



REPORT | JAN 2020

THE DOMINION SCAM:

How a Utility Monopoly Overcharged Virginians \$2 Billion (And Got Away with It)



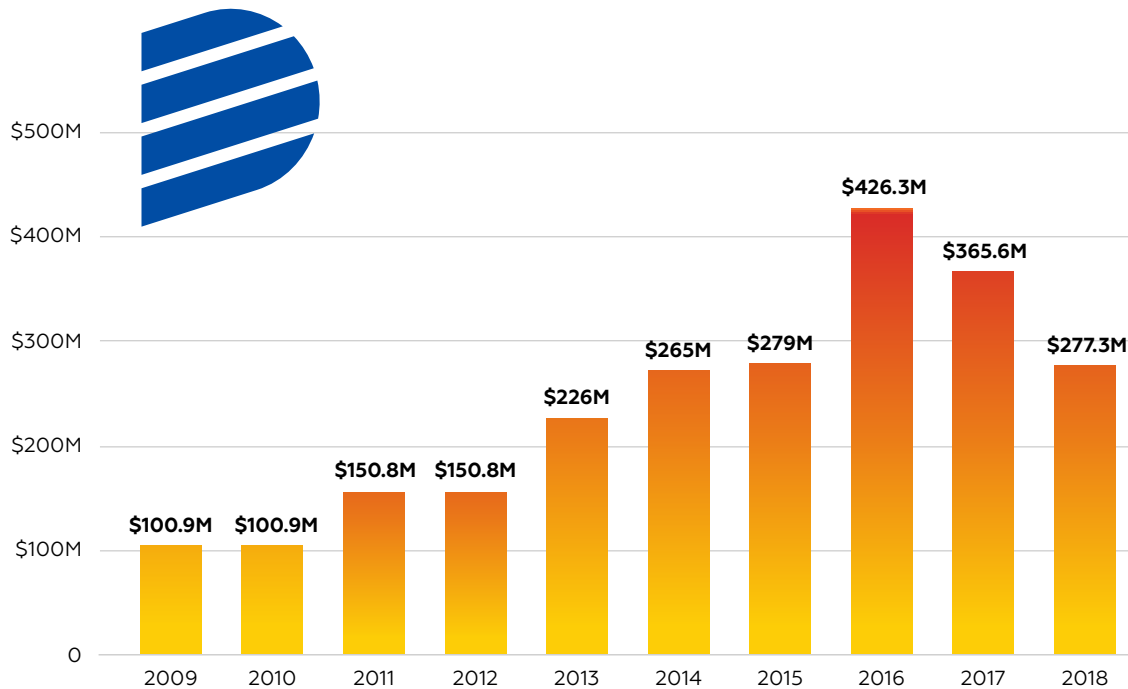
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I. EXECUTIVE SUMMARY

Over the past decade, Virginia’s largest utility monopoly—Dominion Energy—has overcharged its customers by more than \$2.3 billion. To date, less than 5% of this money has been refunded.¹

DOMINION OVERCHARGES



For Dominion’s residential customers—Virginia’s families and workers—bills have skyrocketed in the same period, rising over 25% since 2007.² As of 2018, the average Virginia household in Dominion’s service territory paid \$133.19 a month for electricity, which is more than 13% higher than the national average.³ Despite Dominion Energy’s paid advertisements on “low rates” and “affordability,” Virginians’ residential electricity bills are the 7th highest in the country.⁴

¹ Figures compiled from Virginia State Corporation Commission (SCC) reports and final orders for the years 2009–2018. Please see Table 1 of this report for individual year totals and sources.

² SCC, *Status Report: Implementation of VEURA* (2019), 2, https://www.scc.virginia.gov/comm/reports/2019_veur.pdf.

³ Calculations based on data from U.S. Energy Information Administration, *Electric Sales, Revenue, and Average Price* (2018), Data Table T6, Residential sector, https://www.eia.gov/electricity/sales_revenue_price. This data shows that the average Dominion residential customer used 1,142 kilowatt-hours (kWh) a month in 2018, and that the average Dominion residential monthly energy bill was \$133.19—more than 13% higher than the 2018 national average of \$117.

⁴ U.S. Energy Information Administration, *Electric Sales, Revenue, and Average Price* (2018), Data Table T5.a, Residential average monthly bill by Census Division, and State, https://www.eia.gov/electricity/sales_revenue_price.

Even more troubling, the electricity burden for Virginians—the percentage amount of household income that is spent on electricity costs—is considered to be unaffordable for over 75% of Virginia's households.⁵ With an eviction rate nearly twice the national average, Virginia has the ignominious distinction of having five of the country's ten cities with the highest eviction rates.⁶ Given that one in ten evictions in Virginia were for delinquencies of less than \$340, we must look at inflated electric bills as part of this crisis.^{7,8}

HOW DID THIS HAPPEN? HOW DID THINGS GET THIS BAD? AND HOW CAN WE REPAIR THIS BROKEN SYSTEM?

In this report, we examine how Dominion Energy, its lobbyists, and its allies in the Virginia General Assembly created and now perpetuate the “Dominion Scam”—a systematic effort on the part of Dominion to transfer billions of dollars beyond its authorized profit level from its captive Virginia customers to its top executives and shareholders. We detail how a major rewrite of electric utility law in Virginia in 2007 introduced utility-friendly regulations that constrained regulators' historic power to set fair rates, inflating energy bills well beyond Dominion's authorized rate of return as a public service monopoly. We then examine how Dominion was able to use these new regulations, along with manufactured “crises,” to keep the money it overcharged customers rather than refunding it. Finally, we examine how another major rewrite of Virginia's electric utility law in 2018 further tipped the scales in the monopoly's favor.

The 2007 Virginia Electric Utility Regulation Act (VEURA) was a massive rewrite of Virginia's utility law that severely restricted the authority of the State Corporation Commission (SCC) to fairly set Dominion's rates and allowed profit level.⁹ The new monopoly-friendly regulatory framework also created a series of generous bonuses and ratepayer-funded financial incentives for both Dominion and Appalachian Power Company (APCo), Virginia's second-largest electric utility monopoly. Since this law was passed, **Dominion has overcharged Virginians by an average of \$234 million every year from 2009 to 2018.**¹⁰

To avoid scrutiny for these exorbitant and unwarranted overcharges, Dominion artificially manufactured periodic “crises” immediately preceding each review of its rates so that the utility could claim it needed to use the overcharges for public purposes. On further examination, however, the “crises” and “public purposes” were dubious at best and nonexistent at worst. In many years, Dominion banked every dollar it overcharged customers while providing no additional benefit to customers in return.

