UNITED STATES OF AMERICA 114 FERC ¶63,019
FEDERAL ENERGY REGULATORY COMMISSION

Old Dominion Electric Cooperative) Docket Nos. EC05-1-000
New Dominion Energy Cooperative) EC05-1-001

INITIAL DECISION
(Issued February 2, 2006)

APPEARANCES

Adrienne Clair, Esq., Glen L. Ortman, Esq., John Pirko, Esq., for Old Dominion Electric Cooperative and New Dominion Energy Cooperative.

Alan Robbins, Esq., Debra Roby, Esq., Alyssa Schindler, Esq., for Northern Virginia Electric Cooperative.

Kevin Frank, Esq., for the Federal Energy Regulatory Commission.

JUDITH A. DOWD, Presiding Administrative Law Judge.

BACKGROUND

A. Procedural History

1. Old Dominion Electric Cooperative ("Old Dominion" or "ODEC") is a public utility that operates as a not-for-profit electric generation and transmission cooperative, providing generation, transmission, ancillary and other related services to its twelve Member Cooperatives, which serve retail customers in Virginia, Delaware, Maryland and parts of West Virginia. Old Dominion is exempt from federal income taxation under section 501(c) (12) of the Internal Revenue Code of 1986, as amended.

2. New Dominion Energy Cooperative ("New Dominion") is a new entity created as part of a proposed reorganization of Old Dominion. (Old Dominion and New Dominion are sometimes referred to collectively as "Applicants"). All twelve Member Cooperatives will become members of New Dominion by assigning their membership interests in Old Dominion to New Dominion in

exchange for membership interests in New Dominion. New Dominion will become the sole member of Old Dominion.

3. On October 5, 2004, as amended January 7, 2005, Old Dominion and New Dominion filed a joint application under section 203 of the Federal Power Act ("FPA")[1] requesting Federal Energy Regulatory Commission ("FERC" or "the Commission") authorization to assign Old Dominion's existing jurisdictional wholesale power contracts with its twelve electric distribution cooperative members[2] to New Dominion, which would then become the Member Cooperatives' full requirements power supplier. The Member Cooperatives own Old Dominion and are also its customers, purchasing substantially all of their power requirements from Old Dominion. All of Old Dominion's costs and expenses are recovered through charges to its Member Cooperatives. New Dominion will contract to buy, on a take-or-pay basis, all of the output of Old Dominion's electric generation facilities. New Dominion also expects to make other wholesale electric power sales.[3]

4. On March 8, 2005, the Commission reviewed the joint application of Old Dominion and New Dominion to determine whether the proposed change "will be consistent with the public interest" under section 203(a) of the FPA.[4] The Commission reviewed the application under its three-pronged test assessing (a) the effect on competition; (b) the effect on rates; and (c) the effect on regulation.[5] The Commission concluded that the proposed transaction will not adversely affect competition.[6] The Commission also found that the proposed transaction will have no effect on regulation, either by the Commission or by any state regulatory authority.[7]

[1] 16 U.S.C. § 824b (2000).

[2] The Member Cooperatives of Old Dominion include: A&N Electric Cooperative; BARC Electric Cooperative; Community Electric Cooperative; Choptank Electric Cooperative; Delaware Electric Cooperative; Mecklenburg Electric Cooperative; Northern Neck Electric Cooperative; Northern Virginia Electric Cooperative; Prince George Electric Cooperative; Rappahannock Electric Cooperative; Shenandoah Valley Electric Cooperative; and Southside Electric Cooperative.

[3] In a related proceeding, *Old Dominion Electric Cooperative, New Dominion Energy Cooperative*, Docket Nos. ER05-18-002 and ER05-309-002, the Commission granted New Dominion authority to sell to third parties and Member Cooperatives at market-based rates. *Old Dominion Electric Cooperative, New Dominion Energy Cooperative*, 110 FERC ¶ 61,275 (2005). As part of the Settlement Agreement reached in those dockets among all parties except NOVEC, Old Dominion will file to withdraw its market-based rate authority if the partial, contested settlement and the reorganization are approved by the Commission. Settlement Agreement § 3.05.

[4] 16 U.S.C. § 824b (a) (2000).

[5] *Order Setting for Hearing Disposition of Jurisdictional Facilities*, 110 FERC ¶ 61,274 (March 8, 2005) ("Hearing Order").

[6] *Id.* at 62,072.

[7] *Id.* at 62,074.

5. With respect to the third part of review, the Commission found that there is an issue of material fact as to whether the proposed transaction would adversely affect rates. Northern Virginia Electric Cooperative ("NOVEC") stated before the Commission that Old Dominion's credit rating was reduced from A+ to A by one of three rating services on August 17, 2004. NOVEC alleged that the credit rating was reduced in part because of the risk associated with Old Dominion's proposed restructuring. The Commission set two issues for hearing, namely, whether Old Dominion's credit downgrade could raise rates, and, if so, whether the downgrade is due to the proposed transaction.[8]

6. On March 14, 2005, Chief Administrative Law Judge Curtis Wagner designated the undersigned as Presiding Judge in the instant case. The hearing was held on October 18–20, and November 1, 2005. Old Dominion/New Dominion, NOVEC and Trial Staff ("Staff") all timely filed Initial Briefs on December 9, 2005. Staff and NOVEC filed timely Reply Briefs. Old Dominion filed its Reply Brief one day out of time, but its subsequent motion showing good cause for the late filing and no harm to the other parties was granted by the undersigned on December 29, 2005.

B. Governance and Structure of Old Dominion

7. The business affairs of Old Dominion are managed by its president and CEO under the supervision of its board of directors. The Old Dominion Board of Directors ("Board of Directors" or "the Board") includes two representatives from each of the Member Cooperatives. The Board approves budgets, sets policy, instructs management, and approves any modifications to charges under Old Dominion's FERC-approved formula rate. The Board is also responsible for approving long-term power supply plans and capacity additions for the benefit of Old Dominion and its Member Cooperatives.

8. The vast majority of Old Dominion's revenues are generated by sales to its members, and it relies exclusively on its members for equity. Old Dominion has entered into long-term [9] "full requirements" Wholesale Power Contracts ("WPCs") with all of its Member Cooperatives. Rates are set to generate revenues sufficient to recover all costs/expenses and margins. Revenues collected in excess of period costs constitute Old Dominion's net margin. Such retained net margins are referred to as patronage capital. As of December 31, 2004, Old Dominion was capitalized with patronage capital of approximately $260 million and approximately $853 million of long-term debt.

