[46]

Mr. Stutler explained that for daily market purchases, the natural gas buyer reviews that day's and the following six days' natural gas requirements; gathers market information from various natural gas market hubs, natural gas suppliers, and third-party information platforms; and purchases any needed amount from the most economical and reliable sources available. The buyer schedules natural gas delivery to power plants, monitors deliveries for each gas day, and adjusts deliveries through purchases or sales based on the clearing of PJM's day-ahead market for power supply. For months when the Company's gas-fired Dresden facility is expected to operate daily, the buyer evaluates the need for seasonal or monthly baseload purchases and will issue an RFP if reasonable under the circumstances. According to Mr. Stutler, these RFPs are used to reduce exposure to natural gas market volatility.[47]

Mr. Stutler described the natural gas transportation agreements APCo has in place to deliver natural gas to the Company's gas-fired facilities. The Company uses a mix of interruptible and firm transportation agreements for its Clinch River and Ceredo facilities. The Company has a firm transportation agreement in place through 2028 for its Dresden facility.[48]

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[40] *Id.* at 7.
[41] *Id.* at 8.
[42] *Id.* at attached Sched. 1.
[43] Ex. 10 (Stutler direct) at 3-5.
[44] *Id.* at 4-7.
[45] *Id.* at 7.
[46] *Id.* at 7-8.
[47] *Id.* at 7-9.
[48] *Id.* at 9-11.

Mr. Stutler concluded that based on current conditions, APCo expects it can continue procuring natural gas supplies to operate its facilities reliably throughout the next fuel year.[49]

APCo – Supplemental Direct Testimony

Mr. Stevens filed supplemental testimony that updated the Commission on the status – as of September 19, 2023 – of an investigation by the West Virginia Public Service Commission ("WVPSC") into APCo's coal procurement practices.[50]

Staff Testimony

Staff prefiled the testimonies of **Oliver C. Collier**, an Analyst with the Commission's Division of Public Utility Regulation, and **Patrick W. Carr**, a Deputy Director in the Commission's Division of Utility Accounting and Finance.

Mr. Collier provided an overview of APCo's proposal to mitigate the bill impact of the Company's deferred fuel balance; evaluated the Company's forecasts for energy sales, fuel costs, generating unit performance, and power supply; and presented Staff's findings on the reasonableness of the proposed fuel factor.[51]

Mr. Collier summarized APCo's calculation of the proposed fuel factor rate of 4.139¢/kWh.[52] He calculated that the proposed fuel factor would be 5.130¢/kWh absent the proposed two-year amortization of the deferred fuel balance.[53] According to Mr. Collier, the Company's reasoning behind the two-year amortization proposal is to mitigate the impact of market volatility experienced after the projections used to set the current fuel factor, which resulted in a slower pace of recovery for the previously deferred fuel balance.[54]

Mr. Collier quantified the bill impact of APCo's proposed two-year amortization on an illustrative residential customer. He emphasized APCo's proposal would *decrease* the weighted average monthly bill for a residential customer using 1,000 kWh, by $1.80 from $161.77 to $159.97. In contrast, absent the mitigation proposal, he emphasized that a prior-period factor of 1.982¢/kWh and an in-period factor of 3.148¢/kWh (for a total fuel factor of 5.130¢/kWh) would *increase* the current monthly bill by approximately $8.11, from $161.77 to $169.88.[55]

Mr. Collier reported an update to the Company's deferred fuel balance as of October 31, 2023. The Application had estimated the balance would be $273.1 million; but in discovery the Company reported an updated estimate of $277.8 million.[56]

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[49] *Id.* at 11.
[50] Ex. 3 (Stevens supplemental direct).
[51] Exs. 11 and 11C (Collier) at 2.
[52] Ex. 11 (Collier) at 3-5.
[53] *Id.* at 3.
[54] *Id.* at 5.
[55] *Id.* at 6.
[56] *Id.* at 6-7.

Mr. Collier discussed APCo's forecast of energy sales and commodity prices. He represented that the Company uses PLEXOS modeling software to forecast energy sales in its service territory. He noted that APCo used the same methodology in this case that it used in its most recent integrated resource plan, which is also consistent with the models and methodologies used in prior fuel factor cases.[57] Staff does not oppose the Company's estimate of energy sales.[58] Mr. Collier indicated that APCo's inclusion of RGGI allowances in the dispatch used to support the Application should have a minimal impact on the overall dispatch, all else being equal.[59]

According to Mr. Collier, APCo forecasted the total weighted average cost of coal delivered to APCo's generating stations over the upcoming fuel year will be approximately $78.89 per ton, which is a 30.48% increase from the 2022 Fuel Case and a 73.04% increase from the 2021 Fuel Case.[60] Mr. Collier described the linear regression model that the Company uses to develop projected natural gas prices for each month in the fuel year. He observed that the Company's natural gas price forecast appeared consistent with recent market prices for natural gas which have had a low of $2.15 per MMBtu and a high of $5.66 per MMBtu in a recent 12-month period.[61] With respect to the Company's fuel projections, Mr. Collier concluded that APCo appears to have complied with the standards for evaluating electric utilities' fuel cost projections, which the Commission established in 1990.[62] He further reported Staff's conclusion that the Company's projected fuel expenses are reasonable.[63]

Mr. Collier confirmed that Staff reviewed the projected equivalent availability factors, capacity factors, unplanned outage rates, planned outages, heat rates, and average fuel costs of the Company's generating resources, all of which underlie the Company's forecasted generation and fuel expense.[64] He reported Staff's conclusions that APCo's "fuel expense projections reflect reasonable generating unit performance and are generally consistent with historical performance"[65] and that the underlying assumptions to the fuel expense projections are reasonable.[66] Ultimately, Mr. Collier advised that Staff does not oppose the Company's forecast used to develop the proposed fuel factor.[67]

Mr. Collier discussed APCo's historic generation and power purchases, as well as the Company's projected unit performance assumptions for the Application's fuel year (*i.e.*,

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[57] *Id.* at 7.
[58] *Id.* at 15.
[59] *Id.* at 10. APCo has only one fossil-fueled generation facility that is located in the Commonwealth. *Id.*
[60] *Id.* at 8. *Application of Appalachian Power Company, To increase its fuel factor pursuant to § 56-249.6 of the Code of Virginia*, Case No. PUR-2021-00205 ("2021 Fuel Case"), 2022 S.C.C. Ann. Rep. 342, Order Establishing 2021-2022 Fuel Factor (Mar. 15, 2022).
[61] Ex. 11 (Collier) at 9, n.33.
[62] *Id.* at 10-11, 15 (citing *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Investigation for Evaluating Fuel Cost Projections of Electric Utilities*, Case No. PUE-1990-00004, 1990 S.C.C. Ann. Rep. 319, Final Order (Nov. 27, 1990)).
[63] Ex. 11 (Collier) at 15.
[64] *See, e.g.*, Ex. 11 (Collier) at 13, Attachment OCC-3.
[65] *Id.* at 13.
[66] *Id.* at 15.
[67] *Id.*

November 2023 through October 2024).[68] For July 2022 through June 2023, he reported the following levels of purchased power and generation by APCo.[69]

Source	**July 2022 through June 2023 (GWh)**
Total Fossil Generation	18,485.28
Amos (Coal)	7,953.20
Mountaineer (Coal)	5,776.34
Dresden (Natural Gas)	4,235.14
Ceredo (Natural Gas)	426.32
Clinch River (Natural Gas)	94.28
Total Hydro and Pumped Storage Generation	531.32
Total Purchased Power	12,804.24
Total Generation and Purchased Power	31,820.84

Mr. Carr described the "in-period" and "prior-period" factors that together make up the fuel factor rate. The in-period factor is designed to recover projected jurisdictional fuel expenses, including costs of fuel consumed, purchased energy expenses from PJM and energy sales revenue to PJM, net of off-system sales margins, over the twelve-month fuel year. The prior-period factor is designed to return or recover the over- or under-recovery of previous in-period factors. Over- or under-recoveries of the current period factor are aggregated into a fuel deferral balance, which is traditionally amortized over the next fuel year.[70]

Mr. Carr represented, with respect to the proposed prior-period factor, Staff does not take a position on the Company's proposal to amortize the fuel deferral balance over two years. However, Mr. Carr indicated the Commission may "wish to limit recovery of carrying charges to the amount that would have been incurred under a typical one-year recovery period."[71] He explained that carrying costs on over- or under-recovery balances are higher with a longer amortization period because the balance remains higher for longer.[72] He calculated that the two-year recovery would result in a total of $8.9 million in incremental carrying costs.[73] Mr. Carr identified recent fuel cases in which the Commission approved an extended amortization period.[74]

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[68] *Id.* at 11-13.

