# Virginia State Corporation Commission
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| **Case Name (if known)** | Virginia Electric and Power Company - For approval of 100 percent renewable energy tariffs pursuant to VA Code §§ 56-577 A 5 and 56-234; Case No. PUR-2017-00060 |
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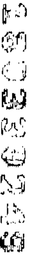


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March 23, 2018

**VIA ELECTRONIC FILING**

Mr. Joel H. Peck, Clerk
c/o Document Control Center
State Corporation Commission
Tyler Building – First Floor
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Richmond, Virginia 23219

**RE:** ***Virginia Electric and Power Company - For approval of 100 percent renewable energy tariffs pursuant to VA Code §§ 56-577 A 5 and 56-234*; Case No. PUR-2017-00060**

Dear Mr. Peck:

Attached for filing with the State Corporation Commission are the Post-hearing Comments submitted on behalf of Environmental Respondents in the above-referenced case. This notice is being filed electronically, pursuant to the Commission's Electronic Document Filing system.

If you should have any questions regarding this filing, please do not hesitate to contact me at (434) 977-4090 or via email at wcleveland@selcva.org.

Regards,

William C. Cleveland

cc: Parties on Service List

**COMMONWEALTH OF VIRGINIA**
**STATE CORPORATION COMMISSION**

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|---|---|---|
| APPLICATION OF<br><br>VIRGINIA ELECTRIC AND POWER COMPANY<br><br>*For approval of 100 percent renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. PUR-2017-00060 |

**<u>COMMENTS OF ENVIRONMENTAL RESPONDENTS</u>**
**<u>ON THE REPORT OF A. ANN BERKEBILE, HEARING EXAMINER</u>**

**INTRODUCTION**

In response to the Hearing Examiner's Report of March 2, 2018 involving the request of Virginia Electric and Power Company ("Dominion" or the "Company") for the approval of six voluntary renewable energy tariffs (collectively, the "CRG Rate Schedules"), Appalachian Voices (the "Environmental Respondents") hereby files the following Comments. Environmental Respondents support the Hearing Examiner's findings that:

(i) The Company failed to prove the CRG Rate Schedules qualify as "tariff[s] for electric energy provided 100 percent from renewable energy" as contemplated in § 56-577 A 5 of the Code of Virginia (the "Code");

(ii) The Company failed to prove the rates in the CRG Rate Schedules are just and reasonable;

(iii) The Company's application for the approval of the CRG Rate Schedules pursuant to §§ 56-577 A 5 and 56-234 of the Code should be denied; and

(iv) The Commission should offer the Company the alternative of offering the CRG Rate Schedules as experimental rates under § 56-234 B of the Code, for a three-year period following the conclusion of the first CRG Rate Schedule enrollment period.

At its core this case is about retaining competition to provide a specific type of renewable energy in Virginia. Generally, electricity customers in the Commonwealth have no choice but to buy power from their local utility. Section 56-577(A)(5) of the Code ("Section A 5") is a specific exception to this rule carved out by the Virginia General Assembly. Currently under Section A 5, customers may purchase 100 percent renewable energy from a licensed Competitive Service Provider ("CSP") if their local utility does not offer 100 percent renewable energy.[1] If the Commission approves tariffs in this case, the competition for 100 percent renewable energy disappears, and participating customers with over one megawatt peak demand can no longer shop.

When restricting competition, the Commission should act carefully to ensure that the customers still retain reasonably-priced options. As the Hearing Examiner stated in her report, "if the rate of an incumbent electric utility's Subsection A 5 tariff is unreasonably high, customers will be deterred from taking service under the tariff while at the same time being precluded from pursuing the competitive options which are contemplated by Subsection A 5."[2] Based on the information provided by the Company, it is impossible for the Commission to conclude that the CRG Rate Schedules qualify as 100 percent renewable energy and that the rates are just and

[1] *See* Va. Code § 56-577(A)(5).

[2] *Application of Virginia Electric and Power Company for approval of 100 percent renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2017-00060, Report of A. Ann Berkebile, Hearing Examiner at 43-44 (Mar. 2, 2018) ("Hearing Examiner's Report").

reasonable. Therefore, the Commission should accept the findings and recommendations in the Hearing Examiner's Report and deny the Company's application.