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[8] *Id.* at 62,073.

[9] The WPCs are in effect for 23 more years, until 2028. Tr. at 438; NOVEC's Initial Brief at 18 (hereinafter "NOVEC IB").

9. Old Dominion relies on the public debt markets to provide almost all of its long-term debt. Old Dominion sells bonds to various investors through public issuances. To obtain financing through the public sale of bonds, Old Dominion must request a bond rating from at least one of the three major rating agencies (Standard and Poor's ("S&P"), Moody's and Fitch) to provide potential investors with an independent assessment of Old Dominion's credit quality. Old Dominion's bonds are rated by all three agencies.

10. The weighted average cost of all of Old Dominion's indebtedness in 2004 was 6.43%. Old Dominion recovers all actual debt expenses through its demand rate. Depreciation expense, which is a component in Old Dominion's formula rate and thereby part of its demand rate, generally produces sufficient cash flow to repay Old Dominion's indebtedness.

11. Old Dominion sets rates for its Member Cooperatives through application of its FERC formula rate, which identifies the specific costs, including margin requirements, which Old Dominion can collect through the demand rate and through the energy rate. (The energy rate is the total of a base energy rate and a fuel factor adjustment rate). Cost estimates to be included in the formula rate are revised at least annually.

ISSUE I: Whether Old Dominion's Credit Downgrade Could Affect Rates

A. Positions of the Parties

NOVEC

12. NOVEC contends that (1) investors use credit ratings to assess risk which is reflected in the interest rates they demand; (2) higher risk results in higher interest rates on debt service; and (3) because Old Dominion's credit rating was downgraded by S&P from A+ to A, the rates Old Dominion pays for credit could be increased. Since Old Dominion's cost of debt is recovered through the demand rates it charges its Member Cooperatives, NOVEC contends that all of the Member Cooperatives will be directly affected by the higher rates.

13. NOVEC relies on the testimony of its witness, Tifton Simmons, president of a firm that specializes in financial advisory work in the power and water areas, to establish the importance of credit ratings.[10] NOVEC also contends that Old Dominion embarked on an ultimately unsuccessful campaign to obtain confirmation from credit rating agencies that the proposed reorganization would

[10] NOVEC IB at 7; Ex. NV-1 at 1.

not result in a degradation of Old Dominion's credit ratings.[11] To further underscore the importance of maintaining a high credit rating NOVEC points to the Reorganization Agreement under which all of the Member Cooperatives, including NOVEC, gave their consent to the organizational changes.[12] Section 6.3 of that agreement requires as one of the conditions to the reorganization that no Old Dominion ratings will be lowered "as a result of the consummation of the Reorganization."[13]

14. NOVEC also cites the testimony of Daniel M. Walker, the Senior Vice-President and Chief Financial Officer of Old Dominion, acknowledging that credit ratings "are a key component that investors consider when determining their required return;" that where a credit rating indicates a weakened ability to repay debt, investors and creditors will require a higher rate of return; and that an entity's credit rating has a direct effect on its cost of debt.[14] NOVEC further cites Mr. Walker's testimony that Old Dominion works hard to avoid a credit downgrade, in part, because of the effect it has on the cost of interest Old Dominion must pay and therefore its cost of debt.[15]

15. NOVEC cites the testimony of its Witness Simmons that all else being equal, a credit downgrade will surely result in higher long-term borrowing costs for the future.[16] NOVEC also contends that Old Dominion and Staff witnesses acknowledged that that the downgrade could have a negative impact on Old Dominion's rates.[17] NOVEC quotes the testimony of Old Dominion Witness Neuhedel that "[i]t is conceivable that lower bond ratings at that time [when it next accesses the capital markets] could be a factor in increasing the cost of debt and therefore ultimately increase Old Dominion's cost structure and potentially rates."[18] NOVEC alleges that Staff Witness Marina Kantor admitted that it was possible that the downgrade could result in increased costs on Old Dominion's debt service. NOVEC cites evidence that Witness Kantor was asked whether it was possible that Old Dominion's downgraded credit rating could cause the cost of Old Dominion's debt service to be greater than it might have been had the downgrade not occurred. Witness Kantor was asked to assume the Commission approved the reorganization and shortly thereafter Old Dominion went forward

[11] *Id.* at 8–9.

[12] *Id.* at 9 (citing Ex. NV-3).

[13] Ex. NV-3 at § 6.3.

[14] NOVEC IB at 10 (citing Ex. ODC-1 at 8:12–14; Tr. at 91:1–18, 92:1–9).

[15] *Id.* at 10 (citing Tr. at 91:1–18, 92:1–9).

[16] *Id.* at 11 (citing Ex. NV-1 at 13:27–28, 14:1–2; Ex. NV-2 at 11:7–10).

[17] *Id.* at 11 (citing Tr. at 92, 418).

[18] *Id.* at 12 (quoting Ex. ODC-9 at 13:11–13).

with a project that would require financing a significant portion of estimated costs of upwards of a billion dollars. In response to this lengthy question, Ms. Kantor replied "[y]es, hypothetically, it's possible."[19] NOVEC also relies on the testimony of Mr. Bowman, the Chairman of the Board of Old Dominion, who acknowledged that credit ratings can affect the cost of debt and that they are especially important because of financings that Old Dominion undertakes.[20] NOVEC also cites Mr. Bowman's testimony that he would be highly concerned about the credit rating downgrade if Old Dominion were going into a refinancing or a new financing "on a new project."[21]

16. NOVEC concedes that all but one of Old Dominion's existing debt instruments has fixed interest rates and that the credit rating downgrade has not affected the cost of existing debt.[22] NOVEC maintains, however, that the focus must be on ***future*** debt. NOVEC disputes Old Dominion's claim that it has no "current" plans to issue any long-term debt.[23] NOVEC alleges that Old Dominion's long-term power supply plans and its obligation to either repay or refinance its bullet maturities indicate that such refinancing is likely to occur. NOVEC contends that contrary to their statements, Old Dominion and New Dominion are highly likely to issue new debt in the near future. According to NOVEC, the record indicates a number of plans under serious consideration by the Old Dominion Board that would require it to issue new debt.

