Virginia State Corporation Commission
eFiling CASE Document Cover Sheet

Case Number (if already assigned)	PUR-2019-00118
Case Name (if known)	Petition of Virginia Electric and Power Co.
Document Type	RPNS
Document Description Summary	Opposition to Motion for Temporary Injunction
Total Number of Pages	20
Submission ID	17051
eFiling Date Stamp	7/31/2019 2:59:26PM

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

PETITION OF	)	
	)	
VIRGINIA ELECTRIC AND POWER COMPANY	)	**CASE NO. PUR-2019-00118**
	)	
For a declaratory judgment	)	

RESPONSE TO CALPINE ENERGY SOLUTIONS, LLC'S MOTION FOR TEMPORARY INJUNCTIVE RELIEF AND REQUEST FOR EXPEDITED ACTION

On July 22, 2019, Calpine Energy Solutions, LLC ("Calpine") filed its Motion for Temporary Injunctive Relief and Request for Expedited Action ("Motion") pursuant to Rules 100 and 110 of the Rules of Practice and Procedure of the State Corporation Commission ("Commission"), 5 VAC 5-20-100 and -110. Pursuant to 5 VAC 5-20-110 and Ordering Paragraph (2) of the Commission's July 23, 2019 Order in this proceeding, Virginia Electric and Power Company ("Dominion Energy Virginia" or the "Company") files this response to Calpine's Motion ("Response"). Calpine does not meet the standard for temporary injunctive relief in this matter. Indeed, Calpine argues in vain that it need not meet the well-recognized standard. For this reason and those set forth below in more detail, the Company respectfully requests that the Motion be denied.

BACKGROUND

1. On or around July 16, 2019, Dominion Energy Virginia filed its Petition for a declaratory judgment ("Petition"). The Petition requests that the Commission issue an order (1) confirming that, for a competitive service provider ("CSP") to serve customers under Va. Code § 56-577(A)(5) ("Section A5"), it must have control of sufficient renewable generation resources, including renewable capacity and associated renewable energy, to enable it to serve

the full load requirements of the customers it intends to serve consistent with the standard approved by the Commission for Appalachian Power Company's ("APCo") Rider WWS in Case No. PUR-2017-00179,[1] and (2) declaring that Calpine, a CSP seeking to serve customers in the Company's service territory, has not satisfactorily demonstrated that it can serve customers "electric energy provided 100 percent from renewable energy" pursuant to Section A5.

2. The Petition, at its core, seeks confirmation from the Commission regarding what is required for a CSP, or any entity in Virginia, to, in fact, be providing "100% renewable energy" to customers in compliance with the requirements of Section A5. The Commission has addressed this question in a long line of cases since 2008, including most definitively when it approved APCo's Rider WWS earlier this year. Nevertheless, the controversy described in the Petition makes clear that additional guidance from the Commission is necessary to ensure that customers in Virginia that seek to purchase "electric energy provided 100 percent from renewable energy" are being provided the service they seek (and require) pursuant to Section A5.

3. As discussed in the Petition and in this Response, the Commission must resolve these questions *before* the Company can proceed with the enrollment of the customers that Calpine seeks to serve. Contrary to Calpine's Motion, this Petition is not an attempt to exercise a "self-help" remedy based on a disagreement over requests for information. Instead, Calpine explicitly has denied that it has any obligation to provide service to the customers it seeks to enroll with energy and capacity necessary to serve those customers' full load requirements that are tied to renewable generation, *and* has refused to provide any meaningful documentation to confirm that it will even be able to serve the needs of its customers with renewable energy alone.

---

[1] Order Approving Tariff, *Application of Appalachian Power Company, For approval of a 100% renewable energy rider pursuant to § 56-577 A 5 of the Code of Virginia*, Case No. PUR-2017-00179 (Jan. 7, 2019) ("Rider WWS Order").

The Company is not exercising "self-help"[2] relief; rather, Dominion Energy Virginia is protecting customers and declining to be complicit in Calpine's provision of unauthorized and illegal service to customers.

