

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, FEBRUARY 8, 2019

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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2018-00133

For approval to establish voluntary rate,
designated Rider CRC, pursuant to § 56-234 B
of the Code of Virginia

FINAL ORDER

On August 15, 2018, Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") pursuant to Enactment Clause 11 of Senate Bill 966, passed during the 2018 General Assembly Session ("Enactment Clause 11"), § 56-234 B of the Code of Virginia ("Code"), and Rule 80 of the Commission's Rules of Practice and Procedure¹ for approval to establish a voluntary rate, designated Rider CRC, Manufacturing and Commercial Competitiveness Retention Credit Rider ("Rider CRC").²

The Company states in its Application that Rider CRC is designed to support economic development in Dominion's service territory by offering a retention credit, in the form of a two percent discount on the total monthly base generation charges, to any eligible retail large general service customers who agree to take Electric Service, including Electricity Supply Service, as those terms are defined in the Company's Terms and Conditions on file with the Commission, exclusively from the Company for a period of at least three years.³ The Company further states

¹ 5 VAC 5-20-10 *et seq.*

² Application at 1.

³ *Id.* at 2-3.

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that Enactment Clause 11 directs the Company to offer a retention credit to large manufacturing and commercial customers who are eligible to participate under the terms and conditions proposed in the Application.⁴

According to the Application, to participate in Rider CRC, large general service customers must currently take service pursuant to, or otherwise qualify to take service under: (1) Rate Schedule GS-3, Large General Service – Secondary Voltage; (2) Rate Schedule GS-4, Large General Service – Primary Voltage; or (3) any special rates or contracts approved pursuant to Code § 56-235.2 (each a "Principal Tariff"), subject to the following limitations.⁵ The Company states that large general service customers who wish to subscribe to Rider CRC must not be receiving service from the Company under any experimental or pilot program tariff rate schedule, tariff rate schedule for market-based rates, tariff rate schedule to purchase 100% renewable energy, or companion tariff rate schedule, such as Rate Schedule MBR – GS-3, Large General Service – Secondary Voltage (Experimental), Rate Schedule MBR – GS-4, Large General Service – Primary Voltage (Experimental), or Schedule RF.⁶

The Company states that, to qualify for Rider CRC, an eligible large general service customer account⁷ ("Qualifying Account") must have, during the most recent calendar year, established a peak measured average 30-minute demand greater than 500 kilowatts, which did not exceed one percent of the Company's peak load during the most recent calendar year, unless

⁴ *Id.* at 3.

⁵ *Id.* at 3-4.

⁶ *Id.* at 5.

⁷ The Company's proposed Rider CRC tariff defines "Account" as "the Customer's Company-assigned electric service account number (as may be superseded) associated with the Customer's service location." *See* Application, Attachment 1.

the customer had a non-coincident peak demand in excess of 90 megawatts in calendar year 2006 or any calendar year thereafter.⁸ The Company further states that a large general service customer wishing to participate in Rider CRC would be required to execute an Agreement for Electric Service ("ESA") with the Company for each Qualifying Account that memorializes the customer's election to volunteer for Rider CRC.⁹ The initial term of each ESA would be separately negotiated with each participating large general service customer; however, the initial term would be for a period of at least three years ("Initial Term").¹⁰ Following the expiration of the Initial Term, the ESA would automatically renew annually for additional one-year terms (each subsequent term referred to as a "Renewal Term"), unless and until the ESA is cancelled by written notice by either party at least 60 days prior to the expiration of the Initial Term or Renewal Term, as applicable.¹¹

Once an ESA has been executed, the Company would make service under Rider CRC effective on the first day of the billing month immediately following the last regular meter reading date for each Qualifying Account.¹² The two percent reduction in the total monthly base generation charges (billed by the Company to the Qualifying Account pursuant to the large general service customer's existing Principal Tariff) would appear as a separate line item on the participating customer's billing statement.¹³

⁸ Application at 3-4.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 4, 6.