[69] *Id.* at Attachment OCC-3, p. 1. The summary table shown above converts MWh figures provided by Mr. Collier to GWhs, for consistency with the GWh figures presented above in the summary of APCo witness Sloan's direct testimony.

[70] Exs. 12 and 12C (Carr) at 4.

[71] Ex. 12 (Carr) at 5.

[72] *Id.* at 6.

[73] *Id.* at 7 and Appendix A, pp. 1-2.

[74] *Id.* at 7-8.

Mr. Carr presented the results of Staff's audit of APCo's fuel costs for 2019 through 2022. Staff's audit report was attached as Appendix B to his testimony. Staff determined that the relevant fuel expenses during 2019 through 2022 were properly stated on the Company's books. Mr. Carr recommended that the fuel factor cases associated with these years be closed.[75]

Mr. Carr discussed inaccuracies contained in APCo's historical monthly reports from its Fuel Monitoring System. While the Company has corrected many of those inaccuracies, he noted that fuel factor revenues continued to be misstated during 2022 and 2023. Staff recommended that the Company take action to improve these reports in the future.[76]

In addition to analyzing whether the relevant fuel expenses during this period were properly stated on the Company's books, Staff undertook an investigation into the Company's coal inventory and procurement activities as directed by the *2022 Fuel Order*. Mr. Carr reported Staff's conclusion that APCo's coal procurement activities were reasonable and prudent.[77] Mr. Carr described the investigation that Staff conducted from approximately April 2023 to December 2023.[78] Staff reviewed documents filed in WVPSC dockets related to West Virginia's investigation into this issue, including WVPSC staff testimony and a prudency report by outside consultants.[79] In addition, Staff interviewed APCo personnel[80] and began conducting discovery on APCo before the instant proceeding commenced.[81] Staff did not visit the Company's coal-fired Amos or Mountaineer generation facilities, nor has Staff ever visited facilities as part of a fuel audit.[82] When asked whether Staff considered hiring a third-party expert to assist with this case, Mr. Carr responded that Staff felt its internal resources were more than sufficient.[83] The focus of Staff's investigation was "what could reasonably be known and anticipated at the time those decisions and actions were made, rather than on what may now be known with the benefit of hindsight."[84]

[75] *Id.* at 3, 8 (recommending that the Commission close Case Nos. PUR-2018-00153, PUR-2019-00157, PUR-2020-00163, PUR-2021-00205 and PUR-2022-00139).
[76] *Id.* at 8 and Appendix B, p. 9.
[77] *Id.* at 3-4.
[78] Tr. at 118-19 (Carr).
[79] Ex. 12 (Carr) at 10; Tr. at 93 (Carr).
[80] Ex. 12 (Carr) at 10; Tr. at 93-94 (Carr) (identifying the scope of Staff's meetings with APCo and who Staff interviewed, to the best of his recollection from the witness stand).
[81] *See, e.g.*, Tr. at 97 (Carr).
[82] Tr. at 95 (Carr).
[83] Tr. at 106-07 (Carr).
[84] Ex. 12 (Carr) at 10.

Mr. Carr identified the following excerpts from APCo's regulated fuel procurement policy and procedures manual ("Fuel Manual") and he emphasized the language shown in italics below.[85]

General fuel management

- AEP's overall Fuel Procurement Policy shall be used to secure *adequate supplies of competitively-price coal* . . . to meet generation, environmental, and operational requirements, while *recognizing the dynamic nature of the various associated markets*, environmental standards, and regulatory requirements. To accomplish these objectives the Company maintains, as appropriate, a mix of physical inventories and a portfolio of long-term and short-term agreements for firm and discretionary supplies of fuels ... suitable for its generating units. AEP's procurement strategy is to provide *an appropriate amount of fuel . . . with optimal supply flexibility*, considering the Company's long-term agreements and market conditions. It is also the policy of regulated [Fuel Procurement] to meet these materials and service requirements at the *lowest reasonable delivered cost over time*, consistent with satisfying the above-stated objectives.[86]
- All commodities and services shall be purchased with due consideration of all relevant factors, including but not limited to: *competitive pricing, the quantity needed to maintain an appropriate supply*, the quality required to optimize the operating characteristics of the generating stations, the need to meet any applicable environmental standards, the production capability as well as the financial reliability of the supplier, existing contractual obligations, and the *ability to address emergencies or other unusual circumstances.*[87]

Inventory levels

- The primary objective of the regulated [Fuel Procurement] organization shall be to ensure the availability of an *adequate, reliable supply* of fuel . . . at the *lowest, reasonable delivered cost* for the generation of electricity. Consequently, decisions affecting solid fuel ... inventories shall be made in consideration of this primary objective. *This policy shall allow for flexibility*, permitting physical inventory levels of solid fuel . . . *to be responsive to known and anticipated changes in conditions*. Fuel ... inventory target levels shall be recommended by a Generation cross-functional team and subject to the approval of senior management. This inventory target determination process helps ensure that each plant's needs are given due consideration and promotes efficiency of operation.[88]

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[85] In discovery, APCo designated the entirety of the Fuel Manual as confidential. At the hearing, however, APCo represented that the excerpts from the Fuel Manual used in Staff witness Carr's testimony – found on pages 11, 12, 13, and 17 of his testimony – could be made public. Tr. at 85 (Ritter). Consequently, this Report treats any of this information included herein as public information.

[86] Ex. 12 (Carr) at 11.

[87] *Id.* at 11-12.

[88] *Id.* at 12.

Enforcement of fuel supply contracts

- If it is determined that a dispute related to a supplier's or transporter's nonperformance is unlikely to result in an amicable resolution, the matter shall be referred to the VP of regulated [Fuel Procurement]. The VP shall undertake the appropriate action, including further negotiation or arbitration if provided for by the agreement.
- If the VP of regulated [Fuel Procurement] finds that an amicable resolution to a supplier's or transporter's non-performance cannot be achieved, litigation may be pursued with the involvement of AEP's Legal department and under guidance of other appropriate senior management.[89]

Mr. Carr addressed the market conditions that existed around the 2020-2022 period. He acknowledged the challenge that the COVID-19 pandemic presented to the electric generation industry and the unpredictable shifts in coal supply and electricity demand over this time period.[90] With respect to the coal market, the economic slowdown in early 2020 caused by the pandemic reduced demand for electricity and thus coal and other fuels. This lower demand, in turn, led to a buildup of utility fuel inventories, lower fuel and energy prices, and reduced coal mining operations.[91] Then economic activity began to rise in the third quarter of 2021, increasing electricity demand in the United States at a time Mr. Carr indicated was not foreseen by utilities. Due to higher natural gas prices, coal became relatively attractive economically, but the impact of reduced mine production constricted supply and mine production was slow to recover. According to Mr. Carr, this sequence of events resulted in coal supply shortages and high prices for coal and other fuels in 2021 and 2022.[92]

Mr. Carr described coal market conditions in 2021 and 2022 as an industry-wide challenge.[93] Mr. Carr also cited specific issues APCo experienced with coal deliveries between 2020-2022, including non-conforming quality specifications and producer under-performance.[94]