⁵ An energy burden is considered unaffordable when 6% or more of a household's income is spent on energy bills. Virginia Poverty Law Center, “Electricity Burden and the Myth of Virginia's Rate Utopia,” August 15, 2018, <https://vplc.org/electricity-burden-and-the-myth-of-virginias-rate-utopia>.

⁶ Jason Boleman, “What's Behind Richmond's Higher Than Normal Eviction Rates,” CBS 6, October 1, 2019, <https://wtvr.com/2019/10/01/virginia-high-eviction-rates-cns>.

⁷ Liz Fuller-Wright, “Eviction Lab examines the intersection of poverty and housing,” *Princeton University*, December 17, 2018, <https://www.princeton.edu/news/2018/12/17/eviction-lab-examines-intersection-poverty-and-housing>.

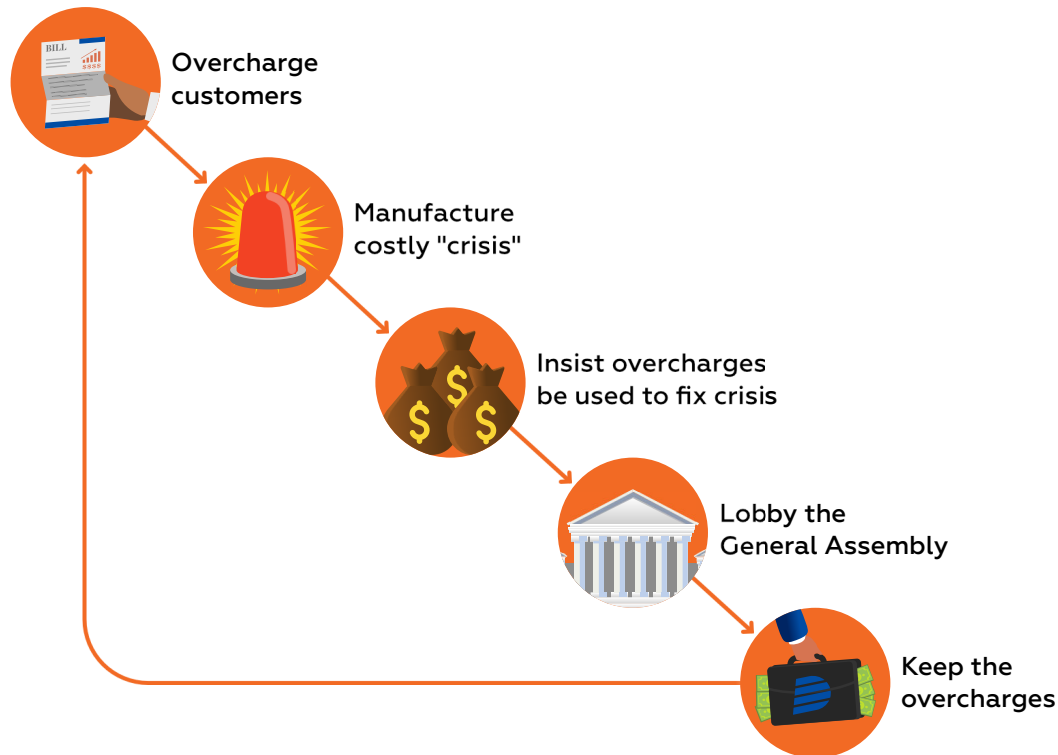
⁸ Virginia Poverty Law Center, “Electricity Burden.”

⁹ Virginia Electric Utility Regulation Act, VA Code Section 56-576, <https://law.lis.virginia.gov/vacodepopularnames/virginia-electric-utility-regulation-act>.

¹⁰ Figures compiled from SCC reports and final orders for the years 2009–2018. Please see Table 1 of this report for individual year totals and sources.

This cycle is best summarized in this chart:

THE DOMINION SCAM CYCLE



This report focuses predominantly on Dominion Energy's role in creating this favorable regulatory environment, as it is the only electric utility in Virginia to overcharge customers by billions of dollars in the past decade. Co-ops and municipal utilities are not regulated under the VEURA and by law do not produce profits, while APCo's overcharges are normally only a small fraction of Dominion's. For example, in 2018, Dominion Energy overcharged customers by \$277.3 million, while APCo overcharged customers by \$7 million, according to earnings information reported to the SCC.¹¹

With a decade of hindsight, the Virginia General Assembly must now decide if it will end the Dominion Scam. Without common-sense legislative reform, Dominion's customers are essentially guaranteed by law to be overcharged on their electric bills. Virginia needs new legislation that returns power to Dominion's regulators to set fair and reasonable rates and to order refunds or lower rates if the monopoly overcharges customers. Billions of dollars from Virginian families and businesses are at stake.

¹¹ SCC, *Status Report*, 9.

II. BACKGROUND

To understand how Dominion pulled off a \$2.3 billion scam, we must first identify a few key players and define several terms that are integral to utility regulation in Virginia.

KEY PLAYERS AND TERMS

Dominion Energy Virginia (DEV): A regulated electric utility with a monopoly in most of eastern, northern, and central Virginia. Referred to in this report as “Dominion Energy” or “Dominion” for simplicity, Dominion Energy Virginia is a major subsidiary of the conglomerate Dominion Energy, Inc. Nearly half of Dominion Energy, Inc.’s total revenues come from Virginia.¹² Dominion Energy Virginia is the third largest utility in the country.¹³

State Corporation Commission (SCC): Virginia’s regulatory body empowered by Virginia’s Constitution to oversee the rates and facilities of Virginia’s public utilities, including Dominion Energy. The Virginia General Assembly nominates and appoints SCC commissioners for six-year terms. Three commissioners, supported by a staff of nearly 600, direct the work of the SCC.¹⁴

