

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2017-00060

For approval of 100 percent renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia

FINAL ORDER

On May 9, 2017, Virginia Electric and Power Company ("Dominion" or "Company") filed an application ("Application") pursuant to §§ 56-577 A 5 ("Section A 5") and 56-234 of the Code of Virginia ("Code") with the State Corporation Commission ("Commission") for approval of six renewable energy tariffs whereby existing or new non-residential customers with peak measured demands of 1,000 kilowatts or greater can voluntarily elect to purchase 100% of their energy needs from renewable energy resources, collectively designated the CRG Rate Schedules.¹ Dominion requests that the Commission approve the CRG Rate Schedules as 100% renewable energy tariffs under Section A 5.²

The Company states that it would develop a portfolio of renewable energy resources ("CRG Portfolio") exclusively to serve CRG Rate Schedule customers based on the participating customers' individual load profiles and preferences.³ To develop the CRG Portfolio, the Company intends: (i) to solicit the wholesale renewable energy market within the PJM Interconnection, L.L.C. ("PJM"), regional transmission organization footprint and negotiate and

¹ The CRG Rate Schedules consist of Rate Schedule CRG – GS-1, Rate Schedule CRG – GS-2, Rate Schedule CRG – GS-3, Rate Schedule CRG – GS-4, Rate Schedule CRG – 27, and Rate Schedule CRG – 28.

² Ex. 2 (Application) at 14.

³ *Id.* at 4.

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execute power purchase agreements ("PPAs") for existing or new facilities; and (ii) to develop new Company-owned renewable energy resources exclusively to serve the needs of CRG Rate Schedule customers.⁴

In the Application, the Company states that it would negotiate and execute a separate requirements contract with each participating customer that would establish an all-inclusive tariff rate for 100% renewable retail electric supply service and would be in lieu of the customer's generation billing under its standard tariff.⁵ The requirements contract would have a minimum term of five years.⁶ To the extent that the CRG Portfolio includes PPAs, the Company proposes to base its all-inclusive tariff rate on the purchased power costs plus a margin equal to the Company's most recently approved return on equity ("ROE") and, to the extent that the CRG Portfolio includes Company-owned renewable resources, a return on investment would also be tied to the Company's most recently approved ROE.⁷ CRG Rate Schedule customers would continue to be subject to distribution service charges and transmission demand and energy charges, unless otherwise exempt, but would not be subject to the Company's existing fuel or generation riders.⁸ The Company states that the cost of any necessary PPAs or dedicated Company-owned facilities and associated administrative expenses would be directly assigned to customers taking service under the applicable CRG Rate Schedule such that no other Virginia

⁴ *Id.* at 5.

⁵ *Id.* at 6, 10.

⁶ *Id.* at 10. If a customer elects to enroll in a Rate Schedule CRG, the customer would be subject to a non-refundable application fee of \$2,000, which is intended to defray the Company's costs related to enrollment and the solicitation process. *Id.* at 12.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

jurisdictional customers nor customers in the Company's other jurisdictions will bear any responsibility for costs incurred to provide service under the CRG Rate Schedules.⁹

Following approval of the CRG Rate Schedules, and upon notification of customer interest to receive service under a CRG Rate Schedule through the enrollment process, the Company states that it plans to conduct solicitation processes involving the wholesale renewable generation market for existing or new construction renewable resources which have the ability to service the customer's hourly energy load profile 24 hours a day, seven days a week, 365 days a year, as well as the capacity requirements of the customer. The Company states it would require the installation of metering equipment and communication technology it deems necessary to properly measure the customer's demand and energy usage at each service location used by the customer to meet the demand threshold, the cost of which would be borne by the customer.¹⁰

On June 1, 2017, the Commission issued an Order for Notice and Hearing that, among other things, docketed this matter; established a schedule for the filing of notices of participation and prefiled testimony; scheduled a hearing; and assigned a Hearing Examiner to conduct further proceedings in this matter and file a final report.

The following parties filed notices of participation in this proceeding: Direct Energy Services, LLC ("Direct Energy"); Wal-Mart Stores, LP and Sam's East, Inc. (collectively, "Walmart"); Appalachian Power Company; Northern Virginia Electric Cooperative ("NOVEC"); Appalachian Voices ("Environmental Respondents"); the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); Secure Futures, LLC; Advanced Energy Economy, Inc. ("AEE"); Mid-Atlantic Renewable Energy Coalition ("MAREC"); National

⁹ *Id.* at 8.

¹⁰ *Id.* at 10-11.

Energy Marketers Association ("NEMA"); and Collegiate Clean Energy, LLC. AEE, Direct Energy, MAREC, Walmart, Commission Staff ("Staff") and the Company pre-filed testimony in this matter.

