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160830192

STATE CORPORATION COMMISSION

August 26, 2016

Hon. Joel H. Peck, Clerk
State Corporation Commission
c/o Document Control Center
Tyler Building, First Floor
1300 East Main Street
Richmond, Virginia 23219

2016 AUG 26 P 2:26
SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

RE: *Application of Virginia Electric and Power Company, For approval and certification of electric transmission facilities: Haymarket 230 kV Double Circuit Transmission Line and 230-34.5 kV Haymarket Substation, Case No. PUE-2015-00107*

Dear Mr. Peck:

Please file the enclosed original and fifteen (15) copies of the attached "Reply of The Commission Staff" with the other papers in this proceeding.

Thank you for your assistance in this regard.

Sincerely yours,

William H. Chambliss
General Counsel

WHC:jpr

cc: Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2015-00107

For approval and certification of electric transmission
facilities: Haymarket 230 kV Double Circuit Transmission
Line and 230-34.5 kV Haymarket Substation

REPLY OF THE COMMISSION STAFF

On August 18, 2016, a letter over the signature of attorney Vishwa B. Link, from the law firm of McGuire Woods, purporting to embody the "objection" of "the Company"¹ to legal arguments raised in the post-hearing brief filed by the Staff ("Staff") of the State Corporation Commission ("Commission") was submitted to the Clerk of the Commission, Hon. Joel H. Peck, and copied to the parties to Case No. PUE-2015-00107. On August 19, 2016, the Hearing Examiner entered a ruling permitting responses to the letter, which the Hearing Examiner characterizes as a motion, on or before August 26, 2016. Pursuant to the Hearing Examiner's Ruling, the Staff responds as follows.

For the reasons set forth below, the Staff asserts that the objection is without any legal merit and should be overruled. To the extent that the letter is deemed a motion, it should be denied. To the extent that the letter is an unauthorized reply brief, it should be stricken, as the procedural orders herein directed the filing of simultaneous briefs by all parties and the Staff and made no provision for briefs in reply.²

¹ As an initial matter, Staff will assume, though it is not made specific at any place in counsel's letter, that "Company" is a reference to the applicant, Virginia Electric and Power Company.

² See footnote 11 to the letter, wherein the true nature of the Company's complaint—that "it was at a disadvantage because post-hearing briefs are filed the same day and the Company had not been privy to Staff's *legal theory for cost recovery*"—is revealed. (Emphases added.) How the Company is peculiarly disadvantaged by this briefing arrangement is unstated; Staff was "not privy" to any legal argument or authority that Company would make or rely on in its brief either.

The letter alleges that Staff has introduced "new evidence" in its post-hearing brief. However, the letter does not identify any such evidence. No new evidence was introduced. Instead, the letter complains about *legal argument* contained in the brief that sets forth some of the Commission's various sources of authority to address a central issue of the proceeding—discussed at length by, among others, scores of public witnesses and in the pre-filed testimony of Company witness Harold Payne and Staff witness Neil Joshipura—that of proper recovery of the costs of the project. These legal arguments are entirely responsive to facts well-established in the record, as cited in Staff's brief. In fact, the Company itself stated on page 4 of its March 15, 2016 Opposition of Virginia Electric and Power Company to Joint Motion for Extension that "the cost recovery question appears to be a *legal issue* that could be subject to briefing by the parties after the evidentiary hearing." (Emphasis added.)

The legal argument in Staff's post-hearing brief regarding the cost recovery question responds directly to Mr. Payne's rebuttal testimony that asserts that the Commission lacks any jurisdictional authority over cost recovery because the project's costs flow through wholesale rates set by FERC. Mr. Payne's testimony, in Staff's view and as addressed by legal argument in its brief, conflates the issues of wholesale cost *allocation* and retail cost *recovery*.

The objection letter also notes the Hearing Examiner's March 21, 2016 ruling granting an extension in the procedural schedule so that "the contested issues in this case, including the cost recovery issue..." could be adequately developed. The ensuing sentence in the objection letter asserts that "Staff did not present any evidence regarding *rate treatment*[" thus continuing the conflation initiated by the Company's rebuttal testimony. (Emphasis added.)

As noted, many public witnesses recommended that the Commission obligate the customer requiring the construction of the project to bear some or all of its costs. Mr. Joshipura's

testimony addresses the Company's line extension policy. Ms. Link herself cross-examined Mr. Joshipura at some length about this testimony. Mr. Payne's rebuttal testimony responds to Mr. Joshipura's testimony. The Company's professed surprise that Staff addressed the issue of cost recovery in its brief is disingenuous.

The objection (motion) should be overruled (denied).

Respectfully submitted,

STAFF OF THE STATE CORPORATION COMMISSION

By 
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Dated: August 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2016, a true copy of the foregoing "Reply of the Commission Staff" was mailed electronically and/or first class, postage prepaid, to all persons on the official Service List attached in this matter.



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