The Virginia General Assembly: Virginia’s part-time bicameral legislature, which may prescribe rules and criteria regarding the SCC’s regulation of public utilities.¹⁵ Historically, the SCC had the authority to determine a utility’s rates, refunds, and what investments were “reasonable and prudent.” In recent years, however, the General Assembly has stripped the SCC of much of its traditional authority and granted those powers to the legislative body itself.¹⁶ Virginia’s Supreme Court ruled in 2017 that the Constitution of Virginia allows the General Assembly to dictate how the SCC sets rates and regulates utilities.¹⁷

The Executive Branch: Virginia’s Governor and cabinet staff. The Governor plays a crucial role in how utilities are regulated in Virginia. Not only does the Governor possess a legislative veto and sign bills; the Governor will also often propose utility regulation legislation and convene stakeholder meetings to build consensus. Major rewrites of utility law in 2015 and 2018 included several provisions that Governors McAuliffe and Northam, respectively, demanded before signing into law.^{18,19}

¹² Dominion Energy, *Q3 2019 Earnings Call*, 6, https://s2.q4cdn.com/510812146/files/doc_financials/2019/q3/2019-11-01-DE-IR-Q3-2019-earnings-call-slides-vTC.pdf.

¹³ U.S. Energy Information Administration, *Electric Sales, Revenue, and Average Price* (2018), Data Table T6, Residential sector, https://www.eia.gov/electricity/sales_revenue_price.

¹⁴ “About The Commissioners,” SCC, accessed December 23, 2019, <https://www.scc.virginia.gov/comm/about.aspx>.

¹⁵ Brian Greene, “Virginia Supreme Court Upholds Electric Utility Rate Freeze,” *GreeneHurlocker*, September 18, 2017, <https://www.greenehurlocker.com/virginia-supreme-court-upholds-electric-utility-rate-freeze>.

¹⁶ Michael Martz, “Dominion Rules: Virginia’s Regulatory Landscape Turns Upside Down, as SCC Loses Sway at General Assembly,” *Richmond Times-Dispatch*, October 15, 2017, https://www.richmond.com/z-no-digital/dominion-rules-virginia-s-regulatory-landscape-turns-upside-down-as/article_b9ea267c-97fc-594e-8c8e-0953102aaee6.html.

¹⁷ Greene, “Virginia Supreme Court.”

¹⁸ Jacob Geiger, “Governor Signs Bill to Freeze Dominion Rates, Suspend Reviews,” *Richmond Times-Dispatch*, February 24, 2015, https://www.richmond.com/business/governor-signs-bill-to-freeze-dominion-rates-suspend-reviews/article_b356b0cb-473d-5cb0-ad1c-6c5a076d45c1.html.

¹⁹ Robert Zullo, “Governor Signs Sweeping Utility Overhaul Affecting 3 Million Virginia Ratepayers,” *Richmond Times-Dispatch*, March 9, 2018, https://www.richmond.com/news/virginia/governor-signs-sweeping-utility-overhaul-affecting-million-virginia-ratepayers/article_ce65175d-c789-5517-bc0c-e4cbd5d2c554.html.

RATES AND BILLS

Dominion services approximately 2.45 million Virginian customers (households, businesses, and state and local government accounts), roughly two-thirds of all ratepayers in Virginia.²⁰ In general, these customers pay monthly power bills that can be broken down into three components:

1. *Base Rate*: The base rate is traditionally designed to cover all required capital expenditures and operating costs for a utility to produce and distribute energy, plus a fair rate of return.²¹ Under current regulatory practice for Dominion, base rates no longer cover all major infrastructure costs, as most new projects are instead recovered through rate adjustment clauses (RACs). For residential customers, base rates make up roughly 65% of a monthly electric bill using 1,000 kilowatt-hours (kWh) per month.²² A *base rate case* is an SCC proceeding in which regulators determine the value of a utility's assets and set the amount in base rates that can be charged to consumers.
2. *Fuel Factor Cost*: A utility's fuel costs include the costs to procure fuel for generation facilities, such as coal, oil, natural gas, and biomass.²³ Electric utilities are allowed to recover from customers all prudently incurred fuel expenses. Fuel factor costs make up roughly 20% of a residential energy bill using 1,000 kWh per month.²⁴
3. *Rate Adjustment Clause (RAC)*: Sometimes called "riders," since 2007, RACs have allowed Dominion to recover new costs and make a profit outside of base rates.²⁵ RACs typically are used to fund new generation projects or cover environmental compliance costs. (Dominion's introduction and use of RACs—as we will examine—has led to significant bill inflation over the past decade.) RACs make up roughly 15% of a residential energy bill using 1,000 kWh per month.²⁶

²⁰ SCC, *Status Report*, 1.

²¹ Will Reisinger, *Guide to Electric Utility Regulation in Virginia* (Virginia: GreeneHurlocker, 2018), 33, <https://www.greenehurlocker.com/wp-content/uploads/2018/04/GreeneHurlocker-Guide-to-Electric-Regulation-in-Va-2018.pdf>.

²² SCC, *Status Report*, 9.

²³ Reisinger, *Guide*, 34.

²⁴ SCC, *Status Report*, 9.

²⁵ Reisinger, *Guide*, 34.

²⁶ SCC, *Status Report*, 9.

III. BEFORE THE SCAM: TRADITIONAL UTILITY REGULATION IN VIRGINIA

For most of Virginia's history, the SCC had the authority to set "reasonable and just" electric rates based on the utility's cost to provide service, ensuring that consumers were not overcharged, while allowing utilities to earn returns high enough to attract private investment.²⁷ As utility regulation attorney Will Reisinger writes in the *Guide to Electric Utility Regulation in Virginia*:

[Prior to 1999] the SCC had the authority to set electric utility rates based on the utility's costs of service. The SCC also had the authority to establish a utility's rate of return, or authorized profit level, after considering factors such as the riskiness of the utility company and general economic conditions.²⁸

During this period, the SCC had sufficient authority to request a base rate case proceeding at its own discretion. During any rate case, the SCC could adjust a utility's rates if a rate change was determined to be appropriate. This "regulatory compact" typified Virginia's utility regulatory framework in the twentieth century.

