

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
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APPLICATION OF

PRINCE GEORGE ELECTRIC COOPERATIVE

CASE NO. PUR-2019-00146

For partial waiver of affiliate requirements

ORDER FOR NOTICE AND COMMENT

On September 9, 2019, Prince George Electric Cooperative ("PGEC" or "Cooperative") filed with the State Corporation Commission ("Commission") a Motion for Partial Waiver of Affiliate Requirements ("Application")¹ pursuant to 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure ("Rules of Practice")² and 20 VAC 5-203-50, *Requests for Waiver*, of the Commission's Regulations Governing the Separation of Regulated and Unregulated Businesses of Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives ("Co-op Rules").³ Specifically, PGEC seeks a waiver of 20 VAC 5-203-40 (2) and (3) of the Co-op Rules. In support of its Application, PGEC states that the Commission approved affiliate agreements between PGEC and RURALBAND in Case No. PUE-2016-00108.⁴ According to PGEC, the approved affiliate agreements enable RURALBAND to provide broadband internet access to citizens and businesses in and around PGEC's service territory.⁵

¹ The Commission hereby deems this filing to be an application, pursuant to 5 VAC 5-20-80, for purposes of initiating a regulatory proceeding.

² 5 VAC 5-20-10 *et seq.*

³ 20 VAC 5-203-10 *et seq.*

⁴ *Application of Prince George Electric Cooperative and PGEC Enterprises, LLC, For approval of affiliate agreements*, Case No. PUE-2016-00108, 2016 S.C.C. Ann. Rept. 460, Order Granting Approval (Dec. 8, 2016).

⁵ Application at 2.

PGEC states that 20 VAC 5-203-40 (2) prohibits PGEC from sharing member information with RURALBAND unless (i) the member authorizes such disclosure; and (ii) PGEC provides such information to competing suppliers under the same price, terms, and conditions as it supplied the information to RURALBAND.⁶ PGEC further states that 20 VAC 5-203-40 (3) prohibits joint promotions, marketing, and advertising between PGEC and RURALBAND unless made available to competing suppliers under the same price, terms, and conditions as made available to RURALBAND.⁷

PGEC asserts that these prohibitions are overly burdensome and restrictive, asserting that to best inform unserved communities, RURALBAND needs contact information for PGEC members.⁸ The Cooperative asserts that it believes its members would provide this information; however, the process to obtain authorization from each member is logistically challenging and cost-prohibitive.⁹ PGEC notes that under 20 VAC 5-203-40 (2), the Cooperative would have to provide members' contact information to competing suppliers at the same price, terms, and conditions, which the Cooperative asserts is a condition that its members would likely not authorize.¹⁰ PGEC further asserts that granting of the requested waiver will not cause harm to competing suppliers because there are no such competitors providing such service.¹¹

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; PGEC should provide public notice of its Application;

⁶ *Id.* at 7.

⁷ *Id.* at 7-8.

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ *Id.* at 9.

¹¹ *Id.* at 10.

interested persons should have an opportunity to file comments on the Application, file a notice of participation as a respondent, and/or request a hearing on the Application; the Commission's Staff ("Staff") should be directed to investigate the Application and present its findings and recommendations in a Report; and a Hearing Examiner should be assigned to rule on any discovery matters that may arise during the course of this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUR-2019-00146.

(2) As provided by Code § 12.1-31 and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to rule on any discovery matters that may arise during the course of this proceeding.

(3) A copy of the Application, as well as a copy of this Order for Notice and Comment, may be obtained by submitting a written request to counsel for the Cooperative, Garland S. Carr, Esquire, Williams Mullen, 200 South 10th Street, Suite 1600, Richmond, Virginia 23219. If acceptable to the requesting party, the Cooperative 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>.

(4) On or before October 25, 2019, PGEC shall cause the following notice to be published in Cooperative Living Magazine and provided to other interested persons:

NOTICE TO THE PUBLIC OF
 AN APPLICATION BY PRINCE GEORGE ELECTRIC
 COOPERATIVE FOR A PARTIAL WAIVER OF AFFILIATE
 REQUIREMENTS
CASE NO. PUR-2019-00146

On September 9, 2019, Prince George Electric Cooperative ("PGEC" or "Cooperative") filed with the State Corporation Commission ("Commission") a Motion for Partial Waiver of Affiliate Requirements ("Application") pursuant to 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure ("Rules of Practice") and 20 VAC 5-203-50, *Requests for Waiver*, of the Commission's Regulations Governing the Separation of Regulated and Unregulated Businesses of Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives, ("Co-op Rules"). Specifically, PGEC seeks a waiver of 20 VAC 5-203-40 (2) and (3) of the Co-op Rules. In support of its Application, PGEC states that the Commission approved affiliate agreements between PGEC and RURALBAND in Case No. PUE-2016-00108. According to PGEC, the approved affiliate agreements enable RURALBAND to provide broadband internet access to citizens and businesses in and around PGEC's service territory.