On October 18, 2017, the Hearing Examiner convened a hearing solely for the receipt of public witness testimony. No public witnesses appeared.¹¹ Beginning on December 4, 2017, the Hearing Examiner reconvened the hearing for the receipt of evidence on Dominion's Application from Staff, respondents, and the Company.¹² On March 2, 2018, the Hearing Examiner issued her Report, which recommended denial of the Application. The following parties filed comments on the Hearing Examiner's Report: Dominion; Staff; Consumer Counsel; Environmental Respondents; AEE; Direct Energy; NEMA; MAREC; and Walmart.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Code § 56-577 A 5 ("Section A 5") states in full:

5. After the expiration or termination of capped rates, individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:
 - a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory in which such a customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy; and

¹¹ Tr. 4. In addition, the Commission received one set of public comments filed by the Retail Energy Supply Association. Three comment letters received by the Company were also admitted as Exhibit 5.

¹² NOVEC did not participate at the hearing.

- b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the exclusive service territory in which the customer is located to offer electric energy provided 100 percent from renewable energy, for the duration of such agreement.

Next, Code § 56-576 defines "renewable energy" as follows:

energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

Section A 5 allows a customer to purchase "electric energy provided 100 percent from renewable energy" from a competitive service provider ("CSP"), if that customer's utility does not offer "an *approved* tariff for electric energy provided 100 percent from renewable energy" (emphasis added). The Commission has previously noted that "[a]lthough this statute requires the tariff to be 'approved' by the Commission, it does not include an express standard of review for the Commission's approval, nor does it include any express limitations on what the Commission may determine is relevant to such review."¹³ Accordingly, the Commission found (and continues to find) that in determining whether to approve such a tariff, the Commission has the authority to consider whether the proposed tariff is just and reasonable.¹⁴

¹³ *Petition of Appalachian Power Company, For approval of a 100% renewable energy rider*, Case No. PUE-2016-00051, Doc. Con. Cen. No. 170910268, Final Order at 5 (Sept. 13, 2017).

¹⁴ *Id.* The Commission also noted that it "may further have the duty to consider whether the proposed rate is just and reasonable pursuant to Code § 56-234 A: 'It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same.'" *Id.* at 5 n.5. Moreover, Code § 56-234 B states that "[i]t shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions."

The record in this case includes considerable discussion and debate surrounding the fact that if a customer's incumbent utility offers a Commission-approved 100% renewable energy tariff, then that customer can no longer purchase 100% renewable energy from a CSP under Section A 5 (beyond the term of any existing power purchase agreements). This outcome, however, represents a policy decision by the General Assembly and, accordingly, occurs by operation of the statute. There is no statutory basis for the Commission to disfavor incumbent utility tariffs proposed under Section A 5 or, similarly, to apply an unwritten heightened standard before approving a proposed 100% renewable energy tariff. Rather, the Commission will evaluate the facts in this proceeding, as it would any tariff request, to reach a finding as to whether the proposed rate schedules are just and reasonable.

The proposed tariffs include formulas and projections. The use of formulas or projections does not in and of itself mandate rejection of a proposed tariff. Rather, the Commission must evaluate the specific items that comprise the proposed tariffs, which we have done. In this regard, the Company proposes that each customer's rate be derived from the following formula:¹⁵

$$\text{Rate} = [(A - B + C + F) / Q_{\text{load}}] * (1+r)$$

Where:

$$A = \text{Cost of Renewable Generation Procured} = \sum_i [P_{\text{ppa}} * Q_{\text{ppa}}]_i$$

$$B = \text{Credit for Generation Procured} = \sum_i [P_{\text{node}} * Q_{\text{ppa}}]_i + PQ_{\text{reccs}}$$

$$C = \text{Cost of Load in PJM} = P_{\text{dom}} * Q_{\text{load}}$$

$$F = \text{PJM Admin Fees} = \text{Load Ratio Share of PJM Administrative and Ancillary Charges}$$

$$P_{\text{ppa}} = \text{Price of PPA for renewable generation including energy, capacity, and Renewable Energy Credits ("RECs")}$$

¹⁵ Ex. 30 (Gaskill rebuttal) at 3-5.

P_{node} = Forecasted price of energy and capacity at generator node

PQ_{recs} = Forecasted price and quantity of excess REC sales

P_{dom} = Forecasted price of energy and capacity at Dom Zone

Q_{ppa} = Quantity of renewable generation procured through PPA

Q_{load} = Forecasted quantity of customer load

r = Operating margin equal to Company's most recently-approved ROE

i = Number of PPAs in renewable generation portfolio for customer

Based on the record in this proceeding, the Commission finds that Dominion has not established that its proposed tariffs will result in just and reasonable rates. The Commission has concluded, in exercising its discretion and considering the operation of the proposed rate schedules, that there is simply too much uncertainty and subjectivity in the tariffs for the Commission to find that they will result in just and reasonable rates. The unknown variables and utility discretion include: energy cost; forecasted energy prices at the generator node; forecasted capacity prices at the generator node; forecasted REC prices; forecasted REC sales; forecasted energy prices at DOM Zone; forecasted capacity prices at DOM Zone; quantity and negotiated price of generation procured through each PPA; number of PPAs; forecasted customer load; customer administrative fees; operating margin; and negotiated contract term. Furthermore, Dominion was unable to cite any Commission precedent approving a formula rate combining this amount of uncertainty and utility discretion.¹⁶

