

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 13, 2017

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PETITION OF

APPALACHIAN POWER COMPANY

CASE NO. PUE-2016-00051

For approval of a 100% renewable
energy rider

FINAL ORDER

On April 28, 2016, Appalachian Power Company ("APCo" or "Company") filed a petition pursuant to Code § 56-577 A 5 with the State Corporation Commission ("Commission") for approval of a voluntary renewable energy rider, designated Rider REO ("Petition"). APCo asserts that Rider REO is a voluntary rider designed to allow participating customers to purchase their full requirements from renewable energy generators, and that as a result, participating customers will purchase "electric energy provided 100 percent from renewable energy"¹ as set forth in Code § 56-577 A 5.²

In its Petition, the Company states that to provide energy generated from 100% renewable resources, the Company has bundled energy output from multiple renewable generators.³ By combining disparate types of intermittent renewable generation, the Company states that Rider REO creates a portfolio effect that provides renewable energy at all hours of the

¹ If Rider REO meets this definition and the Commission approves Rider REO, Rider REO will impact the Company's obligation to allow retail choice to certain customers seeking to purchase renewable energy. See Code § 56-577 A 5.

² Ex. 1 (Petition) at 1; Ex. 2 (Castle Direct) at 2.

³ Ex. 2 (Castle Direct) at 2.

day, in all seasons, to participating customers.⁴ APCo acknowledges that it cannot match the hourly output of the renewable generators to the hourly load of the participating customers.⁵ The Company indicates that initially it will assign to Rider REO the output of its renewable generators that currently are under long-term purchased power agreements ("Renewable PPAs").⁶ According to APCo, as it adds additional renewable resources, such as solar, to its generation portfolio, the subscribed portion of those resources will be assigned to Rider REO.⁷

The Petition states that the proposed pricing design for Rider REO is largely based on the weighted average cost of the Renewable PPAs, which currently is greater than the cost of APCo's overall generation portfolio.⁸ APCo states that proposed Rider REO also includes pricing components for (i) the opportunity cost of not selling or optimizing the renewable energy certificates or credits associated with the Renewable PPAs, and (ii) an average net amount of PJM⁹ transmission congestion and losses charges.¹⁰ APCo also states that the revenues collected through Rider REO will not match the actual costs associated with the renewable energy portfolio exactly because the output of the renewable sources is variable and unpredictable.¹¹

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ *Id.* at 3.

⁷ *Id.*

⁸ Ex. 1 (Petition) at 5; Ex. 5 (Vaughan Direct) at 4.

⁹ PJM Interconnection, L.L.C.

¹⁰ Ex. 5 (Vaughan Direct) at 4-5.

¹¹ Ex. 2 (Castle Direct) at 7. The Company proposes not to "true up" any differences and states that any variability in the costs incurred and revenues collected will be manifested in the fuel factor. *Id.*

On May 17, 2016, the Commission issued an Order for Notice and Hearing that, among other things, established a procedural schedule for this case, directed the Company to provide public notice of its Petition, provided interested persons an opportunity to file comments on the Petition or to participate as respondents in this proceeding, scheduled a public evidentiary hearing, and directed the Commission's Staff ("Staff") to investigate the Petition. The Commission also assigned a Hearing Examiner to conduct further proceedings in this matter on behalf of the Commission, including filing a final report containing the Hearing Examiner's findings and recommendations.

Notices of participation were filed by: Appalachian Voices; Collegiate Clean Energy, LLC ("CCE"); English Biomass Partners – Ferrum, LLC ("English Biomass"); Maryland-DC-Virginia Solar Energy Industries Association ("MDV-SEIA"); Virginia Electric and Power Company ("Dominion"); the VML/VACo APCo Steering Committee ("Steering Committee"); and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). CCE, English Biomass, MDV-SEIA, Staff, and the Company pre-filed testimony in this matter.

On November 15, 2016, the Hearing Examiner convened a hearing for the receipt of public witness testimony and evidence on APCo's Petition from Staff, respondents and the Company.¹²

On June 21, 2017, the Report of A. Ann Berkebile, Hearing Examiner ("Report") was filed with the Clerk of the Commission. In her Report, the Hearing Examiner summarized the record in this proceeding and made the following findings and recommendations:

¹² Numerous public comments were filed in this docket opposing Rider REO, and three public witnesses testified at the public hearing in opposition to Rider REO. *See* Tr. 61-68.

- (1) Rider REO qualifies as a "tariff for electric energy provided 100 percent from renewable energy" as contemplated [by] § 56-577 A 5 of the Code;
- (2) The Commission has the discretion, authority and duty in accordance with §§ 56-234 A and 56-235.2 of the Code to determine whether Rider REO is in the public interest and whether its costs and associated rate are reasonable, just, and not likely to unreasonably prejudice or disadvantage renewable energy customers as conditions of granting approval; and
- (3) APCo's request for the approval of Rider REO should be denied because the Company failed to prove that Rider REO is in the public interest and that its costs and associated rate are reasonable, just, and not likely to unreasonably prejudice or disadvantage renewable energy customers.¹³

On July 12, 2017, comments and exceptions to the Hearing Examiner's Report were filed by APCo, Appalachian Voices, CCE, English Biomass, MDV-SEIA, Dominion, the Steering Committee, Consumer Counsel, and Staff.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds the Company has not established that the rate proposed under Rider REO is just and reasonable and, thus, the Petition shall be denied.

