

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, SEPTEMBER 19, 2018

SCC-CLERK'S OFFICE  
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2018 SEP 19 P 4: 18 09

PETITION OF

KROGER LIMITED PARTNERSHIP I

CASE NO. PUR-2018-00150

For approval to aggregate its  
demand pursuant to § 56-577 A 4  
of the Code of Virginia

ORDER FOR NOTICE AND HEARING

On September 11, 2018, Kroger Limited Partnership I ("Kroger") filed with the State Corporation Commission ("Commission") a petition ("Petition") seeking permission to aggregate the demands of certain nonresidential customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia ("Code").

Under Code § 56-577 A 3, retail access to competitive electricity supply is available to certain large customers with demand exceeding five megawatts. For the purpose of meeting the demand limitations of Code § 56-577 A 3, certain customers may petition for Commission approval to aggregate or combine their demands.<sup>1</sup> Code § 56-577 A 4 provides, among other things, that the Commission may approve such a petition if it finds that:

- a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility; and

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<sup>1</sup> Code § 56-577 A 4 provides in part that "two or more individual nonresidential retail customers of electric energy within the Commonwealth, whose individual demand during the most recent calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate or combine their demands . . . so as to become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth . . . ."

b. Approval of such petition is consistent with the public interest.

Kroger seeks Commission permission to aggregate or combine the demands of 70 nonresidential retail customers.<sup>2</sup> The Petition also identifies Virginia Electric and Power Company as the local distribution company that is certificated to provide retail electric service in the area where Kroger proposes to aggregate load.<sup>3</sup>

Kroger also filed a Motion for Protective Ruling in accordance with 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Rules of Practice").<sup>4</sup>

NOW THE COMMISSION, upon consideration of Kroger's Petition, is of the opinion and finds that the Petition should be docketed; this Order for Notice and Hearing should be served upon appropriate persons; a public hearing should be scheduled for the purpose of receiving testimony and evidence on the Petition; interested persons should have an opportunity to file comments on the Petition or to participate as respondents in this proceeding; and the Commission's Staff ("Staff") should be directed to investigate the Petition and file testimony and exhibits containing its findings and recommendations thereon. Further, we find that a Hearing Examiner should be assigned to conduct all further proceedings in this matter on behalf of the Commission, including filing a final report containing the Hearing Examiner's findings and recommendations.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUR-2018-00150.

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<sup>2</sup> Petition at 1. The Petition provides, among other things, peak demand figures and locations for these customers. *Id.* at Attachment A.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> 5 VAC 5-20-10 *et seq.*

(2) As provided by Code § 12.1-31 and Rule 5 VAC 5-20-120, *Procedure before Hearing Examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission.

(3) A public hearing shall be convened on February 27, 2019, at 10 a.m., in the Commission's second floor courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive the testimony of public witnesses and the evidence offered by Kroger, respondents, and the Staff on the Petition. 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) Any interested person may request a copy of the Petition, accompanying materials, and this Order for Notice and Hearing by directing a request in writing to: Kurt J. Boehm, Esquire, Boehm, Kurtz & Lowry, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202. If acceptable to the requesting party, Kroger may provide the documents by electronic means. Kroger shall, within three (3) days of receiving such request, serve the requested documents upon the person making such request. Copies of the public version of all documents filed in this case also shall be made available for public inspection in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, 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 19, 2018, Kroger shall serve a copy of this Order for Notice and Hearing upon Virginia Electric and Power Company by delivering a copy to Lisa S. Booth,

Esquire, and David J. DePippo, Esquire, Dominion Energy Services, Inc., Law Department, Riverside 2, 120 Tredegar Street, Richmond, Virginia 23219.

(6) On or before October 31, 2018, Kroger shall file proof of service as ordered herein with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

(7) Any person or entity may participate as a respondent in this proceeding by filing a notice of participation on or before November 16, 2018. 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 (6), and the respondent shall simultaneously serve a copy of the notice of participation on counsel to Kroger 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-2018-00150.

(8) On or before December 12, 2018, Kroger shall file with the Clerk of the Commission at the address set forth in Ordering Paragraph (6), and serve on the Staff and all respondents, its pre-filed direct testimony, exhibits, and a one-page summary for each witness's testimony.

(9) Written comments on the Petition may be filed on or before February 20, 2019, by either of the following methods. An original and fifteen (15) copies of any comments may be filed with the Clerk of the Commission at the address set forth in Ordering Paragraph (6). In the

alternative, comments may be submitted electronically by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>. A hard copy of such comments, whether submitted in writing or electronically, shall be served on Kroger at the address identified in Ordering Paragraph (4). All comments shall refer to Case No. PUR-2018-00150.

(10) On or before January 16, 2019, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (6), and serve on the Staff, Kroger, 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, respondents shall comply with the Commission's Rules of Practice, including, but not limited to, 5 VAC 5-20-140, *Filing and service*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2018-00150.

(11) On or before January 30, 2019, the Staff shall investigate the Petition and 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. A copy thereof shall be served on counsel to Kroger and all respondents.

(12) On or before February 13, 2019, Kroger may file with the Clerk of the Commission 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. Kroger simultaneously shall serve a copy 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 (6).

(13) All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(14) Responses and objections to written interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, of the Rules of Practice, 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 the Staff.<sup>5</sup> 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: Kurt J. Boehm, Esquire, and Jody Kyler Cohn, Esquire, Boehm, Kurtz & Lowry, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202; Kevin M. Goldberg, Esquire, Fletcher, Heald & Hildreth, P.L.C., 1300 17th Street, North, 11th Floor, Arlington, Virginia 22209; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; Craig G. Goodman, President, National Energy Marketers Association, 895 Roberta Lane, Suite 103, Sparks, Nevada 89431; and Irene Leech, Virginia Citizens Consumer Council, 4220 North Fork Road, Elliston,

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<sup>5</sup> 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-2018-00150, in the appropriate box.

Virginia 24087. A copy also shall be delivered to the Commission's Office of General Counsel and Divisions of Utility Accounting and Finance and Public Utility Regulation.

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