PGEC states that 20 VAC 5-203-40 (2) prohibits PGEC from sharing member information with RURALBAND unless (i) the member authorizes such disclosure; and (ii) PGEC provides such information to competing suppliers under the same price, terms, and conditions as it supplied the information to RURALBAND. PGEC further states that 20 VAC 5-203-40 (3) prohibits joint promotions, marketing, and advertising between PGEC and RURALBAND unless made available to competing suppliers under the same price, terms, and conditions as made available to RURALBAND.

PGEC asserts that these prohibitions are overly burdensome and restrictive, asserting that to best inform unserved communities, RURALBAND needs contact information for PGEC members. The Cooperative asserts that it believes its members would provide this information; however, the process to obtain authorization from each member is logistically challenging and cost-prohibitive. PGEC notes that under 20 VAC 5-203-40 (2), the Cooperative would have to provide members' contact information to competing suppliers at the same price, terms, and conditions, which the Cooperative asserts is a condition that its members would likely not authorize. PGEC further asserts that granting of

the requested waiver will not cause harm to competing suppliers because there are no such competitors providing such service.

Interested persons are encouraged to review the Application for further details of the Cooperative's proposals.

Copies of the Application and the Order for Notice and Comment that the Commission entered in this case may be obtained by submitting a written request to counsel for the Cooperative, Garland S. Carr, Esquire, Williams Mullen, 200 South 10th Street, Suite 1600, Richmond, Virginia 23219. If acceptable to the requesting party, the Cooperative may provide the documents by electronic means.

Copies 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>.

On or before November 22, 2019, any interested person wishing to comment on the Cooperative's Application shall file written comments on the Application with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to file comments electronically may do so on or before November 22, 2019, 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-2019-00146.

On or before November 15, 2019, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation. 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 above. A copy of the notice of participation as a respondent also must be sent to counsel for the Cooperative at the address set forth above. Pursuant to 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. All filings shall refer to Case No. PUR-2019-00146.

On or before November 15, 2019, any interested person may file a written request for a hearing. If not filed electronically, an original and fifteen (15) copies of the request for hearing shall be submitted to the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUR-2019-00146 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the factual and legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. A copy also shall be served on the Cooperative at the address set forth above.

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.

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

PRINCE GEORGE ELECTRIC COOPERATIVE

(5) On or before October 25, 2019, PGEC shall serve a copy of this Order for Notice and Comment on the following officials, to the extent the position exists, in each county, city, and town in which the Cooperative provides service in the Commonwealth of Virginia: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent official) of every city and town; and the county, city, or town attorney. Service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served.

(6) On or before November 22, 2019, the Cooperative shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (4) and (5),

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.

(7) On or before November 22, 2019, any interested person may file written comments on the Application with the Clerk of the Commission at the address set forth in Ordering Paragraph (6). Any interested person desiring to submit comments electronically may do so on or before November 22, 2019, 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-2019-00146.

(8) Any person or entity may participate as a respondent in this proceeding by filing a notice of participation on or before November 15, 2019. 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 serve a copy of the notice of participation on counsel to the Cooperative at the address in Ordering Paragraph (3). Pursuant to 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-2019-00146.

(9) Within five (5) business days of receipt of a notice of participation as a respondent, the Cooperative shall serve upon such respondent a copy of this Order for Notice and Comment,

a copy of the Application, and all materials filed by PGEC with the Commission unless these materials have already been provided to the respondent.

(10) On or before November 15, 2019, any interested person may file a written request for a hearing. If not filed electronically, an original and fifteen (15) copies of the request for hearing shall be submitted to the Clerk of the Commission at the address in Ordering Paragraph (6). Written requests for hearing shall refer to Case No. PUR-2019-00146 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the factual and legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. A copy also shall be served on counsel to the Cooperative at the address in Ordering Paragraph (3).

(11) The Staff shall investigate the Application. On or before December 13, 2019, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of its Report and exhibits regarding its investigation of the Application.

(12) On or before January 3, 2020, the Cooperative may file with the Clerk of the Commission any comments on the Staff's Report and any comments filed by interested persons in this proceeding. If not filed electronically, an original and fifteen (15) copies of such comments shall be filed with the Clerk of the Commission.

(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) 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) calendar days after receipt of the same. In addition to the service requirements of

5 VAC 5-20-260, 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.¹² 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:

James Patrick Guy II, Esquire, and Garland S. Carr, Esquire, Williams Mullen, 200 South 10th Street, Suite 1600, 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.

¹² 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-2019-00146, in the appropriate box.