

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
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APPLICATION OF

CHICKAHOMINY POWER, LLC

CASE NO. PUR-2017-00033

For certification of an electric generating facility in Charles City County pursuant to § 56-580 D of the Code of Virginia

ORDER FOR NOTICE AND HEARING

On August 24, 2017, Chickahominy Power, LLC ("CPLLC" or "Applicant"), filed with the State Corporation Commission ("Commission") an amended application ("Application")¹ for a certificate of public convenience and necessity ("Certificate") to construct and operate a 1,650 megawatt ("MW") generating facility in Charles City County, Virginia (the "Facility").² CPLLC filed its Application pursuant to § 56-580 D of the Code of Virginia ("Code") and the Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility.³ CPLLC also filed a Motion for Protective Order.⁴

As proposed, CPLLC would construct the Facility on two parcels located approximately 3,700 feet east of the intersection of Chambers Road and Roxbury Road in Charles City County.⁵

¹ CPLLC's August 24, 2017 Application amends CPLLC's April 5, 2017 Application, which replaced CPLLC's initial March 13, 2017 Application. The August 24, 2017 filing also amends Exhibit 1, Responses to 20 VAC 5-302-20. On April 13, 2017, CPLLC filed supplemental Exhibit 4 to its Application, a map identifying the location of the proposed facility for notice purposes. On August 16, 2017, CPLLC filed supplemental Exhibit 5, a July 2017 Environmental Assessment of the Project Site.

² CPLLC identifies 1,650 MW as the net nominal generating capacity of the proposed Facility at 95 degrees Fahrenheit ambient temperature. Application at 6.

³ 20 VAC 5-302-10 *et seq.* CPLLC's Application indicates that the Facility also satisfies other provisions of the Code, including Code §§ 56-46.1 and 56-596. Application at 15-17.

⁴ The Applicant filed the Motion for Protective Order on March 13, 2017, with its initial application.

⁵ Application at 5.

The Application indicates that in 2016 the Charles City County Board of Supervisors approved the assignment and modification of a Special Use Permit regarding this site that will allow operation of the proposed Facility.⁶

According to the Application, the Facility would be constructed as a combined-cycle generation facility configured with three combustion turbines, natural gas supplementally-fired heat recovery steam generators, and steam turbines.⁷ The Applicant represents that the Facility will use dry low nitrogen oxides burner technology, oxidation catalysts, and evaporative-inlet air cooling.⁸

CPLLC represents that acquisition of natural gas production and arrangements for delivery to the Facility will be provided by an independent fuel manager.⁹ According to the Applicant, the Facility will receive pipeline quality natural gas from the gas supplier's pipeline interface location situated on site.¹⁰ There are no incremental interstate natural gas pipelines currently related to the Facility.¹¹

According to the Application, CPLLC is a special purpose entity formed to develop, construct, own, and operate the Facility.¹² CPLLC has retained Balico, LLC to support and manage the design, development, and construction of the Facility.¹³ CPLLC anticipates that

⁶ *Id.*

⁷ *Id.* at 5-6.

⁸ *Id.* at 6-7.

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 2, 8. Development of the facility will be financed by Chickahominy Partners, LLC, which was created to lead the investment activities associated with the Facility. *Id.* at 3, 10.

¹³ *Id.* at 1, 2-3. *See also* Application at 8-9.

construction of the Facility would begin in the first quarter of 2018 and take approximately 29-30 months.¹⁴

CPLLC asserts that construction and operation of the Facility will promote the public interest by providing significant economic benefit to the Commonwealth of Virginia and Charles City County.¹⁵ CPLLC further asserts that the Facility would promote the public interest by supporting the goals of the 2010 and 2014 Virginia Energy Plans by helping to meet the rising demand for electricity in the region using environmentally responsible generation technology located in the Commonwealth.¹⁶ Further, according to CPLLC, the Facility would produce low-cost power to the benefit of Virginia customers.¹⁷

CPLLC further asserts that the Facility will not adversely impact the reliability of electric service provided by any regulated public utility.¹⁸ CPLLC would operate the Facility as an exempt wholesale generator supplying wholesale power to the PJM Interconnection, LLC system.¹⁹ As such, the rates for electricity from the Facility would not be regulated pursuant to Code § 56-585.1, and its costs would not be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 of Title 56 of the Code.²⁰ CPLLC states that it expects the Feasibility Study will indicate that the Facility will comply with all applicable reliability planning criteria and will not have a deleterious impact on the network regardless of

¹⁴ *Id.* at 12; Exhibit 1 at 9.