¹² *Id.* at 5.

¹³ *Id.* at 5, 6.

The Company proposes to make Rider CRC effective for usage on and after the first day of the month that is at least 60 days following the date of the Commission's Final Order in this proceeding.¹⁴ The Company also proposes to make annual reports to the Commission if Rider CRC is approved.¹⁵

On August 30, 2018, the Commission issued an Order for Notice and Comment in this proceeding that directed Dominion to provide public notice of its Application and invited interested persons to file comments or a notice of participation or request a hearing on the Company's Application. The Commission also directed the Staff of the Commission ("Staff") to investigate the Application and file a report containing Staff's findings and recommendations ("Report" or "Staff Report").

On September 10, 2018, Direct Energy Services, LLC ("Direct Energy") filed a Notice of Participation. On September 14, 2018, Calpine Energy Solutions filed a Notice of Participation. On September 21, 2018, MP2 Energy NE LLC ("MP2") filed a Notice of Participation. No requests for hearing were filed.

On October 12, 2018, Direct Energy and MP2 filed comments on the Application. In its comments, Direct Energy asks the Commission to (1) reject the automatic renewal provision in Rider CRC; (2) require Dominion to submit annual reports detailing the level of participation and amount of discounts awarded under Rider CRC; and (3) require Dominion to efficiently deploy any costs of promoting Rider CRC to customers.¹⁶

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ Direct Energy Comments at 2.

In support of its first request, Direct Energy notes that Enactment Clause 11 does not require automatic renewal of the ESA after the initial three-year term.¹⁷ Direct Energy further states that there is no risk to the parties to an ESA if either terminates the agreement without advance notice, as both parties would be in the same position they were in before they entered into the ESA.¹⁸ Direct Energy also asserts that the automatic renewal provision could unnecessarily restrict Rider CRC participants from exercising their right to switch to a competitive service provider following the initial term of the ESA, and/or the automatic renewal provision could result in higher cost increases for non-participating customers.¹⁹

Direct Energy also requests that the Commission direct Dominion to include the following information in annual reports to the Commission: the number of customers participating in Rider CRC, by rate schedule; the combined load of the participating customers; the total dollar amount of discounts awarded; marketing costs attributed to Rider CRC; and any other information the Commission deems relevant.²⁰ Lastly, Direct Energy requests that the Commission direct Dominion to efficiently deploy any costs related to the promotion of Rider CRC, to protect non-participating customers.²¹

In its comments, MP2 asks the Commission to closely examine the reasonableness of the proposed Rider CRC, including (1) the cost impact of proposed Rider CRC on non-participating customers; (2) the proposed roll-out of Rider CRC; (3) the reasonableness of the proposed terms

¹⁷ *Id.*

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 3-4.

²⁰ *Id.* at 4.

²¹ *Id.* at 5.

and conditions of Rider CRC; and (4) the appropriateness of any marketing materials.²² MP2 also urges the Commission to evaluate whether the Application "complies with all requirements for approval of voluntary and special rates found in Sections 56-234 B and 56-235.2 of the Code of Virginia."²³

MP2 states that Dominion estimates that approximately 2,594 customers would be eligible to participate in Rider CRC, and if all eligible customers participated in Rider CRC, the combined value of the two percent discount would be approximately \$10 million annually.²⁴ MP2 further asserts that any marketing materials should clearly explain that participating Rider CRC customers would be unable to take advantage of "potential energy cost savings" during the contract term.²⁵ MP2 also asks the Commission to "carefully scrutinize" the proposed automatic renewal provision in the ESA.²⁶ MP2 also asserts that the timing and proposed rollout of Rider CRC is unclear, and it is unclear whether customers may get a prorated discount for a shorter contract term.²⁷

On December 21, 2018, the Staff filed its Report in this proceeding. The Staff Report includes a list provided by the Company of tariff rate schedules and riders whose customers

²² MP2 Comments at 2.