An Abandoned Attempt at "Deregulation" Lays the Groundwork for the Scam

In 1999, the General Assembly passed new legislation—the Virginia Electric Utility Restructuring Act (not to be confused with the 2007 Virginia Electric Utility Regulation Act or VEURA)—in an attempt to move Virginia to a competitive energy market system.²⁹ The Restructuring Act created a "transition period" through 2007 that froze base rates and fuel factor costs but was supposed to allow new entrants into the energy generation marketplace. The freezing of base and fuel rates also served to protect incumbent utilities like Dominion Energy from losses by allowing them to recover billions in potential stranded asset costs during the transition period.³⁰ The Restructuring Act stipulated that after 2007, regulators would discard these "protections" for utilities, and competitive market forces would largely determine prices for electric generation.

This transition to a fully competitive market never occurred. The protections designed for Dominion and APCo, Virginia's second-largest utility monopoly, discouraged new market entrants who could not compete on price when such large incumbent providers were given cost advantages and still controlled large market shares.³¹ Even though the frozen rates discouraged competition from entering the market, Dominion was also slated to lose \$1.7 billion on higher fuel costs due to a spike in natural gas prices, prompting concerns from the utility as well.³² Further, market analysts who had advised Dominion that its generation assets could earn a higher return in a competitive market grew wary after the California energy crisis of the early aughts and sought the safety—and guaranteed returns—of a regulated monopoly system.³³ When a competitive market failed to materialize in Virginia, the General Assembly moved to "re-regulate" Dominion and APCo.

²⁷ See, e.g., VA Code Section 56-234, Duty to furnish adequate service at reasonable and uniform rates, A, <https://law.lis.virginia.gov/vacode/title56/chapter10/section56-234>.

²⁸ Reisinger, *Guide*.

²⁹ Legislative Transition Task Force Established Under the Virginia Electric Utility Restructuring Act, *Senate Document No. 54* (Virginia: Legislative Transition Task Force, 2000), <https://rga.lis.virginia.gov/Published/2000/SD54/PDF>.

³⁰ Dominion Resources, Inc., 1999 *Annual Report*, 35, <https://www.nrc.gov/docs/ML0037/ML003747539.pdf>.

³¹ SCC, *Status Report: The Development of a Competitive Retail Market for Electric Generation within the Commonwealth of Virginia* (Virginia: State Corporation Commission, 2003), 8, https://www.scc.virginia.gov/comm/reports/2003_1.pdf.

³² Michael Martz, "They Attacked the Messenger," *Richmond Times-Dispatch*, October 13, 2017, https://www.richmond.com/news/special-report/dominion/they-attacked-the-messenger/article_8c65e11e-af6b-11e7-8cf1-9b12981ca9ff.html.

³³ Clean Virginia interview with former Dominion Energy Virginia executive, November 23, 2019.

IV. ESTABLISHMENT OF THE SCAM: DOMINION REWRITES THE RULES

In 2007, a wide array of legislators, stakeholders, and utility lobbyists pushed for legislation that would end Virginia's nascent competitive energy market and reinstate Dominion Energy's monopoly. Dominion played a major role in writing the legislation that fundamentally altered how the SCC regulated the utility monopoly's rates—as well as the rates of Virginia's second largest utility monopoly, APCo.³⁴ The enacted legislation (the Virginia Electric Utility Regulation Act or VEURA) did not return Virginia to the traditional regulatory regime that had successfully governed customer rates throughout the twentieth century. Instead, the “re-regulation” law included a series of new provisions that incentivized increased utility spending, fortified with robust guaranteed returns on investment and various ratepayer-funded bonuses for utility shareholders. **It also fundamentally curtailed SCC oversight on how electricity rates would be set, removing a critical consumer protection measure for Dominion's customers.**

The “re-regulation” legislation dramatically increased utility revenues while simultaneously limiting the SCC's ability to order refunds and lower base rates when Dominion overcharged customers. As one former Dominion executive described the company's ethos at the time, “we got a good deal going into deregulation, and we're going to get a great deal coming out.”³⁵

The provisions enacted in 2007 that gave the monopoly this “great deal”—to the detriment of its customers—comprise **the key components of the Dominion Scam**. In addition to instituting biennial rate reviews (which would later be changed to triennial reviews), these provisions included:³⁶

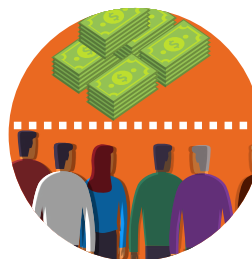
KEY COMPONENTS OF THE DOMINION SCAM



Rate Adjustment Clauses:
Additional fees for infrastructure projects added to bills on top of the base rate.



Peer Group Analysis:
Arbitrary criterion that sets rates artificially high based on earnings levels from more expensive states.



Refund Ceiling:
A cap on how much Dominion has to refund customers when it overcharges.

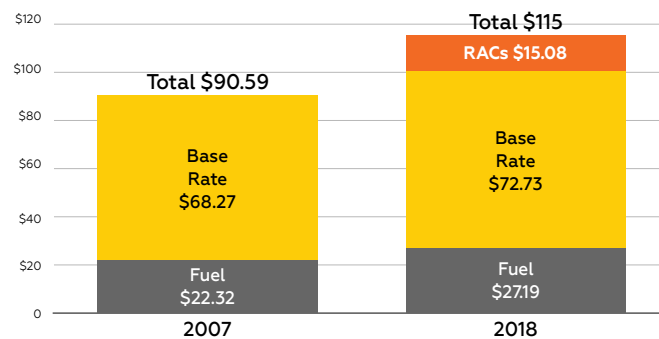
³⁴ Martz, “They Attacked the Messenger.”

³⁵ Clean Virginia interview.

³⁶ Reisinger, *Guide*, 34.

1. Rate Adjustment Clauses: The introduction of RACs, or riders, was the most significant change in the law and constituted the biggest long-term cost to customers. Traditionally, any new infrastructure project would be reviewed by the SCC and recovered through base rates. With the introduction of RACs, however, Dominion could now apply for new projects to be expensed to ratepayers with separate fees outside of the base rate. These charges were guaranteed in full if the projects were approved. **The 2007 law also forbade the SCC from considering base rate earnings levels when Dominion sought to recover project spending through RACs.**^{37,38} This new statutory language meant that the SCC could not, for example, deny a RAC rate increase if Dominion was overearning on its base rates. The addition of RACs to customer bills explains, in part, the drastic increase in customer charges in the past decade. With at least 20 RACs being charged to Dominion ratepayers, total rates were practically guaranteed to be too high without SCC intervention, as Dominion continued to recover the costs of depreciated and retired facilities still contained in the base rate, while pursuing RAC charges for new projects.³⁹ In other words, with the SCC prohibited from reviewing base rates, and with enough riders layered on, excessive profits would inevitably be produced, as the remaining projects in the base rate would constantly lose value, but base rates wouldn't be lowered accordingly.