¹⁵ Application at 14, 16-17.

¹⁶ *Id.* at 14, 17.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 2, 16.

²⁰ *Id.* at 2.

whether CPLLC chooses to construct the 500 kilovolt ("kV") or 230 kV generation options.²¹ CPLLC further represents that Virginia Electric and Power Company ("Dominion") is assessing the Facility for compliance with North American Electric Reliability Corporation Reliability Criteria on Dominion's transmission system and expects to find that the Facility complies with such criteria and will enhance system reliability.²²

According to the Application, CPLLC has or will apply for any permits from regulatory agencies with oversight responsibilities for all environmental aspects of the Facility. CPLLC indicates that it will continue to be engaged in regulatory review of the Facility.²³

As provided by § 62.1-44.15:21 D 2 of the Code, the Commission and the State Water Control Board must consult on wetland impacts prior to the siting of electric utility facilities that require a Certificate. As required by Section 3 of the Department of Environmental Quality – State Corporation Commission Memorandum of Agreement Regarding Wetland Impacts Consultation, the Commission's Staff ("Staff") has advised the Department of Environmental Quality ("DEQ"), acting on behalf of the State Water Control Board, that CPLLC filed its Application and that consultation is required.²⁴

In addition to consultation on wetlands, §§ 10.1-1186.2:1 C; 56-46.1 G, and 56-580 D of the Code direct the Commission and DEQ to coordinate the environmental review of proposed generating plants and associated facilities. Moreover, § 56-46.1 A of the Code provides for the Commission to receive and to consider reports on the proposed facilities from state

²¹ Application at 16.

²² *Id.*

²³ *Id.* at 17.

²⁴ Letter from Alisson P. Klaiber, Esquire, State Corporation Commission, April 6, 2017, to David L. Davis, CPWD, PWS, Director, Office of Wetlands & Stream Protection, Department of Environmental Quality, filed in Case No. PUR-2017-00033.

environmental agencies. Accordingly, the Staff has requested DEQ to coordinate an environmental review of the Facility by the appropriate agencies and to provide a report on the review.²⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that CPLLC should provide public notice of its Application; a public hearing should be scheduled for the purpose of receiving testimony and evidence on CPLLC's Application; a procedural schedule should be established to allow interested persons an opportunity to file written or electronic comments on the Application or to participate in this proceeding as a respondent; and the Staff should be directed to investigate the Application and file testimony and exhibits containing its findings and recommendations. Further, we find that this matter should be assigned to a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission, including ruling on the Applicant's Motion for Protective Order.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUR-2017-00033.
- (2) As provided by § 12.1-31 of the Code and Rule 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"),²⁶ a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission and to file a final report.
- (3) A public hearing on the Application shall be convened on March 20, 2018, at 10 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street,

²⁵ Letter from Alisson P. Klaiber, Esquire, State Corporation Commission, April 6, 2017, to Bettina Sullivan, Department of Environmental Quality, filed in Case No. PUR-2017-00033. The DEQ has informed the Commission that it expects to file its final report on or before October 23, 2017.

²⁶ 5 VAC 5-20-10 *et seq.*

Richmond, Virginia 23219, to receive the testimony of public witnesses and the evidence of the Applicant, any respondents, and the Staff. Any person desiring to offer testimony as a public witness at this hearing should appear in the Commission's Courtroom fifteen (15) minutes prior to the starting time of the hearing and identify himself or herself to the Commission's Bailiff.