²³ *Id.* at 2. Dominion filed the Application pursuant to Code § 56-234 B, which governs applications for "voluntary rate[s] or rate design tests or experiments, or other experiments involving the use of special rates..." MP2 asserts that Dominion should also be required to address the public interest criteria for special rates and contracts with individual customers or classes of customers in Code § 56-235.2. *Id.* at 3-5.

²⁴ *Id.* at 2.

²⁵ *Id.* at 2-3.

²⁶ *Id.* at 3.

²⁷ *Id.*

would be ineligible for Rider CRC.²⁸ Staff recommends that the proposed Rider CRC tariff explicitly identify such rate schedules and/or riders.²⁹

The Staff Report also notes that Rider CRC would result in reduced base generation revenue, all else being equal, which would result in lower earned returns when Dominion's base rates are examined in future triennial review proceedings.³⁰ Staff notes further that such lower returns could result in (1) lower refunds or customer credit reinvestment offsets,³¹ and/or (2) higher rates than would otherwise be necessary if base rates are increased or decreased prospectively as a result of a triennial review.³²

Lastly, Staff estimates that if all eligible customers participate in Rider CRC, approximately \$6.99 million of the annual revenue reduction would be shifted to the residential class, which would increase the bill of a typical residential customer using 1,000 kilowatt-hours per month by \$3.22 annually.³³ Other than Staff's recommendation that the Rider CRC tariff include a list of tariff rate schedules and riders whose customers would be ineligible for Rider CRC, Staff takes no position on the Application.³⁴

On January 11, 2019, the Company filed its response ("Response") to the Staff Report and the comments filed by MP2 and Direct Energy. The Company's Response notes that Staff

²⁸ Staff Report at 3-4.

²⁹ *Id.* at 4.

³⁰ *Id.* at 6.

³¹ *See* Code § 56-585.1 A 8 d.

³² Staff Report at 6.

³³ *Id.* at 6-7.

³⁴ *Id.* at 7.

and the respondents have not stated that they oppose the Company's proposed Rider CRC.³⁵ In response to the Staff Report, the Company states that Staff's recommendation, as described above, should be rejected because new tariff rate schedules are routinely approved, and established and existing rate schedules are routinely modified and/or closed. Accordingly, the Company states that the list of rate schedules whose participating customers would be ineligible for Rider CRC would not be static and to require the Company to modify Rider CRC any time that list changes "would be administratively burdensome for both the Company and the Commission..."³⁶ The Company also asserts that such a requirement is not needed because such tariff rate schedules are identified in concept in Enactment Clause 11 and proposed Rider CRC, and any customers who might be eligible to participate in Rider CRC are "generally savvy" about the language used in Enactment Clause 11 and in the Rider CRC tariff itself.³⁷

The Company also disagrees with Staff's projected bill impact analysis. The Company states that the \$9,713,286.50 figure provided in discovery assumes that every single customer who is eligible to participate in Rider CRC will actually participate, which the Company asserts is "highly unlikely."³⁸ The Company further states that any revenue impact will be allocated across all classes in a manner determined in a future proceeding, and "Staff's example inaccurately uses a customer count to calculate the impact to the residential class."³⁹ The

³⁵ Response at 1.

³⁶ *Id.* at 5.

³⁷ *Id.*

³⁸ *Id.* at 6.

³⁹ *Id.* at 7.