Mr. Carr considered the adequacy of APCo's response to the market conditions addressed above. He noted that APCo issued an RFP in May 2021 for coal deliveries during 2022-2024, which resulted in additional contracted coal supply.[95] APCo issued a second RFP in September of 2021, for additional coal deliveries during the remainder of 2021 in addition to 2022-2023.[96] No coal supplier made an offer for 2021.[97] APCo secured additional contract coal supply for 2022-2023 as a result of the second RFP.[98] He discussed that APCo considered, at the relevant time period, sourcing coal from non-traditional areas, such as the Illinois Basin.[99] APCo

[89] *Id.* at 13.
[90] *Id.* at 14.
[91] *Id.* at 14-15.
[92] *Id.*
[93] *Id.* at 13.
[94] *Id.* at 15.
[95] *Id.* at 16.
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*

continued to issue subsequent RFPs (in April and September of 2022) for additional coal deliveries.[100]

Mr. Carr stated that APCo followed its policies regarding the enforcement of coal supply contracts.[101] Beyond issuing RFPs for additional coal deliveries, Mr. Carr pointed to the fact that APCo worked with its delinquent coal suppliers to meet contractual commitments, but eventually sued one of its coal suppliers when issues could not be resolved amicably.[102] That litigation settled on August 10, 2023.[103]

Mr. Carr recognized that, notwithstanding the above actions, APCo was unable to maintain its minimum target levels for coal inventories at its Amos and Mountaineer generation facilities for periods in 2021 and 2022. His confidential Appendix D contains detailed inventory levels for every month in 2020 through 2022. His testimony also includes a confidential chart summarizing the "shortfall" amounts for each month in 2021 and 2022 when APCo's coal inventory was below a minimum target level.[104] Mr. Carr stated that the below-target inventories resulted from "unforeseeable impacts of COVID-19 on electricity demand and mine production, the subsequent economic rebound, supplier non-performance, and international coal demand."[105]

Mr. Carr concluded that APCo complied with its Fuel Manual in managing the above market conditions because the Company, in Staff's view, "reasonably balanced . . . competing goals of maintaining sufficient inventory and minimizing cost by utilizing the flexibility permitted by the Fuel Manual."[106] While Mr. Carr addressed APCo's actions during 2021 and 2022 in the context of the guidance contained in the Fuel Manual, he indicated that Staff believes the question of whether fuel procurement activities were reasonable and prudent goes beyond the Fuel Manual. Mr. Carr indicated that Staff did not view its evaluation of the Fuel Manual as the "end all be all criteria of" prudence.[107]

As directed by the *2022 Fuel Order*, Staff also calculated that approximately three million megawatt hours ("MWh"), on a Virginia jurisdictional basis, may have been generated had APCo maintained minimum target coal inventory levels and assuming additional coal had been available to generate electricity in subsequent months. He stressed various assumptions Staff had to make to arrive at what he described as a "very rough" estimate. He added that Staff could not calculate a reasonable estimate of the potential financial costs and benefits that would have been associated with the three million MWhs of lost generation.[108]

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[100] *Id.*
[101] *Id.* at 13.
[102] *Id.* at 17.
[103] *Id.*
[104] Exs. 12 and 12C (Carr) at 17-18 and Appendix D. The public version of Mr. Carr's Appendix D shows the actual coal inventory levels at Amos and Mountaineer over the relevant period. The confidential version includes, among other things, the target inventory levels, and the sufficiency/insufficiency compared to the target levels.
[105] Ex. 12 (Carr) at 18.
[106] *Id.* at 13.
[107] Tr. at 81-82 (Carr).
[108] Ex. 12 (Carr) at 19.

Staff Supplemental Testimony

Mr. Carr offered supplemental direct testimony to update the Commission on regulatory developments in West Virginia.[109] His update detailed the following filings made in WVPSC proceedings involving APCo:[110]

- On December 21, 2023, APCo filed excerpts of the prefiled direct testimonies from this proceeding of Staff witnesses Carr and Collier.
- On December 26, 2023, the Consumer Advocate Division of West Virginia filed an objection to the above filing.
- On December 27, 2023, APCo, its affiliate Wheeling Power Company, the West Virginia Energy Users Group, and the West Virginia Coal Association filed a proposed Joint Stipulation and Agreement for Settlement.
- On December 28, 2023, Staff of the WVPSC filed a letter opposing the stipulation.
- On January 2, 2024, the Kanawha County Commission filed a letter opposing the stipulation.
- On January 5, 2024, the Consumer Advocate Division of West Virginia filed a letter opposing the stipulation.

Mr. Carr updated the Commission that on January 9, 2024, the WVPSC issued the *2024 WVPSC Order*,[111] which disallowed APCo and affiliate Wheeling Power Company recovery of $231.8 million of a $552.9 million deferred fuel balance.[112] According to Mr. Carr, the disallowance was based on a WVPSC finding of "imprudent decisions and management that resulted in insufficient stockpiles of coal to self-generate more energy to serve load" and that WVPSC had found "a failure to maintain adequate coal stockpiles and incoming coal supplies to self-generate even when doing so could reduce [expanded net energy cost ('ENEC')] cost."[113] According to Mr. Carr, the calculation of the WVPSC's disallowance was based on "the amount of additional energy margins that could have been produced if APCo and Wheeling Power Company had had sufficient coal to generate electricity in hours when the WVPSC determined it was economical to do so during the two-year period of March 1, 2021 through February 28, 2023."[114]

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[109] Ex. 13 (Carr supplemental) at 2. Staff prefiled this supplemental testimony on January 12, 2024. According to Staff, Staff filed Mr. Carr's supplemental direct testimony "purely as an update for the Commission and concluded that Staff's conclusions and recommendations contained in its prefiled testimony remain unchanged." Staff's Brief at 8.

[110] Ex. 13 (Carr supplemental) at 3-4.

[111] *Appalachian Power Company and Wheeling Power Company, Petition to Initiate the Annual Review and to Update the ENEC Rates Currently in Effect*, Case No. 23-0377-E-ENEC, and *Appalachian Power Company and Wheeling Power Company, Petition to Initiate the Annual Review and to Update the ENEC Rates Currently in Effect*, Case No. 22-0393-E-ENEC, and *Appalachian Power Company and Wheeling Power Company, Petition to Initiate the Annual Review and to Update the ENEC Rates Currently in Effect*, Case No. 21-0339-E-ENEC, WVPSC Order (Jan. 9, 2024) ("*2024 WVPSC Order*").

[112] Ex. 13 (Carr supplemental) at 4.

[113] *Id.* (quoting *2024 WVPSC Order*).

[114] Ex. 13 (Carr supplemental) at 4-5.

With respect to the remaining $321.1 million that the *2024 WVPSC Order* approved for recovery, Mr. Carr indicated this amount will be amortized over a 10-year period at a 4% financing cost rate, which the WVPSC indicated was

> in recognition of the very high remaining under-recovery balance and the likelihood that the imprudence in fuel planning, fuel practices and market strategies that caused a lack of adequate coal supplies, contributed to the inability or unwillingness of the Companies to offset a portion of the remaining [$321.1 million] under-recovery by different decisions for taking or keeping plants out-of-service . . . .[115]

At the hearing, the Committee questioned Mr. Carr regarding his understanding of the West Virginia investigation into APCo's coal procurement activities and the corresponding *2024 WVPSC Order*. Mr. Carr generally agreed that in many regards, the factual issues presented in the WVPSC ENEC proceeding, in which the *2024 WVPSC Order* was issued, are comparable to those in the Virginia fuel factor proceeding.[116] Counsel for the Committee asked Mr. Carr to review each of the 21 findings of fact from the *2024 WVPSC Order.*[117] With respect to each finding of fact, Mr. Carr was asked if he "agree[d], disagree[d], or need[ed] more information to form an opinion . . . ."[118]

Consumer Counsel confirmed with Mr. Carr the implications of closing prior fuel factor proceedings, from an auditing standpoint. Mr. Carr stated that if cases are closed that would mean the underlying costs would not be reaudited.[119] He further clarified that Staff's recommendation to close a fuel factor case is predicated on a completed audit and a completed prudence review.[120]

Regarding the December 27, 2023, settlement he identified from the WVPSC proceeding, Mr. Carr confirmed that APCo and its affiliate had offered to reduce their deferred fuel balance by $50 million for the West Virginia jurisdiction and that no similar relief for the Virginia jurisdiction was offered in the instant fuel factor case.[121]

Mr. Carr confirmed the scope of Staff's investigation focused on whether APCo made reasonable efforts to minimize fuel costs or made any decisions resulting in unreasonable fuel costs consistent with the requirements of the fuel factor statute.[122] Counsel for APCo elicited from Mr. Carr that the *2024 WVPSC Order* did not change the conclusions of his testimony.[123]

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[115] *Id.* at 5 (quoting *2024 WVPSC Order*).
[116] Tr. at 57 (Carr).
[117] *See 2024 WVPSC Order* at 32-35.
[118] Tr. at 58-78 (Carr).
[119] Tr. at 89 (Carr).
[120] Tr. at 90 (Carr).
[121] Tr. at 108 (Carr).
[122] Tr. at 115-16 (Carr).
[123] Tr. at 124 (Carr).