17. In support of its argument that Old Dominion intends to issue new debt in the near future, NOVEC relies on the following evidence. Old Dominion's witness, Mr. Walker, testified that the Old Dominion Board recently approved a recommendation to refinance an outstanding loan by the end of 2005.[24] NOVEC also alleges that New Dominion has requested and been granted authorization by FERC to guarantee up to $1.5 billion of Old Dominion's debt. Since Old Dominion currently has only $1.2 billion in exiting debt, NOVEC suggests that this leaves $300 million of new financing by Old Dominion which could be guaranteed by New Dominion.[25]

[19] *Id.* at 13–14 (quoting Tr. at 418:14).

[20] *Id.* at 14 (citing Tr. at 435:12–14, 436:12–16).

[21] *Id.* at 14 (citing Tr. at 465:1–4).

[22] *Id.* at 15 (citing Ex. NV-1 at 9:23; Ex. ODC-1 at 6).

[23] *Id.* at 16 (citing Ex. ODC-1 at 7).

[24] *Id.* at 17 (citing Tr. at 260:5).

[25] *Id.* at 18 (citing Tr. at 371:24).

Old Dominion

18. Old Dominion argues it is uncontested that (1) the only way the credit downgrade could affect rates is indirectly, by increasing the interest rate investors would require to invest in Old Dominion debt; (2) the downgrade had no effect on the interest rates on Old Dominion's existing debt instruments; and (3) if the downgrade has any impact on interest costs, the impact can only be seen in future Old Dominion debt financings. Old Dominion contends that it has no current plans to issue new long-term debt nor any firm plans— with one exception— to refinance any of its existing long-term debt. Old Dominion states that it did not incur any short-term debt at all during 2004 and 2005 and that it has no plans to incur any such debt in the near future that would be affected by the ratings downgrade.[26]

19. Old Dominion argues it is undisputed that the S&P downgrade did not affect the cost of Old Dominion's existing debt.[27] Thus, according to Old Dominion, all of its existing debt issuances, except one, bear interest at a fixed rate to maturity.[28] These interest rates were fixed at the time of issuance and are not affected by a subsequent change in credit rating. The interest rate on Old Dominion's single variable-rate debt issuance resets in accordance with the length of the lending entity's cost of funds and is likewise unaffected by changes in Old Dominion's credit rating.[29] Witness Walker testified that Old Dominion is required under some of its power supply and financial arrangements to post collateral in the event of certain rating changes, but none of these covenants were triggered by the S&P downgrade.[30] Old Dominion points to evidence that NOVEC Witness Simmons acknowledged that the downgrade has not affected the cost of Old Dominion's outstanding debt.[31] Old Dominion concludes that the only issue concerning debt relates to Old Dominion's future long-term financing.

20. Old Dominion alleges that it has no plans to issue any new long-term debt or to engage in any refinancing likely to be affected by the downgrade. Old Dominion responds to NOVEC Witness Simmons' testimony that ODEC might seek to refinance its "bullet" debt that matures in 2011[32] by citing Witness Walker's testimony that Old Dominion "has no current plan regarding what

[26] Old Dominion's Initial Brief at 14 (hereinafter "Old Dominion IB").

[27] *Id.* at 16 (citing Ex. ODC-1 at 18:5–18; Ex. S-1 at 7:6–7; Ex. NV-2 at 7:2–4; Tr. at 388:1–23).

[28] *Id.* at 16 (citing Ex. ODC-1 at 6:16–17, 18:5–6).

[29] *Id.* at 16 (citing Ex. ODC-1 at 6:18–20, 18:8–11).

[30] *Id.* at 16 (citing ODC-1 at 18:13–18).

[31] *Id.* at 16 (citing Ex. NV-2 at 7:2; Tr. at 388:1–23).

[32] Ex. NV-1 at 10:24–25.

actions it will take with regard to this debt."[33] Old Dominion contends that there is no evidence to support an assumption that Old Dominion will necessarily engage in short-term financing that could be affected by the S&P downgrade, since it has not engaged in any short-term borrowing since December 2002. Old Dominion argues that NOVEC Witness Simmons conceded that he is not aware of any plans by Old Dominion to borrow against its short-term credit facilities.[34] Moreover, Old Dominion alleges that each of its lines of credit has been renewed since the downgrade without any change in the pricing.[35]

21. Old Dominion acknowledges that its Board recently approved a single refinancing plan for certain outstanding debt which, by its terms, was scheduled to be refinanced. According to Old Dominion, the approved refinancing is associated with Old Dominion's Clover Power Station.[36] Old Dominion cites the testimony of Mr. Bowman, its Chairman of the Board, that although he understood that the financing was nearly complete, he had little concern that the credit downgrade would have any effect on rates, since the project is already established, built and operating.[37] Moreover, Old Dominion notes that NOVEC has not offered any argument or proof that this transaction has been affected by the S&P downgrade.[38]

22. Old Dominion dismisses NOVEC's attempts to show that it has plans for new financing as mere speculation.[39] With respect to Commission approval to issue $1.5 billion in long-tem debt and $500 million in short-term debt, Old Dominion contends that NOVEC Witness Simmons was in error in labeling this *new* debt. Old Dominion states that the Commission authorizations relate to *existing* debt and guarantees and not new debt. Old Dominion points out that Mr. Simmons later conceded his error in this respect.[40]

23. Old Dominion argues that even if it had plans to seek new long-term financing, the S&P credit downgrade would not necessarily raise interest rates, since all of Old Dominion's credit ratings remain in the high quality "A" category and the other two credit rating agencies have not adjusted Old Dominion's rating

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[33] Old Dominion IB at 17 (citing Ex. ODC-12 at 7:5–6).

[34] *Id.* at 18 (citing Tr. at 374:2–5).

[35] *Id.* at 18 (citing Ex. ODC-12 at 5:12–23).

[36] *Id.* at 18 (citing Tr. at 465:15–16).

[37] *Id.* at 18 (citing Tr. at 466).

[38] Old Dominion's Reply Brief at 7 n.16 (hereinafter "Old Dominion RB").

[39] Old Dominion IB at 19.