"TYPICAL" ENERGY BILL FOR A DOMINION RESIDENTIAL CUSTOMER



Note: These numbers are for customers using 1,000 kWh per month, while the average Dominion residential customer in Virginia used roughly 1,142 kWh per month in 2018 for an average bill of \$133.19. Source: 2018 SCC VEURA Status Report, p.4.

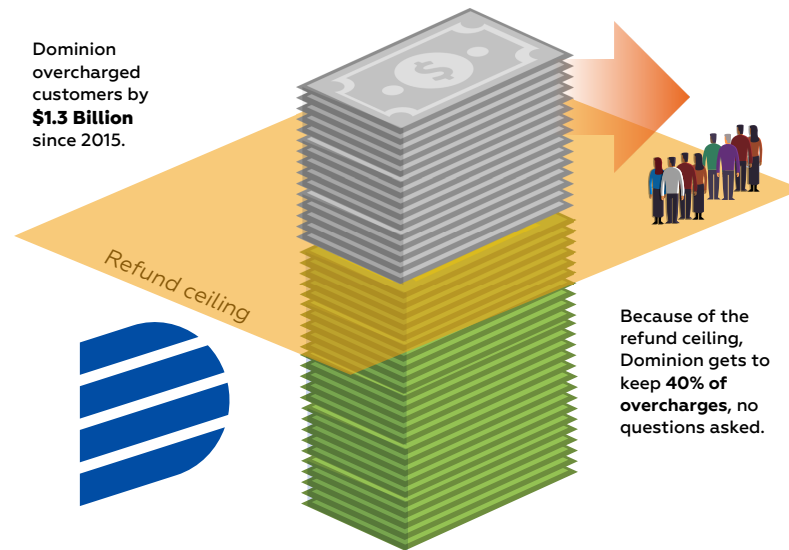
2. Refund Ceiling: The 2007 law created a new "refund ceiling" that is currently set to allow Dominion to refund only 70% of overcharges above its allowed profit level (0.7% above the authorized rate of return).⁴⁰ This means that if Dominion's authorized rate of return is 9.2%, the company is not considered to be overcharging customers unless its actual earned rate of return is over 9.9%. The additional 0.7% is in essence free money—extra profit for Dominion shareholders. Only if Dominion overcharged still more (above 9.9%) would customers be eligible for a refund, but Dominion would only have to issue refunds for 70% of those additional overcharges, and could keep the other 30% with no justification.

³⁷ Martz, "They Attacked the Messenger."

³⁸ See VA Code Section 56-585.1, A7: <https://law.lis.virginia.gov/vacode/title56/chapter23/section56-585.1>.

³⁹ Dominion Power, *Exhibit of Applicable Riders as of November 1, 2019*, <https://www.dominionenergy.com/library/domcom/media/home-and-small-business/rates-and-regulation/residential-business-rates-shared/virginia/exhibit-of-applicable-riders.pdf?la=en&modified=20191101141259>.

⁴⁰ Reisinger, *Guide*, 17.



3. Peer Group Analysis: Under traditional utility regulation, the SCC would set a utility's permitted profit level using "cost of equity analysis," which examines market conditions and risk levels to determine a utility's required rate of return.⁴¹ However, the 2007 VEURA law additionally mandated "peer group analysis," which forbade the SCC from setting returns on equity below an average of the earned returns of utilities in other states in the southeastern United States.⁴² In a recent SCC proceeding, an expert witness for Virginia's Attorney General suggested that Dominion's fair market rate of return should be between 7.60% and 8.80%. The VEURA-mandated peer group analysis, however, requires a return rate of at least 9.09%.⁴³ Peer group analysis detaches the price customers pay for electricity from the cost of providing that service—the touchstone of traditional regulatory price setting—and instead introduces an arbitrary criterion based on the returns earned by utilities operating outside of Virginia's unique environment.

In sum, the 2007 VEURA law essentially ensured Dominion would as a matter of normal process accrue profits far above its authorized rate of return. With this wholesale rewrite of utility law, Dominion was poised to take strong advantage of a weakened regulatory environment, a utility-friendly legislature (into which it continued to pour campaign contributions), and new code provisions that guaranteed high profit levels. Over the next decade of this regulatory framework, the utility monopoly would overcharge customers by billions of dollars, bringing in on average \$234 million more than it was authorized every year.⁴⁴

As the money flowed in from customer overcharges, Dominion faced a new problem: how to justify to legislators and the general public that it deserved to earn way above its authorized limit.

⁴¹ Reisinger, 24.

⁴² Reisinger, 16.

⁴³ Direct testimony by Dr. J. Randall Woolridge representing the Office of the Attorney General, July 12, 2019, <http://www.scc.virginia.gov/docketsearch/DOCS/4hmv01!.PDF>.

⁴⁴ Figures compiled from SCC reports and final orders for the years 2009–2018. Please see Table 1 of this report for individual year totals and sources.

V. THE DOMINION SCAM OVER A DECADE: OVERCHARGE, CREATE A “CRISIS,” REPEAT

In the decade that followed the 2007 VEURA rewrite of utility law, a predictable cycle began to take shape. Dominion Energy, using the regulatory tools enacted in 2007, brought in profit each year far above its authorized rate of return, ranging from \$101 million in 2009 to as much as \$426 million in 2016.⁴⁵ In order to justify the overcharges and prevent rate cuts, Dominion would then artificially manufacture a “crisis” that the utility used to justify keeping the income.

Below, we chronologically examine Dominion’s fabricated excuses for withholding refunds, keeping overcharges, and preventing rate cuts.

In 2011, the SCC officially reviewed Dominion’s rates for the first time under the favorable new 2007 VEURA law. While the SCC found that Dominion had earned a 13.31% return on equity⁴⁶ and had overcharged customers by \$201.8 million in the previous two years, **the newly enacted refund ceiling only allowed the SCC to compel Dominion to refund \$78.3 million.**⁴⁷ This was a milestone in the Dominion Scam. For the first time, Dominion was allowed to keep \$123.5 million of customer overcharges without any stated public justification.