Counsel for APCo discussed with Mr. Carr a 69% capacity factor referenced by the *2024 WVPSC Order*. Counsel for APCo confirmed with Mr. Carr that operating the Amos and Mountaineer generating units at a 69% capacity factor, even when such operations were uneconomic, would be bad for customers and something Mr. Carr would consider imprudent.[124]

In response to questions from the Hearing Examiner, Mr. Carr addressed how a larger fuel deferral balance had developed in West Virginia compared to Virginia. He identified two factors contributing to the larger West Virginia balance. First, similar to the situation in Virginia, he stated that fuel costs rose unexpectedly, or more than had been expected.[125] Second, he offered that the WVPSC, over a number of cases and years, denied timely rate recovery of West Virginia jurisdictional incurred fuel costs. At the same time, Virginia approved timely recovery of its jurisdictional share of the same fuel costs, subject to future audit.[126]

Mr. Carr confirmed that approval of the proposed fuel factor in Virginia would not mean that Virginia customers are picking up the West Virginia share of fuel costs disallowed by the WVPSC.[127] However, Mr. Carr acknowledged that he is recommending as reasonable and prudent the Virginia share of fuel costs that West Virginia disallowed as not reasonable and prudent, at least with respect to the Amos and Mountaineer generating facilities.[128] When asked how the WVPSC reached a different conclusion from Staff regarding the reasonableness and prudence of these costs, Mr. Carr stated:

> [W]e in our investigation looked at what the company and its personnel knew at the time. What they could have reasonably … been expected to know during … a pretty unique and challenging time for the reasons I describe in my pre-filed direct testimony. And … came to the conclusion that their decision making included things like RFPs[,] other efforts to acquire coal, their bidding practices and [sic] PJM … were all reasonable and prudent actions in light of … all the market conditions and such. The [WVPSC] … felt that a reasonable utility would apparently have taken different actions and that the actions APCo took weren't prudent.[129]

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[124] Tr. at 122 (Carr).
[125] Tr. at 127-28 (Carr).
[126] Tr. at 128-29 (Carr).
[127] Tr. at 130-31 (Carr).
[128] Tr. at 131 (Carr). Costs associated with the Mitchell generation facility were also among the costs disallowed by the *2024 WVPSC Order*. Because Wheeling Power Company, not APCo, owns that facility there is no Virginia share of such costs. *Id.*
[129] Tr. at 137 (Carr).

APCo – Rebuttal Testimony

APCo offered the rebuttal testimony of **John A. Stevens**. He expressed appreciation of Staff's examination of the Application, which Mr. Stevens described as thorough, and highlighted differences remaining between the Company and Staff.[130] He objected to Mr. Carr's suggestion that the Commission limit carrying charges on the deferred fuel balance if the Commission approved the Company's two-year recovery proposal. He insisted that the Commission should weigh both the fuel factor and base rate impact on customers in considering both a one-year recovery period and APCo's proposed two-year recovery.[131] Like Staff witness Carr, Mr. Stevens calculated an additional $8.85 million of financing costs associated with the two-year proposal, or $4.425 million annually.[132] He maintained that the Commission should approve the two-year recovery proposal to promote rate stability, and avoid a large increase in the fuel factor for the November 1, 2023 through October 31, 2024 period.[133] Mr. Stevens characterized the limitation of carrying charges suggested by Staff as a "financial penalty on the Company."[134]

Mr. Stevens addressed Staff witness Carr's estimate that three million MWhs of generation would have been available had APCo maintained minimum target coal inventories during 2021 and 2022. Mr. Stevens concurred with Staff's observations regarding the nature of the assumptions necessary to make the estimate.[135] Mr. Stevens stated it was fortunate that it was unnecessary to rely on the "rough estimate" because Staff's investigation found the Company's coal procurement activities to be reasonable and prudent.[136]

At the hearing, Mr. Stevens addressed the WVPSC disallowance of deferred fuel costs stating that "the Company disagree[d] with the findings of [the *2024 WVPSC Order*] in its entirety" and was still considering all its "options as to how to respond."[137] In response to a question from the Hearing Examiner, Mr. Stevens addressed what he believed to be the reason the WVPSC reached a different conclusion regarding the reasonableness and prudence of these costs, as compared to Staff. He stated a primary difference between the jurisdictions is a 69% capacity factor referenced by the *2024 WVPSC Order*.[138] He opined that in 2021 the WVPSC placed a 69% capacity factor requirement on the Company, which is "different from the way this Commission would expect the [C]ompany to operate its generating units."[139]

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[130] Ex. 16 (Stevens rebuttal) at 1.
[131] *Id.* at 1-2.
[132] *Id.* at 2.
[133] *Id.* at 2-4.
[134] *Id.* at 3.
[135] *Id.* at 5.
[136] *Id.*
[137] Tr. at 145 (Stevens).
[138] Tr. at 147 (Stevens).
[139] *Id.*

CODE

With respect to fuel cost recovery, Code § 56-249.6 provides, among other things, as follows:

> Each electric utility that purchases fuel for the generation of electricity or purchases power ... shall submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed by the Commission. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each company to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or under-recovery of fuel costs previously incurred.[140]
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> ....
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> The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to maintain reliable sources of supply, economical generation mix, generating experience of comparable facilities, and minimization of the total cost of providing service.[141]

The Commission's approach to implementing this statute is well-established and has been described by the Commission as follows:

> Pursuant to § 56-249.6 of the Code, APCo is statutorily entitled to recover its prudently incurred fuel costs. Indeed, in describing this statutory provision over twenty-five (25) years ago, the Commission explained that the fuel factor permits dollar for dollar recovery of prudently incurred fuel costs. As also explained in prior fuel cases, approval of a fuel factor herein does not represent ultimate approval of the Company's actual fuel expenses. An audit and investigation of the Company's actual booked fuel expenses, among other things, is conducted by the Staff after the close of the fuel year. The Commission subsequently determines what are, in fact, reasonable, prudent and, therefore, allowable fuel expenses and credits, as well as the Company's recovery position as of the end of the audit period....[142]

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[140] Code § 56-249.6 A 1.

[141] Code § 56-249.6 D 2.

[142] *Application of Appalachian Power Company, To revise its fuel factor*, Case No. PUE-2015-00088, 2016 S.C.C. Ann. Rep. 272, 274, Order Establishing 2015-2016 Fuel Factor (Jan. 6, 2016) (internal footnote omitted).

Accordingly, for fuel factor costs from any given period, the fuel factor ratemaking and review process begins by first setting, in a Commission case, APCo's fuel factor rate to recover projected costs. In a subsequent case, APCo's fuel factor rate is then reset, to reconcile the prior projections with actual costs. When the fuel factor rate is set and reset, parties may raise – and the Commission may decide or defer – issues regarding the reasonableness of projected costs or the prudence and reasonableness of actual costs. Notably, when the fuel factor rate is set and then reset, the Commission does not close these fuel factor cases or reach a final decision on the level of recoverable costs for the period. At some point in the future, Staff audits the costs for the relevant period and files an audit report in the associated cases that have been kept open. Finally, the Commission closes the open fuel factor case(s) when the Commission is assured of the amount of fuel factor costs for that period that were reasonable and prudently incurred.