[40] *Id.* at 20 n.27 (citing Ex. ODC-13; Tr. at 367:9–372:2).

over the past several years.[41] Old Dominion supports its position with the testimony of its Witness Neuhedel, an investment banker specializing in public power and cooperative utilities and a former employee of Fitch rating service. Mr. Neuhedel testified that when there is a ratings split, "[a] downgrade by the agency that has the highest rating will not garner as much attention as a downgrade by an agency with lower ratings. Likewise, a downgrade in the highest rating is least likely to have an impact on the pricing of the entity's debt."[42] Old Dominion also cited with approval Staff Witness Kantor's testimony that "S&P's downgrade has most likely been observed by investors as a *realignment* of the credit agencies' views, rather than a sign of [Old Dominion's] increased default potential," since "S&P's rating now more closely resembles that of Moody's and Fitch."[43]

24. Old Dominion cites evidence that Banc of America did not change Old Dominion's ratings profile or its peer group after the S&P downgrade. Old Dominion quotes the response of a vice-president of Banc of America to its inquiry as to whether there had been a change in its peer group after the downgrade. The Banc of America official responded in part that "since investors typically will either average the ratings or look to the lowest common denominator anyway, the ratings downgrade was not enough for us to change that ratings profile to warrant us to look at different comparables."[44]

25. Old Dominion also cites the testimony of Mr. Walker in pertinent part, as follows: "The board may never decide to build another project. We're also talking to…Virginia Power about a long-term purchase option which may negate the need for another power plant. So I don't have a clue what's going to happen over the next seven to 10 years."[45]

26. Old Dominion responds to NOVEC's allegation that the request for authorization for New Dominion to guarantee $300 million more in debt for Old Dominion constitutes evidence that Old Dominion intends to undertake additional debt, by pointing out that the current authorization is for *guaranteeing* debt. Old Dominion would be required to seek separate Commission approval when, and if, it intended to issue any new debt under this guarantee, and Old Dominion has not sought such approval.

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[41] Old Dominion IB at 21 (citing Ex. ODC-1 at 8:18–19, 20:20–23).

[42] Ex. ODC-14 at 8:18–9:2.

[43] Old Dominion IB at 21–22 (quoting Ex. S-1 at 9:10–15 (emphasis added)).

[44] *Id.* at 23 (citing Ex. ODC-15 at 1; Ex. ODC-14 at 12:4–13).

[45] *Id.* at 9 (citing Tr. at 263:6–11).

Staff

27. Staff agrees with Old Dominion that there is no record evidence to support NOVEC's contention that the credit downgrade will affect future rates. Staff relies on the testimony of Old Dominion Witness Walker denying that Old Dominion has any current plans to issue debt in the foreseeable future.[46] Staff accepts Old Dominion's representations that the timing of their future debt issuances is unknown, and argues that NOVEC's witness merely assumed that Old Dominion would issue debt in the future, but provided no reliable basis for this assumption.[47]

28. Staff also relies on the testimony of its own witness, Marina Kantor, that "[t]he effects of the downgrade on ODEC's future debt issuances, if any, are currently unknown, and predictions in that regard would be purely speculative."[48] Staff argues that because the future credit rating of Old Dominion is unknown, the effects of a future debt issuance on the rates of Old Dominion will depend largely on the credit ratings of Old Dominion at the time of such issuance. Since the future credit rating of Old Dominion cannot be reasonably predicted, the rate effect of a possible future debt issuance cannot be accurately assessed.[49] Staff contends that no witness offered any testimony quantifying the impact of the credit downgrade on rates because there is no possibility of there being any effect on current rates, and the credit downgrade can only affect Old Dominion's rates if Old Dominion issues new debt. Staff argues that Old Dominion might not issue new debt for some time. Staff adds that only if, and when, Old Dominion issues such future debt can the effects of the credit downgrade possibly be assessed with any certainty.

29. Staff further argues that the only support offered for NOVEC's position that Old Dominion might soon issue new debt or refinance its existing debt is the testimony of its witness, Mr. Simmons, that Old Dominion has been granted conditional approval by FERC to issue $1.5 billion in long-term debt and $500 million in short-term debt.[50] However, Staff points out that Mr. Simmons testified at the hearing that he had no idea when Old Dominon might next issue new debt and that he did not know what the credit rating of Old Dominion would be on the date that it next issues debt.[51] Staff also relies on the testimony of Old Dominion

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[46] Staff's Initial Brief at 7 (citing Tr. at 174:9–25) (hereinafter "Staff IB").

[47] Staff IB at 3.

[48] Staff IB at 7 (citing Ex. S-1 at 4:17–19).

[49] Staff IB at 3.

[50] *Id.* at 7 (citing Ex. NV-1 at 10:2–8).

[51] *Id.* at 7–8 (citing Tr. at 389:4–5, 389:9–11).

Witness Walker that the conditional approval Old Dominion received from FERC to issue debt was obtained merely to allow New Dominion to guarantee *existing* obligations of Old Dominion.[52]

30. Staff cites the Banc of America analyses indicating that the downgrade had no noticeable impact on the price at which investors would trade Old Dominion's existing debt in the secondary market.[53] Staff maintains that the Banc of America report is an estimate of the prices at which Old Dominion's debt would trade "given the trading activity of other bonds with similar credit profiles."[54] Staff contends that since Old Dominion's debt is not typically traded on the secondary market, Banc of America's analysis is the best proxy for the market's perception of Old Dominion's credit risk.[55] Staff notes the distinction between the market's perception of Old Dominion's credit risk and the credit rating agencies' perception of Old Dominion's credit risk and points out that the credit rating agencies' perception cannot directly drive debt costs. Staff also argues that although NOVEC Witness Simmons disputed the relevance of the Banc of America analysis, he did not offer any studies indicating the outstanding debt cost of Old Dominion has increased.

B. Discussion and Ruling

31. I agree with Old Dominion and Staff that the record evidence is insufficient to show that Old Dominion's credit downgrade from A+ to A by one of three rating agencies is likely to affect interest rates charged to Old Dominion/New Dominion. NOVEC repeatedly argues that Old Dominion ***could*** be required to pay more for credit with respect to future financing and that the issue, as articulated by the Commission, is whether the credit downgrade "could" raise rates. I interpret the Commission's hearing order to mean not whether it is possible rates will be raised, since anything is possible in the uncertain future, but whether there is a reasonable probability that the credit downgrade will have that effect. There is no substantial evidence in the record as a whole to support the position that the credit downgrade will probably lead to higher interest rates. Some of my reasons for this conclusion are as follows.

32. It is uncontested that Old Dominion's credit downgrade by S&P on August 17, 2004, had no effect upon its rates to date. The only issue with respect to the

[52] *Id.* at 10 (citing Ex. ODC-12 at 2:1–4:16).

