

Why I'm breaking up with Dominion Energy

By Mark L. Keam

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Dominion Energy succeeded in passing a controversial bill to reverse a “rate freeze” they placed on customers.

In 2015, Dominion argued that President Obama’s Clean Power Plan would impose significant compliance costs, so it drafted a bill to prohibit the State Corporation Commission (SCC) from reviewing their books in exchange for freezing the base rates it charges customers.

As a member of the House Commerce Committee, I voted against the 2015 bill because I thought the reasoning was nonsensical. Why can’t this giant monopoly comply simultaneously with both federal and state regulations? Why should customers be stuck with an artificially set electric rate when energy prices could go down?

In 2017, President Trump made it clear there would be no Clean Power Plan, which put Dominion in a bind. Dominion couldn’t justify continuing the rate freeze when the reason it cited no longer existed and it held nearly a billion dollars of potential customer refunds.

On the other hand, as Virginia’s most powerful political donor, Dominion couldn’t admit its mistake and simply return to pre-2015 status. So, Dominion launched an all-out lobbying campaign to push for a different result.

First, Dominion rejected a bipartisan bill that would have repealed the 2015 law.

Second, Dominion drafted its own bill and promoted it as protecting customers. Referring to recent hurricanes, Dominion argued that it should spend customer overcharges to strengthen its infrastructure instead of issuing refunds.

Third, to attract Democrats, Dominion offered millions in solar and wind energies and energy efficiencies for low-income, elderly, disabled and military customers. To attract suburban legislators, Dominion offered to put more power lines underground to prevent storm damage.

Finally, Dominion agreed to regulatory reviews again, but on its terms. Instead of returning all of customer overcharges, Dominion offered a one-time refund of \$200 million now and maximum \$50 million a year starting in 2021.

I was skeptical of Dominion's plans. My opposition stems from my experiences as an attorney who has worked on both sides of a regulated utility.

In the 1990s, I worked for the Federal Communications Commission when Congress passed sweeping telecom reform law that transformed analog rotary phones into the ubiquitous digital wireless broadband networks of today.

As an enforcement lawyer before deregulation, my job was to hold monopoly utilities accountable. Once Congress acted, my job shifted to educating the public on the new rules while ensuring that consumers remain protected from bad industry actors.

Later, I went in-house with a communications provider that was transitioning from a giant monopoly to a smaller high-tech company, fighting in a competitive market.

Based on my firsthand knowledge of challenges and opportunities that public utilities face, I came to Richmond with an open mind about working with Dominion.

But what I've observed in nine years made me conclude that our political and regulatory systems are clearly broken.

Virginia originally regulated Dominion as a monopoly, until 1999, when the legislature tried deregulation. That experiment lasted only eight years when competition failed to materialize, and, by 2007, Dominion was under monopoly status again.

Although Dominion agreed to SCC reviews designed to protect customers from overcharges, it consistently sought ways to subvert oversight. Dominion would forum shop with the legislature if it couldn't get the result it wanted from the agency.

Consider this:

In 2013, Dominion successfully passed legislation allowing it to write off \$400 million in storm recovery costs without SCC review;

In 2014, Dominion passed a bill that wrote off another \$300 million spent on a North Anna nuclear reactor project (which was never completed);

In 2015, Dominion proposed rate freeze in anticipation of the illusionary Clean Power Plan.

And, this year, Dominion followed the same modus operandi. But unlike previous efforts, the bill that will become law effectively defangs the SCC's authority to ever again fully regulate Dominion.

The Virginia Constitution established the SCC as an independent, fact-finding and enforcement body separate from legislative and executive branches.

Yet the legislation includes language declaring many of Dominion's spending decisions to be "deemed in the public interest," "deemed reasonable and prudent" or "deemed cost effective." This means that

SCC's job going forward will simply be to rubber stamp Dominion's decisions rather than independently scrutinizing the proposals' merits.

During the House floor debate, I mentioned these facts and proclaimed that dealing with Dominion feels like Charlie Brown facing Lucy and her repeated football prank.

If Dominion continues to bypass the system, I believe it is inappropriate for the company to make political contributions to legislators it lobbies to circumvent the SCC's authority.

A bill was defeated in this session that would have prohibited campaign contributions from Dominion. Until the General Assembly adopts such a prohibition, I will not accept direct political donations from Dominion.

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