(4) A copy of the public version of the Application may be obtained by submitting a written request to counsel for the Applicant, John K. Byrum, Jr., Esquire, Woods Rogers PLC, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219. If acceptable to the requesting party, the Applicant may provide the documents by electronic means. Copies of the public version of all documents also shall be available for interested persons to review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

(5) On or before October 24, 2017, the Applicant shall cause the following notice and sketch map showing the location of the proposed facilities (Attachment I to this Order) to be published as display advertising (not classified) on two occasions in newspapers of general circulation in Charles City County:

NOTICE TO THE PUBLIC OF
AN APPLICATION BY CHICKAHOMINY POWER, LLC, FOR
A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY FOR A 1,650 MW ELECTRIC GENERATING
FACILITY IN CHARLES CITY COUNTY
CASE NO. PUR-2017-00033

On August 24, 2017, Chickahominy Power, LLC ("CPLLC" or "Applicant"), filed with the State Corporation Commission ("Commission") an amended application ("Application") for a certificate of public convenience and necessity to construct and operate a 1,650 megawatt generating

facility in Charles City County, Virginia (the "Facility"). CPLLC filed its Application pursuant to § 56-580 D of the Code of Virginia ("Code") and the Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility.

As proposed, CPLLC would construct the Facility on two parcels located approximately 3,700 feet east of the intersection of Chambers Road and Roxbury Road in Charles City County. The Application indicates that in 2016, the Charles City County Board of Supervisors approved the assignment and modification of a Special Use Permit regarding this site that will allow operation of the proposed Facility.

According to the Application, the Facility would be constructed as a combined-cycle generation facility configured with three combustion turbines, natural gas supplementally-fired heat recovery steam generators, and steam turbines. The Applicant represents that the Facility will use dry low nitrogen oxides burner technology, oxidation catalysts, and evaporative-inlet air cooling.

CPLLC represents that acquisition of natural gas production and arrangements for delivery to the Facility will be provided by an independent fuel manager. According to the Applicant, the Facility will receive pipeline quality natural gas from the gas supplier's pipeline interface location situated on site. There are no incremental interstate natural gas pipelines currently related to the Facility.

According to the Application, CPLLC is a special purpose entity formed to develop, construct, own, and operate the Facility. CPLLC has retained Balico, LLC to support and manage the design, development, and construction of the Facility. CPLLC anticipates that construction of the Facility would begin in the first quarter of 2018 and take approximately 29-30 months.

CPLLC asserts that construction and operation of the Facility will promote the public interest by providing significant economic benefit to the Commonwealth of Virginia and Charles City County. CPLLC further asserts that the Facility would promote the public interest by supporting the goals of the 2010 and 2014 Virginia Energy Plans by helping to meet the rising demand for electricity in the region using environmentally responsible generation technology located in the Commonwealth. Further, according to CPLLC, the Facility would produce low-cost power to the benefit of Virginia customers.

CPLLC asserts that the Facility will not adversely impact the reliability of electric service provided by any regulated public utility. CPLLC would operate the Facility as an exempt wholesale generator supplying wholesale power to the PJM Interconnection, LLC system. As such, the rates for electricity from the Facility would not be regulated pursuant to Code § 56-585.1, and its costs would not be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 of Title 56 of the Code. CPLLC states that it expects the Feasibility Study will indicate that the Facility will comply with all applicable reliability planning criteria and will not have a deleterious impact on the network regardless of whether CPLLC chooses to construct the 500 kilovolt ("kV") or 230 kV generation options. CPLLC further represents that Virginia Electric and Power Company ("Dominion") is assessing the Facility for compliance with North American Electric Reliability Corporation Reliability Criteria on Dominion's transmission system and expects to find that the Facility complies with such criteria and will enhance system reliability.

According to the Application, CPLLC has or will apply for any permits from regulatory agencies with oversight responsibilities for all environmental aspects of the Facility. CPLLC indicates that it will continue to be engaged in regulatory review of the Facility.

The Commission entered an Order for Notice and Hearing that, among other things, scheduled a public hearing on March 20, 2018, at 10 a.m., in the Commission's Second Floor Courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive testimony from members of the public and evidence related to the Application from the Applicant, any respondents, and the Commission's Staff. Any person desiring to testify as a public witness at this hearing should appear fifteen (15) minutes prior to the starting time of the hearing and contact the Commission's Bailiff.

Copies of the public version of the Application may be obtained by submitting a written request to counsel for the Applicant, John K. Byrum, Jr., Esquire, Woods Rogers PLC, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219. If acceptable to the requesting party, the Applicant may provide the documents by electronic means.