In 2013, the SCC’s 2011 ruling on overcharges set up a potential base rate reduction.⁴⁸ (The law at that time required the SCC to find overcharges in two consecutive biennial reviews before the Commission could cut rates.) However, Dominion successfully lobbied for legislation intended to prevent the SCC from reducing base rates despite consecutive biennial overcharges.⁴⁹ That year, the General Assembly passed a law (HB 2261) that allowed Dominion to immediately recover from ratepayers the full amount of storm recovery efforts and coal plant retirements, instead of expensing these costs over many years, as was traditionally done.⁵⁰ During the following rate case, Dominion was found to have under-earned by \$98.4 million, **but only after the 2013 law allowed Dominion to expense around \$400 million in storm recovery and coal plant costs in a single year.**⁵¹ Without HB 2261, Dominion would have likely recovered those costs over a longer period of time, which places less of a burden on customers, and base rates could have been lowered as it would have been the second consecutive base rate case in which Dominion had overcharged customers. **No refunds were issued to customers as a result.**

In 2014, Dominion once again proposed new expenses so that the SCC could not recommend lowering base rates during the next review.⁵² This time, the vehicle to bury overcharges was SB 459, which allowed Dominion to immediately expense nearly \$320 million in nuclear power plant development costs incurred between 2007 and 2013 for the abandoned North Anna 3 reactor project.⁵³ Assuming the costs were found to be prudently incurred,

⁴⁵ Please see Table 1 of this report for a full list of overcharges per SCC analysis. Note that the findings in the 2016-2019 reports are based on earnings information provided by the utility but have not been audited or verified by the SCC.

⁴⁶ Dominion’s authorized return on equity was 11.9% at the time.

⁴⁷ Final Order for Case PUE-2011-00027.

⁴⁸ Martz, “Dominion Rules.”

⁴⁹ “Bills Lobbied by Dominion Energy, 2013 Regular Session,” Virginia Public Access Project (VPAP), accessed December 23, 2019, <https://www.vpap.org/lobbying/client/120206/bills/?page=1&session=13>.

⁵⁰ Reisinger, *Guide*, 20.

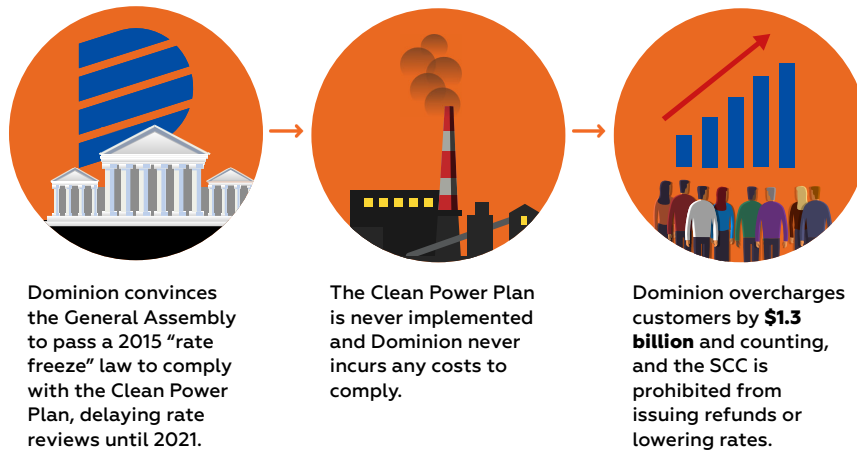
⁵¹ Reisinger, 21.

⁵² “Bills Lobbied by Dominion Energy, 2014 Regular Session,” VPAP, accessed December 23, 2019, <https://www.vpap.org/lobbying/client/120206/bills/?page=2&session=15>.

⁵³ Reisinger, *Guide*, 22.

the SCC would typically permit a utility to recover costs for a failed project like this over many years based on the SCC's discretion. However, SB 459 reduced Dominion's base rate earnings by around \$320 million. Dominion had overcharged customers that year, and would have been required to refund customers at least \$188 million, but that money was never refunded as a result of SB 459.⁵⁴ SCC staff estimated that Dominion overcharged customers by \$226 million in 2013 and \$265 million in 2014.⁵⁵

EXAMPLE OF A "DOMINION CRISIS"



In 2015, Dominion manufactured its largest "crisis" to date, alleging that base rates must be frozen for seven years in order to absorb the costs of compliance with the Obama administration's Clean Power Plan.⁵⁶ The General Assembly agreed and passed so-called "rate freeze" legislation (SB 1349) that suspended the SCC's biennial rate cases until 2021. SB 1349 prohibited the SCC from fully examining Dominion's earnings and from potentially compelling the utility to reduce base rates or issue refunds during this period. However, because President Trump withdrew the Clean Power Plan before it went into effect, Dominion never incurred any costs to comply with the regulatory plan. **To date, Dominion has instead pocketed over \$1.3 billion in overcharges since 2015, without any of this money having been spent to comply with federal environmental regulations per the initial justification for the rate freeze presented to legislators.**⁵⁷

This unprecedented amount of overcharges meant Dominion would have to do more than just manufacture another "crisis" to justify keeping the money—they would once again have to rewrite the law to ensure Virginians did not get their money back.

⁵⁴ Reisinger, *Guide*, 20.

⁵⁵ Final Order for Case PUE-2015-00027, November 23, 2015, 19, <https://www.scc.virginia.gov/docketsearch/DOCS/35m401!.PDF>.

⁵⁶ Peter Maloney, "Virginia legislation would lift Dominion rate freeze if CPP is repealed," *Utility Dive*, January 17, 2017, <https://www.utilitydive.com/news/virginia-legislation-would-lift-dominion-rate-freeze-if-cpp-is-repealed/434042>.

⁵⁷ The SCC found that Dominion over-earned their last approved return on equity by \$278.9 million in 2015, \$426.3 million in 2016, \$365.6 million in 2017, and \$277.3 million in 2018—for a total of \$1.348 billion. See Table 1 for sources.