ANALYSIS

The Application proposed to decrease the Company's fuel factor from 4.319¢/kWh to 4.139¢/kWh. The proposed fuel factor rate includes: (i) a 3.148¢/kWh in-period component designed to recover fuel costs that APCo projects it will incur during November 1, 2023, through October 31, 2024; and (ii) a 0.991¢/kWh prior-period component designed to recover, over two years, an estimated $273.1 million under-recovered fuel balance as of October 31, 2023.[143]

For the in-period factor, Staff concluded that APCo's fuel expense projections reflect reasonable generating unit performance and are generally consistent with historical performance.[144] Staff also found the assumptions underlying these projections are reasonable.[145] No case participant opposed the use of APCo's projected fuel expense for purposes of setting the in-period component. I find that the record supports approval of the proposed in-period component, recognizing that the projected fuel expense will subsequently be trued-up to actual costs, and will remain subject to Staff audit and further Commission consideration.

For the prior-period component, the Application estimated that APCo's deferred fuel balance as of October 31, 2023, would be $273.1 million. The proposed prior-period component is designed to recover this amount, over two years, although APCo subsequently updated its estimated balance to $277.8 million.[146] Consumer Counsel and the Committee supported APCo's proposal to recover its large estimated deferred fuel balance over two years, rather than the traditional one-year period for such recovery.[147] While no case participant opposed the proposed fuel factor, the case participants raised two issues relevant to the proposed prior-period component: (1) the level of carrying charges associated with APCo's deferred fuel balance; and (2) whether the Commission should close prior fuel factor cases based on the completion of Staff's audit of 2019-2022 fuel expenses and Staff's investigation of APCo's coal procurement activities during 2021 and 2022. Those two issues are discussed below.

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[143] *See, e.g.*, Ex. 3 (Stevens direct) at 6-7.

[144] Ex. 11 (Collier) at 13. While Staff found APCo's projected coal and natural gas prices substantially deviate from certain projections reported by the U.S. Energy Information Administration, Staff recognized that these prices could fluctuate substantially depending on a number of factors. *Id.* at 14-15.

[145] *Id.* at 15.

[146] *Id.* at 6-7 and Attachment OCC-1 (APCo's response to Staff discovery request 3-20).

[147] *See, e.g.*, Consumer Counsel's Brief at 12 (supporting the two-year recovery period "in the interest of avoiding yet another rate increase for APCo customers"); Tr. at 19-20 (Tucker).

In addressing these two issues, I have applied applicable law to the evidentiary record developed in this case and taken judicial notice of orders, as appropriate. As such, my analysis is not based on extraneous references to evidence offered, or purportedly offered, in different proceedings.

1. Carrying Charges on Deferred Fuel Balance

While Staff did not take a position on the Company's proposal to amortize the fuel deferral balance over two years, Staff recognized that extending the recovery period increases the costs of carrying a deferred fuel balance.[148] If APCo is allowed carrying costs set at the Company's weighted average cost of capital, Staff and APCo both calculated that carrying costs would be approximately $8.9 million higher with a two-year recovery, compared to the traditional one-year recovery.[149]

Staff indicated that the Commission may "wish to limit recovery of carrying charges to the amount that would have been incurred under a typical one-year recovery period."[150] Staff identified a 2022 fuel factor case in which Dominion Energy Virginia agreed to waive recovery of half of the carrying charges on a deferred fuel balance.[151] While Staff also indicated that in APCo's recently concluded triennial review Staff proposed removing some carrying charges on the Company's deferred fuel balance, the stipulation approved in that case did not address the issue.[152] Regardless, Staff also recognized that carrying charges on the Company's unrecovered fuel deferral balance are recovered through base rates and therefore will be an issue in the Company's 2024 biennial review, which will include an earnings test for 2023.[153]

Consumer Counsel supports Staff's suggestion, but recognized that the carrying charge issue could be decided in APCo's biennial review later this year.[154]

APCo recognized that the Commission could decide the carrying charge rate in APCo's upcoming biennial review, but argued that if the Commission decides the issue in the instant fuel factor case, Staff's suggestion should be rejected. APCo characterized a limitation on carrying charges as an "arbitrary financial penalty unsupported by any evidence or precedent."[155] APCo also, among other things, emphasized that it proposed a two-year recovery of the Company's deferred fuel balance solely to lessen the burden on ratepayers of recovering this large balance.[156]

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[148] *See, e.g.*, Staff's Brief at 9 ("Under longer recovery periods, the unrecovered balance remains higher for longer periods of time, increasing total carrying costs.").
[149] Ex. 12 (Carr) at 7 and Appendix A, pp. 1-2; Ex. 16 (Stevens rebuttal) at 2.
[150] Ex. 12 (Carr) at 5.
[151] *Id.* at 7. *See Application of Virginia Electric and Power Company, To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia*, Case No. PUR-2022-00064, 2022 S.C.C. Ann. Rep. 550, 552, Order Establishing 2022-2023 Fuel Factor (Sep. 16, 2022).
[152] Ex. 12 (Carr) at 8. *See Application of Appalachian Power Company, For a 2023 triennial review of its base rates, terms and conditions pursuant to § 56-585.1 of the Code of Virginia*, Case No. PUR-2023-00002, Final Order (Nov. 30, 2023) (containing no mention of carrying charges on APCo's deferred fuel balance).
[153] Staff's Brief at 9.
[154] Consumer Counsel's Brief at 12-13.
[155] APCo's Brief at 11.
[156] *See, e.g.*, *id.*; Ex. 16 (Stevens rebuttal) at 3-4.

The Committee asserted that it would be more appropriate for the Commission to address the carrying charge issue in APCo's upcoming biennial review.[157]

Carrying charges on deferred fuel balances are recovered through APCo's base rates, rather than its fuel factor rates.[158] I recommend that this base rate issue be decided in this year's biennial review of APCo's base rate costs.

2. Staff's Investigation and Fuel Audit of Deferred Fuel Costs

The *2022 Fuel Order* directed Staff to conduct its fuel procurement investigation and audit. In doing so, the Commission stated, in part, as follows:

> We find that Staff should forthwith commence its fuel audit of the January 1, 2019 to December 31, 2022 period. ... Specifically, such audit should include a focus on whether APCo has made "every reasonable effort to minimize fuel costs or [has made] any decision[s] ... resulting in unreasonable fuel costs" consistent with the requirements of Code § 56-249.6 D 2. As part of its fuel audit, Staff shall investigate and report on, at a minimum, the following with respect to APCo's coal procurement activities ... :
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> - Whether APCo complied with its [Fuel Manual];
> - The timing and adequacy of APCo's response to market turmoil in mid-2021;
> - APCo's actions to obtain performance by contractors with whom APCo had coal supply agreements;
> - APCo's ability to maintain coal inventories at minimum target levels; and
> - If APCo had the ability to maintain the minimum target levels of coal inventory, what additional generation would have been available to APCo.[159]

Staff began its investigation shortly after the *2022 Fuel Order* was entered, and before the instant case was initiated.[160] Based on its investigation, Staff concluded that "APCo complied with its Fuel Manual in navigating ... difficult market conditions because APCo reasonably balanced the Manual's competing goals of maintaining sufficient inventory and minimizing costs."[161] Staff's testimony in the instant case described the decreased demand for electricity and coal caused by the pandemic in 2020 that was followed in 2021 and 2022 by coal supply shortages and high coal prices when electricity demand rebounded along with domestic and international coal demand.[162] APCo described its coal inventory levels in 2020 and early 2021 as adequate,[163] and the monthly coal inventory levels reported by Staff indicate that this is an accurate description, if not an understatement for much of this period.[164] However, during eight of the nine months between August 2021 and April 2022, APCo's coal inventory at Amos