4. Without establishing that the service Calpine intends to provide is in fact "electric energy provided 100 percent from renewable energy" as required by Section A5, Calpine has no legal right to provide service to those customers, nor does Virginia law permit those customers to take service from Calpine. The Company's Commission-approved Terms and Conditions confirm that the Company is under no obligation to allow Calpine to use its system to provide a service that is not legal.[3] Given that Calpine is seeking to provide service that is not authorized under Virginia law, Dominion Energy Virginia has no obligation (or authority) to assist Calpine in providing such service to customers by processing Calpine-pending enrollment requests. Accordingly, the Motion should be denied.

5. Finally, Calpine's Motion mischaracterizes Dominion Energy Virginia's actions as "a death sentence for business customers wanting a 100% renewable product from a CSP."[4] Leaving aside this hyperbole, in reality, Dominion Energy Virginia simply is trying to ensure that any service provided by Calpine (and any other CSPs) to customers within Dominion Energy Virginia's service territory is lawful.

6. As explained in the Company's Petition, customers that choose not to take service from a CSP may incur higher costs because other customers seek service from a CSP. While the law allows such service, the service must meet certain conditions. It is necessary to ensure these conditions are met before asking the remaining customers to incur a larger share of costs – which

---

[2] *Id.* at 3, 4.
[3] *See* Section XXIV (Retail Access) of the Company's Terms and Conditions.
[4] Motion at 7.

can be substantial as the Commission has noted in its order in the aggregation cases under Virginia Code § 56-577 A 4.[5] In addition, the Company is the provider of last resort for the customers to whom Calpine now seeks to provide service, and as such, the Company is compelled to seek guidance and confirmation from the Commission as to whether any customers who might begin to take service from a CSP are receiving service that complies with the laws and regulations of the Commonwealth. Where the CSP fails to provide lawful service, it is Dominion Energy Virginia that will be obliged to provide service to these customers if they must return to the Company's system. Consequently, it is inappropriate to continue enrolling customers in the face of these outstanding and serious questions about the legality of Calpine's alleged-service.

CALPINE'S REQUEST FOR TEMPORARY INJUNCTIVE RELIEF SHOULD BE DENIED

7. The Motion requests that Dominion Energy Virginia be ordered to process all pending enrollment requests through which Calpine seeks to provide service to Dominion Energy Virginia customers.[6] Traditionally, the purpose of a temporary injunction is to maintain the *status quo* until the court can resolve the underlying legal dispute.[7] Calpine's Motion turns that well-established rule of law on its head; contrary to this purpose, Calpine asks the Commission to abandon the *status quo* and treat its pending enrollment requests as lawful without *any* showing of lawfulness, much less a showing that Calpine is likely to prevail on the merits of this dispute, and that the equities and public interest favor injunctive relief.

---

[5] *See, e.g.*, Final Order, *Wal-Mart Stores East, LP and Sam's East, Inc., For permission to Aggregate its Demand Pursuant to sec. 56-577 A 4 of the Code of Virginia within Virginia Electric and Power Company's Service Territory*, Case No. PUR-2017-00173 (Feb. 25, 2019).

[6] *See id.* at 6-7.

[7] *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18, 822 S.E.2d 358 (2019) (*citing Iron City Sav. Bank v. Isaacsen*, 158 Va. 609, 625, 164 S.E. 520 (1932)).

Standards for Granting Temporary Injunctive Relief

8. As the Commission previously has recognized, whether a temporary injunction should be granted is determined based on four factors: "(1) that [the movant] is likely to succeed on the merits; (2) that [the movant] is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in [the movant's] favor; and, (4) that an injunction is in the public interest."[8] Recognizing that it cannot meet these requirements, Calpine argues that it need not meet them to obtain injunctive relief from the Commission.[9]

9. Calpine disclaims any need to meet the traditional test because, it claims, the General Assembly has expressly mooted these requirements by statute.[10] However, there is no statute providing for an automatic grant of injunctive relief in this case, and Calpine does not cite one. Instead, Calpine points to Virginia Code §§ 12.1-13 and 56-6. Those statutes, however, simply vest the Commission with the general authority to grant injunctive relief if and when a movant establishes grounds for such relief. They do not dispense with the traditional prerequisites for a temporary injunction this Commission (and the Courts of Virginia) has long-employed, and Calpine cannot avoid its burden to establish those prerequisites here. In fact, if the general provisions of Virginia Code §§ 12.1-13 and 56-6 eliminated the need to satisfy the traditional test for temporary injunctive relief, there would never be any need in *any* proceeding before the Commission to meet that test. The Commission's precedent demonstrates that cannot be, and is not, the case.[11]

---

[8] Order at 3, *Petition of William C. Barnhardt, For declaratory and injunctive relief*, Case No. PUE-2015-00109, Doc. Con. Cen. Num. 151030149 (Oct. 19, 2015) (citing *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008)).