Company also asserts that Staff's analysis is "unduly speculative" because any class impacts will depend on various factors, which would need to be evaluated in a future regulatory proceeding.⁴⁰

In response to Direct Energy's comments, the Company states that it does not oppose Direct Energy's request regarding the filing of annual reports as it is consistent with what the Company proposed in the Application.⁴¹ In response to Direct Energy's request that the Commission require the Company to efficiently deploy any costs of promoting Rider CRC, the Company states that it does not plan to conduct any formal marketing activities; rather, customers will be made aware of Rider CRC on a one-on-one basis through existing relationships in the Company's Key Accounts team.⁴² The Company objects to Direct Energy's and MP2's request that the Commission reject the provision in Rider CRC requiring automatic renewals, noting that this is a standard provision primarily designed with customer convenience in mind, the proposed Rider CRC permits customers to cancel their participation with 60 days' advance notice, and "rejecting the automatic renewal provision would likely lead to an increase in the costs of administering the program[.]"⁴³

In response to MP2's request that the Commission closely examine the reasonableness of proposed Rider CRC, the Company states that all of the substantive terms and conditions associated within the proposed Rider CRC are specified in Enactment Clause 11.⁴⁴ With regard to MP2's recommendation that the Commission closely examine the cost impact on non-

⁴⁰ *Id.*

⁴¹ *Id.* at 8.

⁴² *Id.*

⁴³ *Id.* at 8-9.

⁴⁴ *Id.* at 9.

participating customers, the Company notes that when customers take energy supply from competitive service providers, those customers' share of the cost of generation is reallocated to non-choice-eligible customers.⁴⁵ Accordingly, the Company states that Rider CRC will enable the Company to continue to serve choice-eligible customers "in a just and reasonable manner," preventing the direct reallocation of generation costs to non-participants, which the Company asserts is in the public interest.⁴⁶

In response to MP2's concerns about the timing and proposed rollout of Rider CRC and whether customers would receive a prorated discount for a shorter contract term, the Company states that the "Application and Enactment Clause 11 clearly explain that the Rider CRC Discount is a flat two percent discount that is applied uniformly to the bills of all participating customers regardless of when they subscribe to the program, or for how long."⁴⁷ The Company states further that because service under Rider CRC would be effective on the first day of the billing month immediately following the last regular meter reading date for each Qualifying Account, and each ESA must be for an initial term of at least three years, there is no provision that would permit a prorated discount for a shorter contract term.⁴⁸

Lastly, in response to MP2's assertion that Dominion should be required to address the public interest criteria for special rates and contracts with individual customers or classes of customers in Code § 56-235.2, the Company states that Rider CRC is not a special rate contract,

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.* at 10-11.

⁴⁸ *Id.* at 11.

and the Application was not filed under Code § 56-235.2.⁴⁹ The Company states further that, unlike special rate contracts that are generally offered to a single customer whose needs cannot be met by existing tariffs, "Rider CRC is a voluntary rider to an approved embedded cost-based tariff that is available to all eligible non-residential retail large general service customers..."⁵⁰

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Application shall be approved pursuant to Enactment Clause 11.

Enactment Clause 11 states:

That any individual nonresidential retail customer of a Phase II Utility, as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, whose single account demand during the most recent calendar year exceeded 500 kilowatts but did not exceed one percent of the Phase II Utility's peak load during the most recent calendar year, unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, and that is currently taking service from the Phase II Utility pursuant to an approved tariff rate schedule applicable to large general service customers, not to include any customer taking service under any experimental or pilot program tariff rate schedule, tariff rate schedule for market-based rates, tariff rate schedule to purchase 100 percent renewable energy pursuant to subdivision A 5 of § 56-577 of the Code of Virginia, or companion tariff rate schedule, that enters into an exclusive supply agreement with the Phase II Utility whereby the customer agrees to purchase electric energy exclusively from the Phase II Utility serving the exclusive service territory in which such retail customer is located for a period of three years or more shall be eligible for a Manufacturing and Commercial Competitiveness Retention Credit during the duration of such exclusive supply agreement, which shall reduce the base generation charges under the customer's existing approved tariff rate by a total of two percent.

⁴⁹ *Id.*

⁵⁰ *Id.*

The Commission finds that Rider CRC complies with the requirements of Enactment Clause 11, and that the terms and conditions approved herein (and as further discussed below) are reasonable for purposes of implementing the same.