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[157] Committee's Brief at 1-2.
[158] *See, e.g.*, Ex. 12 (Carr) at 6.
[159] *2022 Fuel Order* at 8-9.
[160] Tr. at 97, 119 (Carr).
[161] Staff's Brief at 5 (citing Ex. 12 (Carr) at 13).
[162] Staff's Brief at 5-7.
[163] Ex. 12 (Carr) at Appendix F (APCo's response to Staff discovery request 5-61).
[164] Ex. 12C (Carr) at Appendix D.

fell below its target inventory level. And during January 2022 through April 2022, APCo's coal inventory at Mountaineer fell below its target inventory level.[165]

Staff concluded that "APCo's repeated efforts to secure additional supplies of coal through RFPs and other actions during 2021 and 2022 demonstrate a reasonable response to the market and inventory conditions as they unfolded during that time."[166] The RFPs reported by Staff were conducted in May 2021, September 2021, April 2022, and September 2022. The May 2021 RFP was for coal deliveries in the 2022-2024 period, and resulted in additional contracted coal supply.[167] The September 2021 RFP was for additional coal deliveries for the remainder of 2021, and for 2022 and 2023.[168] APCo secured additional contract coal supply for 2022 and 2023, but no coal supplier made an offer for the remaining months of 2021 – when, as discussed above, APCo's coal inventories fell below the targeted levels.[169] During this period, APCo also considered sourcing coal from non-traditional areas.[170] APCo continued to issue subsequent RFPs (in April and September of 2022) for additional coal deliveries.[171]

Staff also concluded that APCo followed its policies regarding the enforcement of coal supply contracts.[172] APCo worked with its delinquent coal suppliers to meet contractual commitments, and eventually sued one of its coal suppliers when issues could not be resolved amicably.[173]

As for the final bulleted directive from the *2022 Fuel Order*, Staff estimated that approximately three million MWh, on a Virginia jurisdictional basis, may have been generated had APCo maintained minimum target coal inventory levels and assuming additional coal had been available to generate electricity in subsequent months. That estimate was provided with the caveat that Staff viewed this as a "very rough" estimate due to the various assumptions on which the estimate was based.[174]

Based on the completion of Staff's audit, and consistent with Staff's conclusion that APCo's fuel procurement activities were prudent in 2021 and 2022, Staff recommended closing the fuel factor cases that had remained open pending Staff's audit and a final determination by the Commission for fuel costs incurred during 2019, 2020, 2021, and 2022.[175]

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[165] *Id.* at Appendix D, pp. 2-3. Amos was above its target level during November 2021. *Id.* at 2.
[166] Staff's Brief at 6.
[167] Ex. 12 (Carr) at 16. According to APCo, the May 2021 RFP "did not seek deliveries for 2021 due to the committed positions for 2021 being at 100%. *Id.* at Appendix E (APCo's response to Staff discovery request 7-80).
[168] *Id.* at 16.
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] *Id.* at 13.
[173] *Id.* at 17 and Appendix F (APCo's response to Staff discovery request 7-73).
[174] Ex. 12 (Carr) at 19; Ex. 12C (Carr) at Appendix E.
[175] Ex. 12 (Carr) at 20.

The *2022 Fuel Order* also directed the following:

> for informational purposes, we direct APCo to file in this docket copies of any orders issued by the [WVPSC] concerning its investigation of APCo's coal procurement practices and address the status, including any decisions of the [WVPSC], in APCo's next fuel factor application. Staff should also monitor these proceedings and report on developments when Staff files testimony in APCo's next fuel factor proceeding.[176]

Consistent with this directive, Staff promptly filed supplemental testimony reporting the issuance of the *2024 WVPSC Order,* which disallowed APCo and its affiliate recovery of $231.8 million of West Virginia jurisdictional deferred costs that include fuel and purchased power expenses.[177] Staff's supplemental testimony was filed five days before the hearing in the instant case. At the hearing, Staff witness Carr testified that nothing in the *2024 WVPSC Order* changed the conclusions from Staff's investigation.[178]

Consumer Counsel, the Committee, and Steel Dynamics all argued that the Commission should not yet make a final decision on the Company's fuel costs implicated by the coal procurement activities of APCo during 2021 and 2022. Consumer Counsel asserted that Code § 56-249.6 and the standard applied in the *2024 WVPSC Order* are "substantially the same ...: whether the Company's coal procurement activities constituted reasonable and prudent efforts to minimize fuel costs, not whether the Company achieved any specific capacity factor."[179] Consumer Counsel recommended that the Commission continue to keep open the fuel factor dockets covering the relevant periods and again direct APCo to file in this docket copies of any WVPSC orders concerning the coal procurement issue, as well as copies of any applicable appellate orders.[180] Consumer Counsel indicated it does not contend that Staff failed to fulfill the requirements of the *2022 Fuel Order*. However, in Consumer Counsel's view, "the methodical, critical findings [of the *2024 WVPSC Order*] seem to call for a more particularized response by a party who disagrees with them."[181] Consumer Counsel also indicated, among other things, that in light of the *2024 WVPSC Order*, the Commission may wish "to expand the depth or breadth of its Staff's investigation" and noted that other parties may also wish to undertake their own investigations.[182]

The Committee argued that Staff's investigation fails to satisfy the *2022 Fuel Order* and asserted that Staff's investigation was not guided by this order or Code § 56-249.6. The Committee indicated that the Supreme Court of Virginia interprets the "every reasonable effort"

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[176] *2022 Fuel Order* at 9-10.
[177] Ex. 13 (Carr supplemental).
[178] Tr. at 123-24 (Carr).
[179] Consumer Counsel's Brief at 7.
[180] *Id.* at 8-9.
[181] *Id.* at 10.
[182] *Id.* at 9, n.27. Consumer Counsel indicated that additional areas of inquiry might include: (i) the discrepancy between Staff's findings and those in West Virginia; (ii) whether the WVPSC disallowance can be attributed to not reaching a 69% capacity factor at the Amos and Mountaineer plants; (iii) the extent to which the Company used its coal units to hedge against the market; (iv) the effects of West Virginia's order on Virginia; and (v) West Virginia appeals. *Id.* at 9.

standard of Code § 56-249.6 as creating a statutory duty to minimize fuel costs.[183]

The Committee argued that Staff's testimony and audit report are flawed because they over-rely on APCo's internal Fuel Manual. In support of this argument, the Committee asserted that mere compliance with this internal policy cannot be equated with compliance with a statutory duty. The Committee also indicated, among other things, that Staff does not offer any testimony concerning how the Fuel Manual relates to APCo's statutory duty or how the Fuel Manual may be useful in the statutory analysis.[184]

The Committee also argued that Staff's testimony and audit report are flawed because they failed to present material facts and circumstances for the Commission's consideration. The Committee asserted that locational marginal prices ("LMP")[185] during the fuel audit years should have been presented because the degree or extent to which APCo could or should have anticipated LMP recovery after all-time lows during the COVID-19 pandemic is a material consideration with implications on the reasonableness of APCo's coal procurement and, by extension, fuel costs. The Committee also asserted that generation levels at Amos and Mountaineer or their burn rates should have been discussed because self-generation is a recognized method for minimizing fuel costs in the face of rapidly spiking LMPs, even when coal prices are rising. The Committee also contended that coal prices, coal futures, or the actions of other market participants should be considered when assessing the timing of APCo's response to market turmoil, including the timing of the Company's RFPs for additional coal.[186]

The Committee recommended that the Commission: (1) hold open the fuel audit of 2019 through 2022; and (2) direct the Staff further investigate APCo's behavior during that time to confirm or deny the factual findings made by the [WVPSC] and to take whatever investigatory steps are necessary to produce a comprehensive report regarding whether APCo complied with its statutory duty to minimize fuel costs during the relevant period.[187]