Throughout this proceeding, APCo asserted that the reasonableness of the rate proposed for Rider REO is not relevant to the Commission's approval thereof.¹⁴ The Commission disagrees. Code § 56-577 A 5 requires "an approved tariff for electric energy provided

¹³ Report at 26-27.

¹⁴ *See, e.g.*, Tr. 17-18 ("Accordingly the Company asks the Commission [to] approve Rider REO as a tariff for electric energy provided 100 percent from renewable energy. This is really the only issue properly before the Commission in this proceeding, . . ."); Tr. 21 ("The Code does not require the Commission to make any specific determination regarding the reasonableness of the costs of Rider REO."); APCo's Post-Hearing Brief at 2-3 ("Notably, no party challenges the Petition on the grounds that Rider REO would not provide 100 percent renewable energy or questions the Company's proposed manner in which to measure 100 percent – which is the only issue before the Commission in this proceeding."); APCo's Post-Hearing Brief at 3 n.6 ("Arguments that the Commission should consider the age, location or cost of Rider REO resources . . . are irrelevant to the Petition pursuant to the

100 percent from renewable energy;" Although 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. We find that the Commission – in determining whether to approve the proposed tariff – has the authority to consider if the rate to be charged to customers is just and reasonable.¹⁵

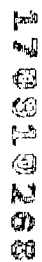
In this regard, the Commission finds the Company has not established that its proposed rate for Rider REO is just and reasonable. In addition, the Hearing Examiner noted as follows: "[o]ther than asserting that the Rider REO rate is voluntary and cost-based (and likely to come down with the addition of new resources), the Company made no effort to establish the reasonableness of its proposed Rider REO rate (equating to \$0.08961 per kilowatt hour)."¹⁶ Conversely, several parties object to the rate proposed for Rider REO. For example: (i) Appalachian Voices states that the proposed tariff "would charge participating customers significantly more for renewable resources that are already included as part of the standard tariff,"¹⁷ (ii) the Steering Committee similarly asserts that "Virginia customers would pay approximately \$15 per megawatt-hour more than the cost of the PPAs for the renewable

plain and unambiguous text of Subsection A5, and, as discussed below, cannot be part of the Commission's consideration of the Petition.").

¹⁵ Moreover, as explained by Staff, not only does the Commission have such authority, the Commission 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." *See, e.g.*, Staff's Comments on Hearing Examiner's Report at 9. In addition, the Commission notes that APCo has not proffered Rider REO as a "special rate" under Code § 56-235.2 or as a "voluntary rate or rate design test[] or experiment[]" under Code § 56-234 B.

¹⁶ Hearing Examiner's Report at 25.

¹⁷ Appalachian Voices' Comments on Hearing Examiner's Report at 3-4.



energy,"¹⁸ (iii) MDV-SEIA states that "there is significant evidence in the record that the Rider REO price of \$72/MWh is much higher than prevailing market prices for renewable energy," and that APCo "admitted that the cost of Rider REO is not representative of current market prices for wind energy,"¹⁹ and (iv) CCE contends that "Rider REO would force APCo's customers utilizing Rider REO to pay the full cost of purchased power agreements that the Commission has determined to be unreasonable and not prudent."²⁰ Based on the record in this case, the Commission finds the Company has not established that its proposed rate for Rider REO is just and reasonable for purposes of supplying 100% renewable electric energy.²¹

Finally, in the final sentence of its Comments on the Hearing Examiner's Report, APCo requests as follows:

In the alternative, if the Commission determines that Appalachian was required to prove and has not proven that the Rider REO rates are just and reasonable, the Company requests that the Commission remand the Petition to the Hearing Examiner so that the Company can more fully develop the record based on current data.²²

¹⁸ Steering Committee's Comments on Hearing Examiner's Report at 6.

¹⁹ MDV-SEIA's Comments on Hearing Examiner's Report at 5-6.

²⁰ CCE's Comments on Hearing Examiner's Report at 5 (emphasis removed).

²¹ The fact that Rider REO is voluntary does not render the proposed rate reasonable as a matter of law. Moreover, the instant case is distinguishable from the Commission's approval in 2008 of APCo's voluntary Renewable Power Rider. For example: (a) unlike Rider REO, the Renewable Power Rider (as determined by the Commission) was not a tariff for electric energy provided 100% from renewable energy; (b) unlike the instant case, in 2008 APCo proposed the Renewable Power Rider, at least in part, because "[i]ndividual demonstrations of support are essential to the success of the renewable energy industry [and] a significant level of participation in the Rider will send a customer-based signal to the Company and others to continue the current development of sources of renewable energy"; and (c) no party claims that the market for renewable energy is the same now as it was in 2008. *Application of Appalachian Power Company, For approval of its Renewable Power Rider*, Case No. PUE-2008-00057, Order Approving Tariff, 2008 S.C.C. Ann. Rept. 557 (Dec. 3, 2008).

²² APCo's Comments on Hearing Examiner's Report at 26. The Company also states therein that the "Commission has the authority to review whether the Rider REO rate is just and reasonable, albeit there is no mandate in the Code that they affirmatively do so before approving Rider REO." *Id.* at 10.

We will not remand the instant case. All participants were provided the opportunity to litigate fully the Petition filed by APCo, and the Commission's denial thereof does not preclude the Company from subsequently applying for a new tariff for electric energy provided 100% from renewable energy.

Accordingly, IT IS ORDERED THAT APCo's Petition is denied as set forth herein, 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 Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.