The Commission also finds the Company has not established that it is reasonable to apply its authorized ROE to purchased power costs. To the extent the Company projected that it would incur additional risks under these tariffs for which it is not already compensated, then any proposed return should be based thereon. Similarly, to the extent the Company projected that it

¹⁶ See, e.g., Staff Post-hearing Brief at 3-4; 23-26; Ex. 17; Ex. 27; Ex. 28.

would incur specific incremental costs to administer these tariffs for which it is not already compensated, then any proposed administrative fees should likewise be based thereon.¹⁷

We recognize that the CRG Rate Schedules allow the utility to design a unique renewable energy product for each customer based on the customer's preferences for specific types of renewable resources.¹⁸ We note that parties opposing Dominion's request in this case likewise argued that customers should have such an option.¹⁹ While understandable, this desire cannot supplant the Commission's determination of whether the tariffed rates would be just and reasonable for all customers. The General Assembly has already defined "renewable energy" in Code § 56-576 as it applies to this case, and there is no statutory requirement for the utility's approved tariff to offer any undefined subset of that definition. The Commission must find that the energy provided by the proposed tariffs meets the General Assembly's definition of renewable energy, not an individual customer's preferred definition of such. The requirements of Section A 5, however, do not preclude a utility from proposing – under separate statutes – specific renewable options designed for specific customers.²⁰

The Commission also rejects Dominion's suggestion that if the proposed tariffs are denied, then there is no circumstance under which a utility tariff for 100% renewable energy

¹⁷ The Commission also finds that the specific CRG Rate Schedules, as proposed, are not "necessary in order to acquire information which is or may be in furtherance of the public interest" under Code § 56-234 B, due to the same concerns supporting our finding that such tariffs are not just and reasonable.

¹⁸ See, e.g., Dominion's Comments on the Hearing Examiner's Report at 19; Ex. 19 (Morgan rebuttal) at 4.

¹⁹ See, e.g., Ex. 7 (Marquis) at 10, 22-26; Ex. 11 (Hanger) at 4; Ex. 12 (Thumma) at 6.

²⁰ For example, the Commission recently approved the Company's application for approval of Schedule RF, a voluntary companion rate schedule involving the purchase of environmental attributes of new renewable generation facilities, which was proposed with the provisional commitment of a subsidiary of Facebook, Inc., to participate in the offering. See *Application of Virginia Electric and Power Company, For approval to establish experimental companion tariff, designated Schedule RF, pursuant to § 56-234 B of the Code of Virginia*, Case No. PUR-2017-00137, Doc. Con. Cen. No. 180340069, Order Approving Tariff (Mar. 26, 2018).

could ever be approved. To the contrary (and not by way of limitation), the Commission's findings herein do not preclude a utility from proposing a rate based on a reasonably estimated cost of providing 100% renewable energy, and demonstrating that the resulting rates, terms, and conditions are just and reasonable. The General Assembly simply did not require the Commission to approve a utility tariff under Section A 5 that it finds to be unreasonable. Similarly, the General Assembly could have directed the Commission to approve a 100% renewable energy tariff if limited minimum requirements were met, but it did not.

In sum, the Commission finds Dominion has not established that the CRG Rate Schedules are just and reasonable. The combination of factors – when taken together – that inform this decision include: the extraordinary discretion delegated to the utility; the magnitude of combined uncertainty and subjectivity in the formula's variables and resulting rates; the proposed use of ROE; unknown administrative fees on a customer-by-customer basis; unknown negotiated contract terms on a customer-by-customer basis; and the inability to ensure that the resulting charges will be uniform for customers taking service under like conditions.²¹ We emphasize, however, that this finding does not preclude a utility from proposing tariffs under Section A 5 with just and reasonable rates, terms, and conditions including, but not limited to, rates sufficiently demonstrated as reasonably approximating or representing market prices for 100% renewable energy.²²

²¹ As noted above, Code § 56-234 B states that "[i]t shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions." We do not find that Dominion's proposed use of enrollment periods, in and of itself, violates this principle. For example, depending upon the specific tariff and circumstances, customers subscribing in different enrollment periods may be found as not taking service "under like conditions." In the current case, however, the terms and conditions, taken as a whole, raise into question whether this is satisfied.

²² Having denied the CRG Rate Schedules for the reasons set forth herein, the Commission does not reach the legal question of whether the Company's proposed hourly matching standard for providing 100% renewable energy is required by statute.

Accordingly, IT IS ORDERED that the Application is denied, and this matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.