## STANDARD OF REVIEW

Section A 5 allows customers to purchase electric energy provided 100 percent from renewable energy from any licensed CSP only if such customer's incumbent utility does not offer "an approved tariff for electric energy provided 100 percent from renewable energy."[3] Section A 5 does not specify how the Commission should approve a petition for a "tariff for electric energy," nor does it define the applicable standard or the process for the Commission's review of such an application. However, as recognized by the parties in this case, the Commission "has authority to consider if the rate to be charged to customers is just and reasonable."[4] Moreover, the Commission "may further have the duty to consider whether the proposed rate is just and reasonable pursuant to Code § 234 A."[5]

## ARGUMENT

### A. CRG Rate Schedules Do Not Qualify As Tariffs For Electric Energy Provided 100 Percent From Renewable Energy

Environmental Respondents support the Hearing Examiner's findings that the Company failed to prove that the CRG Rate Schedules qualify as "tariff[s] for electric energy provided 100 percent from renewable energy."[6] Although the Commission has not ruled on the applicable standard, the Company designed the CRG Rate Schedules assuming that Section A 5 requires the

[3] Va. Code § 56-577(A)(5).
[4] Hearing Examiner's Report at 43; *Application of Appalachian Power Company for approval of a 100 percent renewable energy rider*, Case No. PUE-2016-00051, Final Order Denying Tariff at 5 (Sept. 13, 2017) ("Final Order Denying APCo Application").
[5] Hearing Examiner's Report at 43; Final Order Denying APCo Application at 5 n. 15 ("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 the same." Va. Code § 56-234 A.)
[6] Hearing Examiner's Report at 42 (quoting Va. Code § 56-577(A)(5)).

tariffs meet 100 percent of the customer's load on an hourly basis.[7] Yet, as the Hearing Examiner found, the Company failed to provide evidence necessary to determine whether the generation portfolio for the CRG Rate Schedules would be capable of providing 100 percent renewable energy to participating customers under this artificial hourly standard.[8] In fact, the Hearing Examiner stated that the Company "presented no evidence relative to: (1) the actual generation facilities to be included in the CRG Portfolio; (2) the type of renewable energy produced by each facility in the CRG Portfolio; (3) the actual capacity of each facility and the total capacity of the CRG Portfolio; and (4) the actual annual, monthly and hourly energy production performance of the facilities in the CRG Portfolio."[9] Without sufficient evidence from the Company, the Commission cannot certify that the CRG Rate Schedules meet the standard advocated by the Company.

In addition, the Company divulged that in certain "*de minimis*" instances it would not be able to provide participating customers with 100 percent renewable energy on an hourly basis.[10] Yet, the Company failed to define "*de minimis*."[11] Instead, the Company argued that since they *intend* to meet an hourly standard 100 percent of the time, the Commission and the customers should simply trust that the outages of 100 percent renewable energy will only occur infrequently.[12] Without a definition of "*de minimis*" the Commission cannot determine whether

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[7] *Id.* at 42 n. 126; *Application of Virginia Electric and Power Company for approval of 100 percent renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia,* Case No. PUR-2017-00060, at 4 (May 9, 2017) ("Application for CRG Rate Schedules"); *see also Application of Virginia Electric and Power Company for approval of 100 percent renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia,* Case No. PUR-2017-00060, Environmental Respondents' Motion to Certify Material Issue and For Stay of Proceedings (Mar. 7, 2018).
[8] Hearing Examiner's Report at 42-43.
[9] *Id.* at 42.
[10] *Id.* at 42-43.
[11] *Id.* at 42.
[12] *See* Tr. vol. 1, 132: 18-25, Dec. 4, 2017.

the CRG Rate Schedules meet the legal definition under Section A 5 or even the Company's own unsupported standard of continuous renewable energy on an hourly basis.[13]

**B. CRG Rate Schedules Are Not A Just And Reasonable Rate**

Environmental Respondents also support the Hearing Examiner's findings that the CRG Rate Schedules are not a just and reasonable rate.[14] First, the CRG Rate Schedules do not contain a rate, but instead they contain a formula for a rate with many key unknowns. The Company plans to base the inputs for several of these unknowns on internally-developed forecasts, which will not be subject to Commission oversight or review.[15] As a result, the ultimate rate produced by the CRG Rate Schedules may be higher than market prices depending upon the accuracy of the Company's forecasts.[16]

Furthermore, the CRG Rate Schedules include a margin equal to the Company's latest approved ROE on PPA costs.[17] As the Hearing Examiner pointed out, "the inclusion of a margin on PPA costs is inconsistent with traditional ratemaking principles because a utility makes no up-front investment in a PPA justifying a return to compensate investors for the cost of their capital."[18] Again, the Company did not provide any evidence as to why a margin equal to the Company's latest approved ROE is an appropriate margin to compensate the Company for its risk.[19] Without a compelling justification for this margin, the resulting rate is unjust and unreasonable. Yet, this is not the only flaw of the CRG Rate Schedules. As Ms. Hunt, witness