Steel Dynamics recommended that the Commission direct Staff to conduct a more expansive audit to include, at a minimum, APCo's management of its coal stockpile levels, fuel supplies, and power plant operations during the period at issue.[188]

APCo recommended that the Commission reject requests for "a second, repeat investigation into [the Company's] coal procurement activities during 2021 and 2022."[189] APCo asserted that the Committee and Consumer Counsel have offered no reason why such an investigation should be performed again, "especially considering that no new information has or will come to light."[190] APCo characterized Staff's investigation as thorough, comprehensive,

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[183] Committee's Brief at 8-9.
[184] *Id.* at 10.
[185] LMP prices refers to PJM's wholesale energy market prices.
[186] *Id.* at 11. The Committee also asserts that Staff's testimony and audit report are flawed because they did not consider APCo's past representations concerning Amos and Mountaineer made in separate prior proceedings. Other case participants also offered some extra-record information purportedly in support of some of their arguments. As discussed above, my Report applies governing law to the evidentiary record developed in the instant case.
[187] Committee's Brief at 15.
[188] Steel Dynamics' Brief at 4.
[189] APCo's Brief at 12.
[190] *Id.* at 2.

and well-supported, and asserted that Staff considered all available information that might potentially be relevant (including the information considered by the WVPSC), applied applicable law and precedent, and addressed all the directives from the *2022 Fuel Order*.[191] APCo indicated that the "mere fact that Staff did not reach the same conclusion as the WVPSC does not mean Staff's investigation was inadequate."[192] APCo also asserted that no new evidence has come to light since Staff filed its testimony on December 20, 2023, and emphasized the following testimony by Staff witness Carr during cross-examination by the Company:[193]

> Q: Since you filed your original direct testimony [on December 20, 2023] have any of the facts underlying your investigation changed?
>
> A: No.
>
> Q: You looked at a lot of information in your investigation; now, is there anything that is different?
>
> A: No. Nothing – none of the facts, circumstances, anything else that were examined and led to my conclusions have changed since [Staff filed its testimony on] December 20th.
>
> Q: You agree that if you redo this audit[,] you essentially do it again, as some parties are suggesting you should, you wouldn't uncover anything new?
>
> A: I'm not sure exactly what parties have suggested as far as an audit, but ... if the [Commission's instruction in that second audit is for Staff] to examine the prudency of the coal procurement during this period[,] then ... we've done that.
>
> Q: You've already done that?
>
> A: Yes.
>
> Q: And you've reached your conclusion?
>
> A: Yes.
>
> Q: Nothing in the [*2024 WVPSC Order*] changed your conclusion?
>
> A: That's right. And I stated as much in my supplemental testimony.

APCo characterized Consumer Counsel's and the Committee's recommended result as "a second bite at the apple." In support of this argument, APCo asserted that both parties knew the coal procurement investigation would happen because they requested it in the 2022 Fuel Case.[194]

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[191] *Id.* at 2-6.

[192] *Id.* at 6.

[193] *Id.* at 7-8 (quoting Tr. at 123-24 (ellipses and bracketed language supplied by APCo, except for order name)).

[194] APCo's Brief at 8. While APCo cited to extra-record information on this point, I have taken judicial notice of the *2022 Fuel Order*, which recognized parties' recommendations for a Staff investigation. *2022 Fuel Order* at 8.

As an initial matter, I find that the record supports the Commission's issuance of a final order for fuel expenses incurred in 2019 and 2020. Staff has completed its audit for these years and the questions that Consumer Counsel, the Committee, and Steel Dynamics recommend the Commission not resolve in the instant case relate to fuel costs incurred in 2021 and 2022. Accordingly, I recommend the Commission close, at the appropriate time, the open fuel factor cases relevant to 2019 and 2020, regardless of how the Commission rules on the fuel procurement issues relevant to fuel costs in 2021 and 2022.[195]

As shown above, and recognized by the *2022 Fuel Order*, questions regarding the prudence of actions or inactions resulting in APCo's high fuel costs in 2021 and 2022 are based on the following provisions of Code § 56-249.6:

> The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to maintain reliable sources of supply, economical generation mix, generating experience of comparable facilities, and minimization of the total cost of providing service.[196]

I find that the record could support APCo's and Staff's recommendations to close the book on fuel costs incurred in 2021 and 2022 under the above statutory provisions. The record details a number of activities APCo took during the relevant timeframe to procure additional coal supply that could be viewed as making "every reasonable effort," under the extreme circumstances.[197] The record also identifies the root cause of the COVID-19 pandemic – causing a rare, if not unique, whipsaw in electricity demand. As reported by Staff, APCo did not maintain its minimum target coal inventory for several reasons, including "unforeseeable impacts of COVID-19 on electricity demand and mine production, the subsequent economic rebound,

[195] However, because APCo's fuel factor rates have not been implemented on a calendar-year basis, if the Commission does not issue a final decision on 2021 costs at this time, the timing of when to close Case No. PUR-2020-00163 – which includes two months of 2020 costs and ten months of 2021 costs – would appear to depend on the issuance of final decisions on costs for both 2020 and 2021. *See, e.g.*, Ex. 12 (Carr) at Appendix B, p. 3.

[196] Code § 56-249.6 D 2. I agree with the Committee, Staff, and Consumer Counsel that Code § 56-249.6, not the Fuel Manual, provides the applicable legal standard in this case. While not dispositive of the issues regarding coal procurement, whether APCo complied with its Fuel Manual is clearly relevant to APCo's coal inventory management efforts, in my opinion, because the manual generally sets forth the Company's view of how coal inventory should be managed. This is presumably why the *2022 Fuel Order* directed Staff to investigate whether APCo complied with its Fuel Manual.

[197] The Committee asserted that the "Supreme Court of Virginia interprets the 'every reasonable effort' standard contained in Code § 56-249.6 D 2 as creating a duty to minimize fuel costs." Committee's Brief at 9 (citing *Appalachian Voices v. State Corporation Commission*, 277 Va. 509, 519 (2009) ("*Appalachian Voices*"). I do not read the language cited by the Committee as an interpretation of the statute that removes "reasonable" from its plain language. Instead, I read the Court's use of the phrase "this statutory duty to minimize fuel costs" in *Appalachian Voices* as a short-hand description of the broader statutory language that the Court had quoted in the preceding sentence of its Opinion. Additionally, that part of *Appalachian Voices* was simply addressing whether a utility could favor more expensive in-state coal versus less expensive out-of-state coal. That geographical and price specific context was relevant to the dormant Commerce Clause issue presented in that particular appeal, but does not appear instructive to the question of prudence or reasonableness at issue in the instant fuel factor case.

supplier non-performance, and international coal demand."[198] The Commission could find that this confluence of events constitutes "just cause."[199] Additionally, no case participant has recommended a disallowance at this time.

However, closing APCo's 2021 and 2022 fuel factor costs now would implement a two- to three-year timeline for finalizing such costs, which is more accelerated than the Commission typically uses. The Commission typically waits longer than two to three years before closing out fuel factor costs for a given year.[200] A longer timeline has been used where APCo's fuel factor costs were far lower than the 2021 and 2022 levels that have resulted in historically high fuel factor rates for APCo.[201] Additionally, a longer timeline for finalizing fuel factor costs has been used in situations where – unlike the instant case – there has been no pending request to keep such costs open for further scrutiny.

Although Staff has completed its investigation and audit of 2021 and 2022 fuel factor costs, as directed by the *2022 Fuel Order*,[202] what is "reasonable" or "just" under Code § 56-249.6 is fact dependent.[203] And, in this case, the Committee asserted that material facts and circumstances were not included in Staff's testimony or report, nor elsewhere in the evidentiary record.[204] Furthermore, Consumer Counsel indicated that participants in a future Commission case may want to undertake their own investigations of the Company's 2021 and 2022 activities and fuel factor costs.[205]

APCo is correct that all case participants had the opportunity in the instant case to conduct discovery of the underlying activities and to receive the Company's discovery responses propounded by Staff. However, I do not view that opportunity as dispositive of whether the

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[198] Ex. 12 (Carr) at 18.