Table 1. From 2009 to 2018, Dominion overcharged Virginia customers by \$2.3 billion on base rates, but only refunded about \$98 million in overcharges to ratepayers.

	Overcharges	Refunds	Notes	Sources
2009	\$100,900,000	\$39,150,000	Annual average of 2009–2010 over-earnings.	Final Order in 2011 DEV Dominion Base Rate Case, p. 14
2010	\$100,900,000	\$39,150,000		
2011	\$150,800,000	\$0	Dominion was only found to have “under-earned” by \$98.4 million in these two years after \$400 million in accelerated write-offs.	Final Order in 2013 DEV Dominion Base Rate Case, p. 9
2012	\$150,800,000	\$0		
2013	\$226,000,000	\$10,000,000	Total overcharges “excluding extraordinary statutorily directed impairment or write-off charges” as calculated by SCC staff.	Final Order in 2015 DEV Dominion Base Rate Case, p. 28
2014	\$265,000,000	\$10,000,000		Final Order in 2015 DEV Dominion Base Rate Case, p. 28
2015	\$278,900,000	\$0		2016 SCC VEURA Status Report, p. 6
2016	\$426,300,000	\$0		2017 SCC VEURA Status Report, p. 7
2017	\$365,600,000	\$0		2018 SCC VEURA Status Report, p. 7
2018	\$277,300,000	\$0	Refunds were issued in 2018, but were not necessarily related to over-earnings. ⁵⁸	2019 SCC VEURA Status Report, p. 9
Total	\$2,342,500,000	\$98,300,000		
Net	\$2,244,200,000			

⁵⁸ The 2018 Grid Transformation and Security Act did allow Dominion to issue one-time customer credits of \$133 million and \$67 million in 2018 and 2019, respectively, but these amounts were not explicitly tied to base rate over-earnings and may not even result in functionally lower energy bills. For example, the \$67 million customer credit issued in 2019 will count toward the next earnings period, meaning customers will effectively be paying back the cost of these refunds later on.

VI. ESCALATION OF THE SCAM: DOMINION REWRITES THE RULES AGAIN

In 2018, after it was clear that the federal government would not implement the Clean Power Plan, Dominion employed 22 lobbyists to promote the passage of legislation (the Grid Transformation and Security Act) that would allow the monopoly to keep retaining overcharges, regardless of the original justification.⁵⁹ Under this legislation, which represents today's regulatory framework, Dominion can now deny refunds and suppress overcharges in a host of ways, old and new:

1. Refund Ceiling, Peer Group Analysis, and New RACs: As mentioned earlier, these provisions either drive up rates or allow Dominion to refuse to refund overcharges. These provisions will continue into 2021 and beyond without changes in the law.

2. Customer Credit Reinvestment Offsets: Dominion is now permitted to use a portion of overcharges from 2017 through 2020 as “customer credit reinvestment offsets” that can be spent on grid transformation and renewable energy projects rather than be refunded.⁶⁰

3. \$50 Million Reduction Cap: The Grid Transformation and Security Act also introduced a new component to the Dominion Scam, **prohibiting the SCC from lowering Dominion's base rates more than \$50 million in its next review, scheduled for 2021.**⁶¹ Once again, this provision appears to serve no public interest. With billions of dollars in base rate revenues, the prohibition on lowering rates is effectively another “rate freeze” that ensures base rates cannot be fairly determined by the SCC.

4. Skimming off the Top of Reinvestment Projects: The Grid Transformation and Security Act allows Dominion to retain approximately 15–40% of overcharges that would normally be issued back to customers before “reinvesting” the remaining amount into eligible grid modernization and renewable projects (each with its own rate of return) instead of refunding them.⁶² As noted above, the law allows Dominion to “offset” customer refunds by instead applying those overcharges to cover the costs of renewable energy and grid modernization projects, provided that such costs are not already being recovered through riders. Crucially, the law stipulates that this “reinvestment” amount is calculated after the refund ceiling is applied, creating a “skim” for Dominion. For example, in 2017 and 2018, Dominion overcharged customers by an estimated \$642.9 million. Under current law, Dominion would get to keep upwards of \$263.2 million of that amount (based on current rates of return) before “reinvesting” a single penny. Once again, this is pure profit—above and beyond the authorized rate of return—which appears to serve no public interest.

⁵⁹ “Lobbyists Employed, May 2017–April 2018,” VPAP, accessed December 23, 2019, https://www.vpap.org/lobbying/client/120206-dominion-energy/?registration_year=2017-2018.

⁶⁰ Reisinger, *Guide*, 25.

⁶¹ Reisinger, 18.

⁶² Dominion, by law, may retain 0.7% above authorized earnings for the reinvestment credit (around 15% of these over-earnings), but an independent analysis of the law suggests it may also get to keep 30% of the amount above 0.7% as well (allowing Dominion keep roughly 40% of these over-earnings total) under VA Code Section 56-585.1, A 8 (d). See the SCC, *Status Report: Implementation of VEURA (2019)*, Footnote 24, https://www.scc.virginia.gov/comm/reports/2019_veur.pdf.

VII. THE DOMINION SCAM TODAY: WHERE DOES VIRGINIA GO FROM HERE?

Since 2007, Virginia's legal code has evolved to preclude Dominion's regulators at the SCC from compelling the monopoly to issue refunds or lower base rates when they consistently overcharge customers. With over 20 new RACs, unjustified bonuses for new infrastructure projects, and a regulatory body that is unable to lower the base rate to reflect depreciating assets or compel the refunding of customer overcharges, the current regulatory environment for Dominion is unnecessarily bloated, complex, and in many ways, nonsensical. The Dominion Scam rewards the monopoly's executives and shareholders while punishing Dominion's customers. Indeed, while Virginia's electricity bills steadily climbed higher and overcharges mounted, Dominion became the second most profitable utility in the United States.⁶³

Apart from substantial reform in 2020, the Dominion Scam will continue to punish Virginia families with skyrocketing electricity bills for years to come. This "heads I win, tails you lose" approach fundamentally violates the regulatory compact Dominion has with the Commonwealth to serve the public.

The next base rate case to determine Dominion's overcharges is scheduled for 2021, at which point the SCC will review Dominion's earnings from 2017 to 2020—the largest period of time ever examined by the SCC in an earnings review case since the passage of the 2007 VEURA law. That means billions of dollars are at stake, not just in refunds, but in potentially lower rates and Dominion's allowed profit level moving forward.