[53] Staff's Reply Brief at 5 (citing Ex. ODC-1 at 18:18–19:8; Ex. ODC-9 at 11:20–12:2; Ex. ODC-14 at 11:15–12:13; Ex. S-1 at 7:14–9:5).

[54] *Id.* at 5 (quoting Ex. ODC-14 at 11:18–20).

[55] *Id.* at 5–6.

downgrade's effect upon Old Dominion's credit rating concerns any future debt issuances. Old Dominion witnesses credibly testified that Old Dominion has no current plans to seek new financing in the bond markets. Staff Witness Marina Kantor accepted the testimony of Old Dominion's witnesses as reasonable. Furthermore, NOVEC failed to produce any substantial evidence showing that the Old Dominion Board has approved any future project that requires long-term financing. NOVEC's evidence merely showed that the Board has a number of possible projects under consideration.

33. NOVEC witness, Mr. Simmons, acknowledged that he had no information regarding when Old Dominion might seek additional new financing. Mr. Simmons simply took the position that Old Dominion would seek new financing in the near future and that such financing would be at higher rates because of the downgrade.

34. While it may be inevitable that a utility such as Old Dominion will need to seek additional long-term financing in the future, I agree with Staff's and Old Dominion's witnesses that without more information, it is too speculative to find that Old Dominion will be required to pay higher interest rates because of the credit downgrade. Obviously it is possible that Old Dominion may be forced to pay higher interest rates for new financing, but it is also possible that the S&P downgrade will have lost its impact by then, or that any number of variables will occur which could offset the lower rating. In any event, I think it is reasonable to believe that Old Dominion's overall credit rating will be considered in the future and of significant importance is the fact that the other two rating services—Fitch and Moody's—have not currently lowered their ratings of Old Dominion. There is also nothing in the record to suggest that they will do so in the near future. Old Dominion's overall credit rating remains in the positive "A" category and until and unless it is lowered again, there is no reason to assume that it will be required to pay more for credit in the future.

35. I conclude that based on the record as a whole that there is no substantial evidence showing that Old Dominion will be required to pay higher interest in the future based on the single factor that one of three rating services downgraded its credit rating from A+ to A.

ISSUE II: Whether Old Dominion's Credit Downgrade Was Due to the Proposed Transaction

A. Position of the Parties

NOVEC

36. NOVEC argues that the plain language of the August 2004 S&P credit report establishes that the credit downgrade was due to the reorganization.[56] NOVEC emphasizes the language in the August 2004 report stating that the credit downgrade was driven by four concerns, including the increase in business risk resulting from the proposed creation of New Dominion.[57] NOVEC states "the fact that the reorganization is one of four bulleted points at the beginning of the report demonstrates that S&P felt the need to 'highlight' this issue for investors."[58] Additionally, NOVEC notes that S&P issued the August 2004 report after discussions between S&P and Old Dominion with respect to the reorganization and less than a month after the Reorganization Agreement was signed.[59]

37. Additionally, NOVEC contests Old Dominion's allegations that documents issued by S&P after the downgrade show that the reorganization did not cause the downgrade.[60] NOVEC specifically addresses three S&P reports: (1) a bulletin issued by S&P on February 2, 2005 ("February Bulletin"); (2) an "Industry Report Card" issued by S&P on February 3, 2005; and (3) a bulletin issued by S&P on May 5, 2005 ("May Bulletin").

38. The February Bulletin states that S&P "does not view the creation of New Dominion as material to ODEC's overall credit quality."[61] Mr. Simmons testified that the February Bulletin deals exclusively with the NOVEC intervention in this proceeding.[62] Therefore, contrary to Old Dominion's contentions, NOVEC maintains the February Bulletin does not clarify or retract from S&P's initial statements in the August 2004 report.[63] In the Industry Report Card, S&P writes "the creation of New Dominion is not expected to adversely affect credit quality."[64] According to NOVEC, this statement refers only to future events and does not deal with the past change to Old Dominion's credit rating.[65]

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[56] NOVEC IB at 19.

[57] *Id.* at 20 (citing Ex. ODC-2 at 1–2).

[58] *Id.* at 21 (citing Tr. at 307:25).

[59] *Id.* at 19; NOVEC's Reply Brief at 16 (hereinafter "NOVEC RB").

[60] *Id.* at 24 (citing Tr. at 226–29).

[61] Ex. ODC-3.

[62] NOVEC IB at 25–26 (citing Tr. at 382:2–4, 382:19–24).

[63] NOVEC RB at 18.

[64] Ex. ODC-4 at 5.

[65] NOVEC IB at 26.

39. NOVEC also contests Old Dominion's reliance on S&P's statement in the May Bulletin that "the absence of New Dominion would not be viewed as materially benefiting credit quality."[66] NOVEC argues that the report must be read in its entirety and that Old Dominion inappropriately attaches significance to a single sentence among many.[67] NOVEC also asserts that the May Bulletin pertains only to future changes to Old Dominion's credit quality and has no bearing on the past downgrade.[68] According to Mr. Simmons, the May Bulletin merely indicates that "the absence of New Dominion alone may not cause [S&P] to change the rate upward."[69]

40. Moreover, Mr. Simmons notes that the later reports refer both to the reorganization and to the increased business risk concerns cited in the August 2004 report, affirming that the reorganization could increase Old Dominion's business risk and affect its credit.[70] Somewhat inconsistently, NOVEC further argues that S&P did not intend the later reports to be follow ups to the August 2004 report, but rather meant them to "reflect [S&P's] point of view at the time the reports were issued."[71] Assuming S&P wanted to clarify the August 2004 report, it could have done so in a single follow-up report, NOVEC contends.[72]

41. NOVEC also cites comments by Moody's and Fitch to show that "S&P was not alone in worrying that granting ODEC greater flexibility to engage in hedging and marketing activities would be perceived by investors as increasing their investment risk."[73] In particular, NOVEC alleges that Moody's stated that it views the reorganization "negatively from a credit perspective"[74] and expressed to Old Dominion hesitation about the reorganization.[75] NOVEC cites Fitch's statements that the reorganization will impose "different forms and levels of risks" and that Old Dominion will need "sufficient levels of liquidity" to mitigate the risk.[76]

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[66] NOVEC IB at 27 (citing Ex. ODC-5 at 1).

[67] *Id.* at 27.

[68] *Id.* at 27.

[69] *Id.* at 28 (citing Tr. at 385:15–18).

[70] *Id.* at 26–27 (citing Ex. ODC-4 at 7).

[71] NOVEC RB at 18.