[199] Deputy Director Carr has lengthy and substantial experience and expertise applying Code § 56-249.6, and his testimony and attachments specifically addressed the issues identified by the *2022 Fuel Order*. The suggestion that he overlooked the only statute that applies to the case in which he filed expert testimony, or the order that his testimony explicitly addressed, is unpersuasive. Committee's Brief at 8-9.

[200] *See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning certain fuel factor cases of Appalachian Power Company,* Case No. PUE-1991-00036, 2010 S.C.C. Ann. Rep. 280, Order Closing Fuel Factor Cases (Sep. 24, 2010) (closing fuel factor cases that were initiated between five to nineteen years prior to the order); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning certain fuel factor cases of Appalachian Power Company*, Case Nos. PUE-2010-00058, PUE-2012-00051, Order Closing Fuel Factor Cases (Oct. 8, 2019) (closing fuel factor cases that were initiated nine and seven years prior to the order).

[201] Based on my review of Commission fuel factor orders, I am aware of no fuel factor rate approved for APCo higher than the rate approved by the *2022 Fuel Order*. The 2021 and 2022 fuel factor costs are significantly higher than the 2019 and 2020 costs that have not been questioned. *See, e.g.*, Ex. 12 (Carr) at Statement II (showing Virginia jurisdictional fuel costs in 2022 exceeded fuel costs for 2019 and 2020, combined).

[202] The opinions of Staff and parties to a ratemaking case inform, but do not bind, the Commission. *See, e.g., Roanoke Gas Co. v. Division of Consumer Counsel*, 219 Va. 1072, 1079 (1979).

[203] As opinions about whether something is reasonable or just can vary, I find nothing disconcerting about the WVPSC reaching a different conclusion than Staff on the prudence of APCo's coal procurement activities during 2021 and 2022 – even if (as asserted by the Committee) WVPSC and Staff were examining the same conduct and the same expenses under (as asserted by Consumer Counsel) comparable legal standards. *See, e.g.*, Committee's Brief at 14; Consumer Counsel's Brief at 7.

[204] *See, e.g.*, Committee's Brief at 3, 8, 11.

[205] Consumer Counsel's Brief at 9, n.27 (identifying the potential for such an investigation specifically in a future fuel factor docket).

Commission should close the 2021 and/or 2022 fuel costs at this time. Additionally, this fuel factor case provided the respondents with far less time to evaluate such issues. The instant Application was filed on September 14, 2023, the Commission's Procedural Order was issued on October 5, 2023, and notice was completed on October 29, 2023.[206] The deadline for filing respondent testimony was December 13, 2023,[207] and the deadline for discovery (absent a motion and ruling) was January 11, 2024.[208] While APCo argued the eight- to nine-month duration of Staff's investigation supports the Company's recommendation to close this issue, that duration, in my view, highlights the more condensed timeframe for the discovery and development of factual issues by interested persons in the instant fuel factor case.[209]

Consistent with the Commission's typical timeline for keeping fuel costs open, I do not recommend the Commission make a final decision on 2021 or 2022 fuel costs at this time. Instead, I recommend the Commission keep these years open for now. If adopted by the Commission, my recommendation should allow participants in the upcoming biennial review and/or future fuel factor proceedings to further evaluate, and present any recommendation(s) on, the reasonableness of the underlying actions or inactions by APCo. While the Commission's consideration of fuel factor cost recovery occurs in fuel factor cases, there is some overlap between base rate costs and fuel factor costs that may allow respondents to continue to evaluate these issues in the upcoming biennial review, unless the Commission makes a final prudence determination in the instant case. Carrying charges on deferred fuel costs are a base rate item, as discussed in Section 1 of this Report's Analysis, and the 2023 deferred fuel costs at issue in the upcoming biennial review stem in part from the significant increase in fuel factor costs during 2021 and 2022.[210] Consequently, it appears that the coal procurement and management activities in question would be relevant to the appropriate level of APCo's deferred fuel balance and any associated carrying charges in this year's biennial review. Absent a contrary ruling by the Commission, that proceeding should offer respondents in the instant case an extended opportunity to conduct discovery and develop any position they may have on APCo's coal procurement and management during 2021 and 2022.

FINDINGS AND RECOMMENDATIONS

Based on the evidence received in this case and the Code, and for the reasons set forth above, I find that:

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[206] Ex. 1.

[207] Procedural Order at Ordering ¶ 15.

[208] 5 VAC 5-20-260; Procedural Order at Ordering ¶ 19.

[209] I also note that in this situation Staff has broader authority to obtain information from APCo than do case participants relying on the Commission's discovery process. Staff investigations of regulated public utilities directed by the Commission are not constrained by the Commission's Rules of Practice and Procedure ("Rules of Practice"). *See* Code § 56-36.

[210] The prior-period factor for the fuel factor in effect during November 1, 2022, through October 31, 2023, was designed to recover the significant under-recovery balance at the beginning of preceding fuel year (*i.e.*, November 1, 2022) over the two-year period ending October 31, 2024. Because the fuel rates in effect during November 1, 2022, through October 31, 2023, recovered the 2022 deferred fuel balance slower than anticipated, APCo proposed another two-year amortization in the instant case. *See, e.g.*, Ex. 3 (Stevens direct) at 3-5 and attached Sched. 2.

(1) The record in this case supports approval of APCo's proposed fuel factor of 4.139¢/kWh, which includes a two-year amortization of an estimated $273.1 million deferred fuel balance.

(2) The Commission can and, in my opinion, should address the appropriate base rate carrying charge on APCo's deferred fuel balance in the upcoming biennial review of APCo's base rates.

(3) Staff has completed its audit of APCo's fuel factor costs incurred in 2019 and 2020 and recommended the Commission close the related fuel factor dockets for these years. No case participant has questioned the fuel factor costs incurred during these years.

(4) Staff has completed its audit of APCo's fuel factor costs incurred in 2021 and 2022, including Staff's investigation of coal procurement activities directed by the *2022 Fuel Order,* and recommended the Commission also close the related fuel factor dockets for these years. The respondents have raised questions about the sufficiency of Staff's investigation and recommended that the Commission not yet close the related fuel factor dockets for these years.

(5) While the record could support APCo's and Staff's recommendations to close the book on fuel factor costs incurred in 2021 and 2022 under Code § 56-249.6, the Commission typically keeps fuel factor costs open for a longer period. Additionally, this fuel factor case afforded the respondents (who recommend keeping these costs open) less time than Staff to evaluate coal procurement and management issues raised regarding APCo's large deferred fuel balance.

(6) Since carrying charges on deferred fuel factor costs are a base rate item, the upcoming biennial review of APCo's base rates would, absent a Commission ruling to the contrary, offer the respondents in the instant case an extended opportunity to conduct discovery and develop any position they may have on APCo's coal procurement and management during 2021 and 2022.

Accordingly, **I RECOMMEND** the Commission enter an Order that:

(1) ***ADOPTS*** the findings of this Report;

(2) ***APPROVES*** the proposed fuel factor of 4.139¢/kWh, for service rendered on and after November 1, 2023;

(3) ***CLOSES*** fuel factor cases associated with 2019 and 2020 fuel factor costs, if the Commission determines it is appropriate to do so at this time; and

(4) ***CONTINUES*** this case generally, pending audit and investigation of the Company's actual fuel factor costs for all periods not closed by the Commission.

COMMENTS

Staff and parties are advised that, pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Code § 12.1-31, any comments on this Report must be filed on or before April 12, 2024. To promote administrative efficiency, the parties are encouraged to file electronically in accordance with 5 VAC 5-20-140 of the Rules of Practice. If not filed electronically, an original and fifteen (15) copies must be submitted in writing to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been sent by electronic mail to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

D. Mathias Roussy, Jr.
Senior Hearing Examiner

Document Control Center is requested to send a copy of the above Report to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, Tyler Building, First Floor, Richmond, VA 23219.