[9] Motion at 6.

[10] *See id.*

[11] *See* Order, *Petition of William C. Barnhardt, For declaratory and injunctive relief*, Case No. PUE-2015-00109 at 3 (Oct. 19, 2015) (citations omitted) (recognizing and applying traditional four-part test before issuing temporary injunction).

10. Calpine cites two cases – *Carbaugh v. Solem*, 225 Va. 310, 302 S.E. 2d 33 (1983), and *Virginia Beach S.P.C.A. Inc. v. South Hampton Roads Veterinary Ass'n*, 229 Va. 349, 329 S.E.2d 10 (1985) – as support for its argument that the Commission may issue a temporary injunction here without the normal showing.[12] Even a cursory reading demonstrates that those cases are inapplicable here.

11. In *Carbaugh*, the statute in question stated: "[i]n the event of violation of any provision of *this article or the regulations adopted thereunder*, either commissioner may petition any appropriate court of record for relief by injunction, *without being compelled to allege or prove that an adequate remedy at law does not exist.*"[13] Thus, the statute, on its face, dispensed with the normal factors in a narrow range of cases. The applicable statute here, Virginia Code § 56-577, mentions nothing about injunctive relief, and certainly does not create an exception to the normal standard *sub silencio* or otherwise.

12. *Virginia Beach S.P.C.A. Inc.*, too, is readily distinguishable. As in *Carbaugh*, the applicable statute in *Virginia Beach S.P.C.A.* specifically provided that "any person unlawfully practicing veterinary medicine may be temporarily or permanently enjoined from such unlawful practice by the circuit court."[14] The statutes at issue here, Virginia Code §§ 12.1-13 and 56-6, do no such thing. Rather, they merely vest the Commission with general authority to issue injunctions when the grounds for issuing an injunction have been satisfied.

13. Also in *Virginia Beach S.P.C.A.*, the party being enjoined did not challenge the finding that it was unlawfully practicing veterinary medicine in violation of the statute.[15] Thus, there was no need for the court to consider the traditional four factors before issuing the

---

[12] *See* Motion at 6.
[13] *Carbaugh*, 225 Va. at 35 (emphasis added).
[14] *Virginia Beach S.P.C.A. Inc.*, 229 Va. at 353-54.
[15] 229 Va. at 353, 329 S.E.2d at 12.

injunction; the ultimate issue was already decided.[16] Contrastingly, here, the parties disagree over the meaning of the statute at issue and Dominion Power Virginia denies that it is violating the relevant statutory scheme and asserts that to permit Calpine to service customers would violate that scheme. Given this dispute, Calpine must satisfy the traditional four factor test before any injunction could issue.

14. In essence, Calpine improperly seeks to shift the burden of proving its entitlement to an injunction to Dominion Energy Virginia, arguing that an injunction is proper until *Dominion Energy Virginia* can prove that it does *not* violate Virginia Code § 56-577.[17] But, neither *Carbaugh* nor *Virginia Beach S.P.C.A.* change the basic principle of law that Calpine, as the moving party, bears the burden of proving any alleged statutory violation. Only if it meets this burden (and satisfies the other three factors) would Calpine be entitled to injunctive relief. Calpine's request puts the proverbial cart before the horse.

15. In sum, to obtain temporary injunctive relief, Calpine must show that it meets the traditional prerequisites for such relief. While Calpine makes a passing attempt to address the prerequisites for injunctive relief, it fails to establish that *any* of the four factors weighs in favor of a temporary injunction.

Calpine Has Failed to Show that It Is Likely of Success on the Merits

16. A party seeking temporary injunctive relief must first establish that it is ultimately likely to succeed on the merits in the underlying legal dispute.[18] The "merits" are the substantive

---

[16] *Id.* at 354, 329 S.E.2d at 13.

[17] Motion at 4.