[72] *Id.* at 18.

[73] NOVEC IB at 28–29 (citing Ex. ODC-7 at 2; Ex. NV-6 at 2; Tr. at 127:19–23; Ex. ODC-8 at 2).

[74] *Id.* at 28 (quoting Ex. ODC-7 at 2).

[75] *Id.* at 28 (citing Ex. NV-6 at 2; Tr. at 127:19–23).

[76] *Id.* at 28–29 (quoting Ex. ODC-8 at 2).

NOVEC interprets Fitch's statements as indicating that, if Old Dominion fails in its hedging and marketing transactions, it will lead to higher rates.[77]

42. Finally, NOVEC disputes Old Dominion's averment that the Commission's Hearing Order limits the instant issue to whether *the assignment of Old Dominion's WPCs to New Dominion* caused the downgrade. Rather, NOVEC maintains that the issue set for hearing is whether the *proposed reorganization* caused the downgrade.[78] According to NOVEC, Old Dominion's interpretation is inconsistent with the Hearing Order, as well as the Joint Stipulation of Contested Issues submitted by the parties.[79]

43. In the event the Commission accepts Old Dominion's interpretation of the instant issue, NOVEC maintains that the transaction in question nonetheless encompasses the WPC assignment, the creation of New Dominion, and the authority to engage in hedging and other transactions.[80] According to NOVEC, section 203 of the FPA focuses on protecting customers from adverse rate impacts "associated with" proposed section 203 transactions.[81] NOVEC concludes that since the proposed reorganization and the increased flexibility to engage in financial and hedging transactions are "associated with" the assignment of the WPCs, the Commission must consider those events in evaluating the instant issue.[82]

Old Dominion

44. Old Dominion argues that the second issue, *i.e.* whether the credit downgrade was due to the proposed transaction, is dependent on the first issue, *i.e.* whether the credit downgrade could raise rates.[83] According to Old Dominion, absent a finding that the credit downgrade could raise Old Dominion's rates, the Commission need not even address the issue concerning the cause of the downgrade.[84]

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[77] *Id.* at 29.

[78] NOVEC RB at 2–4.

[79] *Id.* at 2–3 (citing *Order Setting for Hearing Disposition of Jurisdictional Facilities*, 110 FERC ¶ 61,274 at 62,073 (March 8, 2005); Joint Stipulation of Issues at 2).

[80] *Id.* at 3–4.

[81] *Id.* at 3–4 (citing 16 U.S.C. § 824b (2000)).

[82] *Id.* at 4.

[83] Old Dominion IB at 25.

[84] *Id.* at 25–26.

45. Alternatively, regardless of whether the Commission finds that the credit downgrade could raise rates, Old Dominion argues that the credit downgrade was not due to the proposed transaction.[85] In support of its position, Old Dominion first notes that S&P did not announce the credit downgrade until nearly five months after Old Dominion publicly announced the reorganization.[86] In Old Dominion's view, if the reorganization had prompted the credit rating change, S&P would have notified investors earlier.[87]

46. Moreover, Old Dominion maintains that several factors influenced S&P's action and there was no single cause.[88] Old Dominion points to that portion of the August 2004 report, which states that "[the downgrade] does not result from any one development, but rather reflects an amalgam of risks."[89] According to Old Dominion, the August 2004 report outlines a number of rationales contributing to the downgrade and only mentions the creation of Old Dominion as one of many factors.[90] Although NOVEC Witness Simmons stresses the fact that S&P lists the reorganization as one of four bulleted items, Old Dominion Witness Neuhedel states that "there is no mathematical correlation between the number of factors listed in a credit agency's report and the reason for the ratings action taken."[91] Old Dominion argues that the bulleted list is not exclusive, and more than the listed four reasons account for the downgrade.[92]

47. Old Dominion emphasizes the purposes and structure of credit reports to show that it is improper to place much reliance on the bulleted list contained within the August 2004 report.[93] Mr. Neuhedel explains that credit agencies highlight certain factors within a report for various reasons.[94] For example, a credit agency may want to expose certain facts to prevent "headline risk"—the risk that investors may discover pertinent information from outside sources such as newspapers and conclude that the credit agency overlooked important information.[95] Therefore, asserts Old Dominion, a highlighted or bulleted list of

[85] *Id.* at 26.

[86] *Id.* at 26–27 (citing Ex. ODC-1 at 11:21–12:3, 13:11–15; Ex. ODC-2).

[87] *Id.* at 26–27.

[88] *Id.* at 27.

[89] *Id.* at 27 (citing Ex. ODC-2 at 1).

[90] *Id.* at 27–28 (citing Ex. ODC-2 at 2).

[91] *Id.* at 28 (citing Ex. ODC-14 at 3:9–10).

[92] *Id.* at 28–29.

[93] *Id.* at 29–31.

[94] *Id.* at 30–31 (citing Ex. ODC-9 at 8:14–19, 8:21–9:2; Tr. at 302:9–24).

[95] *Id.* at 30–31 (citing Tr. at 302:13–303:10).

factors in a credit report should not serve as a summary of the credit agency's overall opinion.[96]

48. Rather, Old Dominion asserts that the three S&P reports that followed the August 2004 report (referred to as, "follow-up reports") show that S&P did not consider the creation of New Dominion as material to its decision to downgrade Old Dominion's credit rating.[97] According to Old Dominion, S&P's statements in the follow-up reports conclusively establish that the ratings downgrade was not due to the proposed transaction.[98]

49. Moreover, Old Dominion contests NOVEC's argument that the follow-up reports refer only to future changes in credit quality and do not reflect upon the August 2004 downgrade.[99] Old Dominion maintains that S&P issued the follow-up reports in response to NOVEC's intervention in the instant proceeding.[100] In Old Dominion's view, S&P thought NOVEC was misinterpreting the August 2004 report and therefore issued the follow-up reports "to clarify the record."[101] Although NOVEC discounts the value of the follow-up reports, Mr. Neuhedel testified that the later reports have "tremendous relevance."[102] According to Mr. Neuhedel, credit rating agencies commonly issue follow-up reports to ensure that investors properly interpret and understand earlier reports.[103]

50. Old Dominion also disputes NOVEC's reliance on notes of meetings that Old Dominion held with the various credit ratings agencies prior to its decision to reorganize. Although Old Dominion concedes that "[a]voiding adverse effects on credit ratings and negative responses from ratings agencies has been a paramount concern to Old Dominion throughout this process," Old Dominion maintains that NOVEC has established no connection between the meeting notes and the issues in the instant docket.[104]

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[96] *Id.* at 30–31.