But as a decade of the Dominion Scam has shown us, current law ensures that—absent legislative intervention—the next base rate case in 2021 will almost certainly result in customer overcharges again going to Dominion and its shareholders instead of being refunded to Virginians. **The refund ceiling, peer group analysis, new RACs, the \$50 million reduction cap, and Dominion's capacity to skim from the top of reinvestment projects** will all either drive up rates or allow Dominion to refuse to refund overcharges.

We recommend that the General Assembly pass new legislation that reforms or repeals the aspects of the law that have enabled the Dominion Scam. These elements of today's utility regulatory framework essentially guarantee Dominion will continue to overcharge customers with limited, if any, benefit to the public. In a monopoly market system, utility regulation will always be a balancing act between the interests of the utility and the public, but as of now, that balance tilts overwhelmingly toward the interests of Dominion Energy and its shareholders. Simply put, the SCC is prohibited by law from setting fair electric rates based on traditional rate-setting principles and best regulatory practices. As a result, Virginians have lost the assurance that the price of their utility bills is at all reflective of the cost to Dominion to generate and distribute the energy customers use.

Wholesale change is necessary to ensure the next decade does not see a continuance of the Dominion Scam. Virginians cannot afford another transfer of billions of their hard-earned dollars to a utility monopoly's shareholders.

⁶³ Ranked in terms of recurring EBITDA (earnings before interest, tax, depreciation, and amortization) margin. Darren Sweeney et al., "Overpowered: In Virginia, Dominion Faces Challenges to its Reign," S&P Global Market Intelligence, December 4, 2019, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/54171542>.

ANNEX: TIMELINE OF THE DOMINION SCAM

Prior to 1999: The State Corporation Commission (SCC) has the sole authority to set “reasonable and just” electric rates based on the utility’s cost to provide service. The SCC also has sole discretion to adjust a utility’s rates if it determines a rate review to be appropriate.

1999-2007: In 1999, the General Assembly passes the *Virginia Electric Utility Restructuring Act* in an attempt to move Virginia to a competitive energy market. The legislation creates a “transition period” through 2007 that freezes base rates and fuel factor costs but that is supposed to allow new entrants into the energy generation marketplace. Due to poor policy design and potential utility financial losses, Dominion Energy lobbies to undo this law. The transition to a fully competitive market never occurs.

2007: The General Assembly passes the *Virginia Electric Utility Regulation Act* to end Virginia’s nascent competitive energy market and reinstate Dominion’s monopoly. Crucially, the enacted legislation does not return Virginia to the pre-1999 regulatory regime that had previously governed customer rates. Instead, the “re-regulation” law includes a series of new provisions that incentivize increased utility spending, fortified with robust guaranteed returns on investment and various ratepayer-funded bonuses for utility shareholders. These provisions include a mandated ceiling on refunds, “peer group analysis” that arbitrarily ties rates to other states, and new add-on fees known as Rate Adjustment Clauses (RACs).

2013: Following years of massive overcharges, the SCC is prepared to lower rates. However, Dominion successfully lobbies for legislation to prevent the SCC from doing so. The General Assembly passes a law (2013 HB 2261) that allows Dominion to immediately recover from ratepayers the full amount of storm recovery efforts and coal plant retirements, instead of expensing these costs over many years, as was traditionally done. As a result, no refunds are issued to customers and rates are not lowered.

2014: Dominion once again proposes legislation so that the SCC cannot lower rates. A new law (2014 SB 459) allows Dominion to immediately expense nearly \$320 million in nuclear power plant development costs incurred between 2007 and 2013 for the abandoned North Anna 3 reactor project. As a result of this law, refunds of at least \$188 million are not issued to customers and rates are again not lowered.

2015: Dominion manufactures its largest “crisis” to date, alleging that base rates must be frozen for seven years in order to absorb the costs of compliance with the Obama Administration’s Clean Power Plan, a plan that will never be implemented. Instead, Dominion will pocket over \$1.3 billion in overcharges, without any of this money being spent to comply with federal environmental regulations.

2018: Dominion lobbyists promote the passage of legislation (the *Grid Transformation and Security Act*) that allows the monopoly to keep retaining overcharges, regardless of the original justification. Under this legislation, Dominion can deny refunds and suppress overcharges in a host of ways, old and new, including a reduction cap that prevents the SCC from lowering rates by more than \$50 million, and a provision that allows Dominion to skim hundreds of millions of dollars off the top of new projects.

In total, Dominion Energy overcharged Virginia customers by at least \$2.3 billion since 2009, ranging from \$101 million in 2009 to as much as \$426 million in 2016.

WHO WE ARE

Clean Virginia is a 501(c)(4) independent advocacy organization with an associated Political Action Committee (Clean Virginia Fund). We promote clean governance, clean energy, and clean competition by fighting monopoly utility corruption in Virginia politics. We are motivated by the core belief that our democracy should serve average Virginians over special interests.

Clean Virginia focuses on the publicly-regulated utility monopolies Dominion Energy Virginia (Dominion) and Appalachian Power Company (APCO) because these two investor-owned utilities have an outsized influence on clean energy and clean governance in Virginia. Dominion and APCO are state-sanctioned monopolies with a captive consumer market consisting of over 80% of Virginians: roughly 67.5% of Virginian ratepayers are in Dominion's service territory, and 14% are in APCO's service territory.⁶⁴ The remaining 18.5% of Virginians purchase energy from non-profit electric cooperatives or municipal-owned electric utilities. These non-profit utilities return excess profits to shareholders and are therefore incapable of matching Dominion and APCO's millions of dollars in financial contributions to political actors and influencers. Virginia's uniquely lax campaign finance, ethics, and regulatory laws enable this lopsided access to lawmakers.

Clean Virginia provides independent, transparent analysis that allows all Virginians — from ratepayers to lawmakers to researchers -- to understand the complex world of utility regulation and how it affects their wallet, their environment, and their community. Clean Virginia's funding is provided by the Chairman of our Board, Michael Bills. For more information on Clean Virginia's financial reports and financial giving, please visit our [Virginia Public Access Project](#) page.

⁶⁴ State Corporation Commission, 2018 Combined Reports, 1.