Copies of the public version of the Application and documents filed in this case also are available for interested persons to review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

Any person or entity may participate as a respondent in this proceeding by filing, on or before December 19, 2017, a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. A copy of the notice of participation as a respondent also shall be sent to counsel for the Applicant at the address set forth above. Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. All filings shall refer to Case No. PUR-2017-00033. For additional information about participation as a respondent, any interested person or entity should obtain a copy of the Commission's Order for Notice and Hearing.

On or before January 23, 2018, each respondent may file with the Clerk of the Commission, and serve on the Commission's Staff, the Applicant, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case, and each witness's testimony shall include a summary not to exceed one page. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth above. Respondents also shall comply with the Commission's Rules of Practice and Procedure, including: 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2017-00033.

On or before March 13, 2018, any interested person wishing to comment on CPLLC's Application shall file written comments on the Application with the Clerk of the Commission at the address set forth above. Any interested person desiring to file comments electronically may do so on or before March 13, 2018,

by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. Compact discs or any other form of electronic storage medium may not be filed with the comments. All such comments shall refer to Case No. PUR-2017-00033.

The Commission's Rules of Practice and Procedure may be viewed at <http://www.scc.virginia.gov/case>. A printed copy of the Commission's Rules of Practice and Procedure and an official copy of the Commission's Order for Notice and Hearing in this proceeding may be obtained by the Clerk of the Commission at the address set forth above.

CHICKAHOMINY POWER, LLC

(6) On or before October 24, 2017, the Applicant shall serve a copy of this Order for Notice and Hearing on the chairman of the board of supervisors and county attorney of Charles City County, and on Dominion and Virginia Natural Gas, Inc. Service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served.

(7) On or before November 7, 2017, the Applicant shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (5) and (6), including the name, title, and address of each official served with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

(8) On or before March 13, 2018, any interested person may file written comments on the Application with the Clerk of the Commission at the address set forth in Ordering Paragraph (7). Any interested person desiring to submit comments electronically may do so on or before March 13, 2018, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Compact discs or any other form of electronic storage

medium may not be filed with the comments. All comments shall refer to Case No. PUR-2017-00033.

(9) Any person or entity may participate as a respondent in this proceeding by filing a notice of participation on or before December 19, 2017. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (7), and the respondent shall serve a copy of the notice of participation on counsel to the Applicant at the address in Ordering Paragraph (4). Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2017-00033.

(10) Within five (5) business days of receipt of a notice of participation as a respondent, the Applicant shall serve upon such respondent a copy of this Order for Notice and Hearing, a copy of the public version of the Application, and all materials filed by the Applicant with the Commission unless these materials have already been provided to the respondent.

(11) On or before January 23, 2018, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) and serve on the Staff, the Applicant, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case, and each witness's testimony shall include a summary not to exceed one page. If not filed electronically, an original and fifteen (15) copies of such testimony and

exhibits shall be submitted to the Clerk of the Commission. In all filings, the respondent shall comply with the Commission's Rules of Practice, including: 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2017-00033.

(12) The Staff shall investigate the Application. On or before February 20, 2018, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits, and each Staff witness's testimony shall include a summary not to exceed one page. The Staff shall serve a copy thereof on counsel to CPLLC and all respondents.

(13) On or before March 6, 2018, the Applicant may file with the Clerk of the Commission: (a) any rebuttal testimony and exhibits that it expects to offer, and each rebuttal witness's testimony shall include a summary not to exceed one page; and (b) a summary not to exceed one page of each direct witness's testimony if not previously included therewith. The Applicant shall serve a copy of the testimony and exhibits on the Staff and all respondents. If not filed electronically, an original and fifteen (15) copies of such rebuttal testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (7).

(14) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, shall be modified for this proceeding as follows: Responses and objections to written interrogatories and requests for production of documents shall be served within seven (7) business days after receipt of the same. In addition to the service requirements of Rule of Practice 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically, or by facsimile, on the party

to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to Staff.²⁷ Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq.*

(15) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

John K. Byrum, Jr., Esquire, and J. Walton Milam, III, Esquire, Woods Rogers, PLC, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North 9th Street, 8th Floor, 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.

²⁷ The assigned Staff attorney is identified on the Commission's website, <http://www.scc.virginia.gov/case>, by clicking "Docket Search," and clicking "Search Cases," and entering the case number, PUR-2017-00033, in the appropriate box.