[97] *Id.* at 32 (citing Ex. ODC-3 at 1; Ex. ODC-4 at 5; Ex. ODC-5 at 1).

[98] Old Dominion RB at 21.

[99] Old Dominion IB at 32–33 (citing Tr. at 312:2–317:8, 324:1–325:4); Old Dominion RB at 21–22. Old Dominion points out that NOVEC concedes it has no explanation for the statement in the February Bulletin that the creation of New Dominion is not material to Old Dominion's credit quality. Old Dominion RB at 22.

[100] Old Dominion IB at 32–33. Old Dominion notes that NOVEC filed its intervention on January 14, 2005, shortly before the February Bulletin. Old Dominion RB at 23.

[101] Old Dominion IB at 33 (citing Tr. at 231:7–12).

[102] *Id.* at 33 (quoting Ex. ODC-14 at 5:1–2).

[103] *Id.* at 33–34 (citing Ex. ODC-14 at 4:10–14).

[104] Old Dominion RB at 26.

51. Old Dominion also proffers argument concerning the proper scope of the instant issue. Old Dominion asserts that: (1) in order for the Commission to find that the credit downgrade was "due to" the proposed transaction, NOVEC must establish that the downgrade resulted directly from the proposed transaction;[105] and (2) the "proposed transaction" at issue is the assignment of the WPCs and not the reorganization as a whole.[106]

Staff

52. Staff concurs with Old Dominion that the downgrade was not due to the proposed reorganization. Staff alleges that: (1) S&P does not view the reorganization as material to Old Dominion's credit profile; (2) the reorganization is not the type of occurrence that normally triggers a credit downgrade; and (3) several factors contributed to the downgrade, with no single factor being paramount.

53. First, Staff argues that the evidence shows that S&P does not view the reorganization as material to Old Dominion's credit profile.[107] In support, Staff cites S&P's follow-up reports.[108] Also according to Staff, S&P waited so long after the announcement of the reorganization to downgrade Old Dominion's credit rating that the reorganization could not logically have caused the downgrade.[109]

54. Staff further argues that the proposed reorganization is not the type of occurrence that normally triggers a credit downgrade.[110] Staff references Old Dominion Witness Neuhedel's testimony, which explains that credit ratings reflect various factors relevant to the credit quality of debt issuers.[111] According to Mr. Neuhedel, "it is highly unusual for one specific occurrence to be the sole trigger of a rating change" and Old Dominion's reorganization is not a likely cause for a

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[105] Old Dominion IB at 35–36. Specifically, Old Dominion proposes a "but for" test. Old Dominion RB at 17–18.

[106] Old Dominion IB at 36–38. Old Dominion explains that the Commission's Hearing Order describes the "proposed transaction" as follows: "The Member Cooperatives' existing [WPCs] with Old Dominion will be assigned to New Dominion.... New Dominion will then become the full requirements wholesale power supplier for each Member Cooperative." *Id.* at 37 (quoting 110 FERC ¶ 61,274 at 62,071).

[107] Staff IB at 11 (citing Ex. ODC-1 at 16:1–17:20; Ex. ODC-3; Ex. ODC-4; Ex. ODC-5).

[108] *Id.* at 11 (citing Ex. ODC-3; Ex. ODC-4; Ex. ODC-5).

[109] *Id.* at 11. Staff notes that S&P's announcement of the downgrade came five months after Old Dominion publicly announced the reorganization. *Id.* at 11 (citing Ex. ODC-1 at 11:21–12:3, 13:11–19).

[110] *Id.* at 11–12.

[111] *Id.* at 11 (citing Ex. ODC-9 at 4:14–15).

credit downgrade.[112] Staff Witness Kantor agrees that credit ratings reflect various factors and opines that Old Dominion's credit downgrade resulted from the company's overall risk profile.[113]

55. Staff also argues that several factors contributed to the downgrade, and no one factor was paramount.[114] Staff points out that the August 2004 report states, *inter alia*, that the downgrade "reflects an amalgam of risks."[115] In his testimony, Mr. Neuhedel explains that the bulleted section of the August 2004 report, in which S&P mentions the reorganization, is not necessarily a summary of the factors supporting the credit rating decision.[116] Mr. Neuhedel maintains that the bulleted items merely "inform investors of important facts about the company."[117] Accordingly, Staff asserts that "[i]t is not possible to conclude from the August 2004 report that the proposed reorganization of Old Dominion caused the credit downgrade."[118]

56. In Staff's view, S&P made the decision to downgrade Old Dominion's credit rating regardless of the reorganization.[119] Staff emphasizes Mr. Neuhedel's testimony that failure to complete the reorganization would not impact Old Dominion's credit rating.[120] Additionally, Mr. Walker notes that the follow-up reports state that the absence of New Dominion would not improve Old Dominion's credit rating.[121]

57. Although NOVEC downplays the relevance of the follow-up reports, Staff argues that "the later reports have more probative value than the generalized statement in the August 2004 report."[122] Staff explains that the August 2004 report merely discusses the impact of the reorganization on Old Dominion's risk profile.[123] The later reports, by contrast, focus specifically on the effect of the

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[112] Ex. ODC-9 at 6:8–13.

[113] Staff IB at 12 (citing Ex. S-1 at 5:3–10, 6:11–7:4).

[114] *Id.* at 12–14.

[115] Staff RB at 11 (quoting Ex. ODC-2 at 1).

[116] Staff IB at 12 (citing Ex. ODC-9 at 8:8–9:2).

[117] *Id.* at 12.

[118] Staff RB at 12.

[119] Staff IB at 14.

[120] *Id.* at 14.

[121] *Id.* at 14 (citing Ex. ODC-3; Ex. ODC-4; Ex. ODC-5).

[122] Staff RB at 13.