The Commission further finds, however, that Rider CRC does not fall within the Commission's discretionary authority under Code §§ 56-234 B or 56-235.2.⁵¹ The rate discount provisions of Rider CRC have been expressly mandated by the General Assembly (*i.e.*, Enactment Clause 11). Conversely, the Commission may only approve voluntary or special rates under Code § 56-234 B if we find that such are "necessary in order to acquire information which is or may be in furtherance of the public interest." Similarly, the Commission may only approve special rates under Code § 56-235.2 if we find that "such measures are in the public interest." In the instant proceeding, the Commission has no discretion to reject a rate that conforms with Enactment Clause 11 as not in the "public interest" under the requirements of Code §§ 56-234 B or 56-235.2. That is, the Commission has the discretion to approve reasonable terms and conditions to implement the unambiguous plain language of Enactment Clause 11, but we do not have the authority to reject the provisions of Rider CRC that comply with that legislative directive.

In this regard, we find that Rider CRC, as proposed, complies with the criteria set forth in Enactment Clause 11 for eligible non-residential retail large general service customers to receive a Manufacturing and Commercial Competitiveness Retention Credit. Consistent with Enactment Clause 11, Rider CRC applies only to non-residential customers who meet the demand requirements and limitations and is not available to customers "taking service under any experimental or pilot program tariff rate schedule, tariff rate schedule for market-based rates,

⁵¹ Accordingly, the six-month time period in Code § 56-234 B does not apply to the instant proceeding.

tariff rate schedule to purchase 100 percent renewable energy pursuant to subdivision A 5 of § 56-577 of the Code of Virginia, or companion tariff rate schedule." Also consistent with Enactment Clause 11, Rider CRC requires participating customers to agree to purchase electric energy exclusively from Dominion for a period of three years or more, and such customers' base generation charges under the customers' existing approved tariff rate will be reduced by a total of two percent.

We also find that the Company's proposed automatic renewal provision in the ESA is reasonable, and we note the Company's concerns that rejecting the automatic renewal provision could lead to an increase in the costs of administering the program. Moreover, prior to executing an ESA for an initial term of three years, in exchange for a two percent discount on the base generation charges under the customer's existing tariffs, a customer will have the opportunity to review, and seek clarification of, the terms and conditions of Rider CRC, including the requirement that the customer provide 60 days' advance notice of termination prior to expiration of the ESA's term.

With regard to Staff's recommendation that Rider CRC include a list of tariff rate schedules and riders whose customers would be ineligible for Rider CRC, we find that, for the reasons stated in the Company's Response, it is not necessary to require that Rider CRC include such a list as a condition of approval of Rider CRC. We further find that the remaining proposals of Direct Energy and MP2, other than recommended reporting requirements, which are discussed separately below, are not necessary conditions for approval of the Application.

As stated previously, the Company proposed in its Application to make annual reports to the Commission about Rider CRC. We adopt the recommendation of Direct Energy that such annual reports include, at a minimum, the following information: the number of customers

participating in Rider CRC, by rate schedule; the combined load of the participating customers; the total dollar amount of discounts awarded; and marketing costs attributed to Rider CRC, if any.

Accordingly, IT IS ORDERED THAT:

(1) Rider CRC is approved subject to the provisions set forth herein, effective for usage on and after the first day of the month that is at least sixty (60) calendar days following the date of this Order.

(2) No determination as to the rate impact of Rider CRC is being made in this proceeding. The Company shall file an annual report, on or before May 1, 2020, and May 1 of each year thereafter, detailing the number of customers participating in Rider CRC, by rate schedule; the combined load of the participating customers; the total dollar amount of discounts awarded; and marketing costs attributed to Rider CRC, if any.

(3) The Company forthwith shall file a revised Rider CRC with the Clerk of the Commission and with the Commission's Division of Public Utility Regulation, in accordance with this Final Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(4) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, 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.