[13] *Id.*; *see also* Application for CRG Rate Schedules, Post-Hearing Brief of Environmental Respondents at 15 (Jan. 16, 2018) ("Post-Hearing Brief of Environmental Respondents").
[14] Hearing Examiner's Report at 43.
[15] *Id.* at 44; *see also* Tr. vol. 1, 47:13-16; Tr. vol. 1, 278:7-9.
[16] *Id.* at 44; *see also* Tr. vol. 1, 278:4-7; Tr. vol. 2, 513:1-11, Dec. 5, 2017; Post-Hearing Brief of Environmental Respondents at 13-15.
[17] Hearing Examiner's Report at 45.
[18] *Id.* at 45.
[19] *Id.* at 45.

for the Mid-Atlantic Renewable Energy Coalition, stated in the hearing, even if the Commission were to remove the margin from the formula, the CRG Rate Schedules would still be deficient.[20]

The Company also has complete control over the PPA solicitation process without Commission oversight or review.[21] As established at the hearing by Mr. Lacey, witness for Direct Energy Services, LLC, Collegiate Clean Energy, LLC and the National Energy Marketers Association, the quality of the PPA solicitation generally dictates the quality of the response.[22] In this case, the more expensive the PPA, the more the Company earns. As a result, as Witness Lacey testified, under the proposed tariff structure there is no financial incentive for the Company to conduct a good solicitation of market PPAs and find the lowest cost provider.[23]

As demonstrated repeatedly throughout the Hearing Examiner's Report, the Company has not provided sufficient information to establish that the proposed rate is just and reasonable.[24] In the Hearing Examiner's assessment, "it is particularly important for an incumbent electric utility to establish that the rate for a proposed Subsection A 5 tariff is just and reasonable given the loss of competitive options for customers upon the approval of a Subsection A 5 tariff."[25] This is a flawed application that will not result in just and reasonable rates for Virginia customers.

**C. The Commission Should Reject the CRG Rate Schedules, But If The Commission Were To Approve The Tariffs, They Should Be Approved As Experimental Tariffs**

The CRG Rate Schedules are fatally flawed. The Commission should not try to address the inadequacies of the CRG Rate Schedules, but instead the Commission should deny the

[20] *See* Tr. vol. 1, 240:18-22.
[21] *Id.* at 45; Post-Hearing Brief of Environmental Respondents at 19.
[22] Tr. vol. 1, 194:5-19.
[23] Tr. vol. 1, 195:4-6.
[24] *See* Hearing Examiner's Report at 42-46.
[25] *Id.* at 43.

Company's application outright. In the alternative, the Environmental Respondents support the Hearing Examiner's recommendations that if the Commission were to approve the CRG Rate Schedules, the Commission should approve them as experimental tariffs in accordance with § 56-234 B of the Code and not under Section A 5.

Section 56-234 B of the Code permits the Commission upon a "finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest" to approve experimental, voluntary rates.[26] According to the Hearing Examiner, "[a]pproval of the CRG Rate Schedules as voluntary experimental rates is likely to further the public interest by determining whether qualifying customers will elect to take service under the CRG Rate Schedules and, if so, whether the CRG Rate Schedules will function as has been proposed."[27] In other words, it would be to the customers' benefit for the Commission to approve the tariffs as experimental rates for three years in order to have time to review the tariffs in practice. As proposed, there are simply too many unknowns. The CRG Rate Schedules are without precedent in Virginia and it would be prudent for the Commission and the Company to take the time to review them in practice before approving them.[28] If the Commission were to approve the CRG Rate Schedules, it should approve the tariffs as experimental tariffs and not preclude customers from buying 100 percent renewable energy from CSPs.

## CONCLUSION

For the foregoing reasons, as well as for the reasons stated in its Post-Hearing Brief filed on January 16, 2018, Environmental Respondents maintain that the Commission must deny the Company's application as the Company fails to prove that (i) the CRG Rate Schedules qualify as "tariff[s] for electric energy provided 100 percent from renewable energy" as contemplated by

[26] Va. Code § 56-234 B.
[27] Hearing Examiner's Report at 46.
[28] *See* Tr. vol. 1, 149: 14-17.

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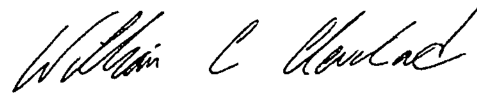
Section A 5, and (ii) the CRG Rate Schedules are just and reasonable. In the alternative, if the Commission decides to approve the application, the Commission should approve the CRG Rate Schedules as experimental tariffs under § 56-234 B of the Code of Virginia and not under Section A 5. Accordingly, Environmental Respondents request that the findings and recommendations contained in the Hearing Examiner's Report be accepted.

March 23, 2018

Respectfully submitted,



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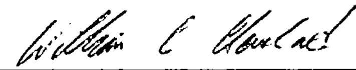

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Southern Environmental Law Center

**DATED: March 23, 2018**