[123] *Id.* at 13 (citing Ex. ODC-2 at 2).

reorganization on Old Dominion's credit.[124] Therefore, Staff asserts that the later reports bear more directly on the particular issues in this proceeding.[125]

58. Staff also contests NOVEC's suggestion that S&P warned Old Dominion that the reorganization would lower its credit rating.[126] Staff asserts the discussions between Old Dominion and S&P were of a more general nature and did not convey any warning of a downgrade related to the restructuring. Staff argues that the discussions are irrelevant to the issues in this proceeding because NOVEC has failed to tie them to S&P's downgrade decision.[127]

59. Finally, Staff disputes NOVEC's contention that other credit agencies shared S&P's concerns about Old Dominion's reorganization.[128] To the contrary, Staff points out that no other credit rating agency downgraded Old Dominion's credit rating after the announcement of the reorganization.[129] In Staff's view, the actions of other credit rating agencies confirm that the reorganization did not cause the downgrade.[130]

B. Discussion and Ruling

60. At the outset, I address Old Dominion's arguments regarding the scope of this issue. The Commission set for hearing the issue of "whether the downgrade is due to the proposed transaction."[131] I concur with Old Dominion that in using the phrase "due to" the Commission requires proof of a clear and direct connection between the downgrade and the reorganization. The phrase "due to" suggests that NOVEC must show more than that reorganization is one among several factors informing S&P's downgrade decision.

61. However, I disagree with Old Dominion that the phrase "proposed transaction" refers only to the proposed assignment of the WPCs rather than the proposed reorganization as a whole. The instant proceeding began with NOVEC's protest of Old Dominion's section 203 filing. Specifically, NOVEC alleged that S&P downgraded Old Dominion's credit rating in part due to the risk associated with the overall restructuring of Old Dominion. Because the pertinent transaction

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[124] *Id.* at 13 (citing Ex. ODC-4 at 5; Ex. ODC-5).

[125] *Id.* at 13.

[126] *Id.* at 13–14.

[127] *Id.* at 14.

[128] *Id.* at 14–15.

[129] Staff IB at 12 (citing S-1 at 10:15–17, 13:1–2).

[130] Staff RB at 14–15.

[131] *Order Setting for Hearing Disposition of Jurisdictional Facilities*, 110 FERC ¶ 61,274 (March 8, 2005).

in NOVEC's protest is the reorganization, it is appropriate to focus on that transaction when determining whether the downgrade was due to the "proposed transaction." In any event, the proposed assignment of WPCs from Old Dominion to New Dominion necessarily implicates the broader reorganization.

62. With the proper scope of inquiry in mind, I find NOVEC has not demonstrated that the credit downgrade was due to the reorganization. NOVEC has shown only that the August 2004 report announcing the credit downgrade listed the reorganization as one of multiple factors that S&P considered in reaching its decision. Indeed, the report expressly states that the downgrade "does not result from any one development, but rather reflects an amalgam of risks."[132]

63. Although NOVEC correctly notes that S&P listed the reorganization as one of four bulleted factors "driving" the downgrade, Old Dominion Witness Neuhedel testified, based on his experience as an investment banker, that the number of factors listed in a credit report does not correlate to the strength of the reasons for the ratings action. Furthermore, Old Dominion correctly points out that the August 2004 report references more than four reasons for the downgrade, and NOVEC adduces no evidence to show that the downgrade is more important than any other factor. NOVEC surmises that S&P included the downgrade on the bulleted list to highlight it for investors. However, Old Dominion provides uncontested expert testimony from Mr. Neuhedel that credit agencies often highlight items in credit reports for other reasons, such as avoiding headline risk. Moreover, Mr. Neuhedel further testified that it is unusual for one occurrence alone to trigger a rating change, and the reorganization is not the type of occurrence that would trigger a downgrade. NOVEC produces no evidence to refute Mr. Neuhedel's testimony. Having shown only that the reorganization was one of several factors leading to the downgrade, NOVEC has failed to establish a cause-and-effect relationship sufficient to find that the downgrade was due to the proposed transaction.

64. The follow-up reports issued by S&P confirm that the downgrade was not due to the proposed reorganization. These later reports unambiguously state that S&P did not view the creation of New Dominion as material to Old Dominion's credit quality and did not expect the new entity to impact Old Dominion's credit rating.[133] Mr. Neuhedel testified that credit agencies often issue follow-up reports to ensure that investors interpret earlier reports properly. NOVEC offers no

[132] Ex. ODC-2 at 1.

[133] I also agree with Staff that the follow-up reports, which focus on the effect of the reorganization on Old Dominion's credit, carry more weight than the August 2004 report, which deals only with the reorganization's impact on Old Dominion's risk profile in general.

contrary evidence and provides no support for its interpretation of the reports as forward-looking.

65. Moreover, the five-month delay between the time when Old Dominion publicly announced its plans to reorganize and the time when S&P announced the downgrade provides further reason to find that the reorganization did not cause the downgrade. Although NOVEC notes that the reorganization plan was not finalized until about one month before the downgrade occurred, NOVEC provides no reason why the finalization date is relevant. The fact remains that S&P took no action with respect to Old Dominion's credit rating until at least five months after Old Dominion's plans to reorganize became public.[134] Such a long delay suggests that S&P did not view the reorganization to be of paramount importance to its downgrade decision.

66. Additionally, NOVEC's reliance on informal notes of various meetings between S&P and Old Dominion staff is misplaced. NOVEC contends the notes supply proof that S&P warned Old Dominion of the impending downgrade. However, NOVEC establishes no connection between the notes and the issue of whether the downgrade was due to the proposed transaction. The notes show at most that S&P expressed broad concerns that the reorganization could expose Old Dominion to more risk.

67. NOVEC also does not meaningfully connect the isolated comments by Moody's and Fitch's analysts it cites to the issues in the instant proceeding. Moreover, Moody's and Fitch ultimately decided not to change Old Dominion's credit rating. The 2005 reports by Fitch and Moody's read as a whole show a number of positive and negative factors unrelated to the proposed reorganization, including the current dispute between Old Dominion and NOVEC over the terms of the WPCs.[135]

68. I conclude based on the record as a whole that there is no substantial evidence showing that the credit downgrade was due to the proposed reorganization. In any event, as Old Dominion points out, the Commission need not even address the causation issue if it finds in favor of Old Dominion on the first issue.

C. ORDER

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[134] Mr. Walker testified that Old Dominion publicly announced the proposed reorganization on March 22, 2004. Ex. ODC-1 at 11–12.

[135] *See* Ex. ODC-7; Ex. ODC-8.

69. It is ordered that subject to review on exceptions or on the Commission's own motion, as provided in the Commission's Rules of Practice and Procedure, within thirty (30) days of the issuance of the Final Order of the Commission adopting the Initial Decision in this proceeding, all parties shall take the appropriate action to implement the rulings in this decision.

Judith A. Dowd
Presiding Administrative Law Judge