[18] *See, e.g., McEachin v. Bolling*, 84 Va. Cir. 76, 2011 WL 10909615 at *1 (2011), no pet. (where, in a case in which a request for a temporary injunction was filed in conjunction with the party's request for declaratory relief, the court's analysis noted that the parties presented procedural and substantive arguments "as to whether the *declaratory judgment action* is likely to be successful" and denied temporary injunctive relief because Plaintiff could not show that he would likely succeed on the merits." (emphasis added)); *Owens v. City Council of City of Norfolk*, 75 Va. Cir. 91, 2008 WL 6745386 at *2, 9-13 (2008), no pet. (where, in a case involving a request for

issues in the proceeding. Here, the "merits" are the questions raised in the Petition about what is required for a CSP to establish that it will, in fact, be providing "electric energy provided 100 percent from renewable energy" to its customers in compliance with the requirements of Section A5. To obtain temporary injunctive relief, Calpine must show that it is likely to prevail on those questions. In its Motion, however, Calpine sidesteps this question. Calpine instead focuses on whether an incumbent utility is obligated to process enrollment requests pursuant to Section A5 even when it is unable to verify and validate whether the service is in compliance with Section A5 requirements. This issue is secondary to the merits of this case as described in the Petition – whether Calpine has any legal authority in the first place to sell a service it only purports to provide. The Motion makes no attempt to address squarely the underlying legal issue in this proceeding.[19] Calpine offers no meaningful argument to rebut the many points made in the Petition that explain why Calpine is *unlikely* to succeed on the merits.

17. For example, the Company raises the issue in its Petition that, rather than provide information showing Calpine controls sufficient renewable energy to meet the capacity requirements of each customer it seeks to serve, Calpine instead disagreed that it is required to provide such information and provided, at best, limited information regarding supposedly contracted-for energy.[20] Indeed, the little information Calpine made available consists of

---

declaratory relief that the defendant's conduct violated Dillon's Rule and other constitutional claims, the court assessed the plaintiff's request for injunctive relief based, in part, on the likelihood of success "upon the merits *of this litigation*"—that is, upon each of the underlying bases on which the plaintiff had requested declaratory relief—in determining whether the plaintiff had shown a likelihood of success on the merits); *see also Sarsour v. Trump*, 245 F. Supp. 3d 719, 729 (E.D. Va. 2017).

[19] Before addressing its actual request for injunctive relief, Calpine vaguely asserts that "Calpine provided, upon Dominion's request, information showing that the enrollments comply with Section A 5." Motion at 2. Rather than specify any documents establishing that compliance, Calpine instead argues that it should not be required to comply with any such requirements instead. Motion at 2-3. As noted in the Petition, for example, Calpine refused to provide any documentation or information confirming that it has control of any renewable capacity needed to serve the full load of the customers that it is currently seeking to enroll. *See* Petition at 6.

[20] Petition at 6.

heavily-redacted renewable energy purchase "confirmation letters," but the few terms left visible in these letters show they constitute only non-binding "agreements to agree."[21] Rather than address these points or cite specific terms establishing Calpine will have energy available to meet the full load requirements, Calpine instead vaguely claims that it provided "information showing that the enrollments comply with Section A 5."[22] This conclusory statement does not confirm that Calpine controls sufficient renewable generation resources, including renewable capacity and associated renewable energy, to serve the full load requirements of the customers it intends to serve even though the Company's request for such evidence is consistent with the standard approved by the Commission for APCo Rider WWS.[23] Accordingly, the Motion fails to demonstrate Calpine's likelihood of success on the merits, and this failure is fatal to its request for temporary injunctive relief.

18. Furthermore, Calpine fails to establish a likelihood of success even on its own theory of the relevant "merits." The Company is not required under any Virginia statute or any Commission regulation to enroll customers for a service to be provided by a CSP that is not legally available to those customers. Calpine relies upon Section XXIV of the Company's Terms and Conditions, which permits the Company to discontinue or deny service to a CSP only in certain circumstances. But that provision, along with similar provisions in §17.3 of the CSP Coordination Tariff, expressly allows the Company to discontinue or deny service to a CSP if the CSP is engaging in illegal practices or practices that do not comply with the Company's CSP

---

[21] Motion, Ex. 4 at 1; Ex. 4 at Exs. C, D, E. *See also Virginia Power Energy Mktg., Inc. v. EQT Energy, LLC*, No. 3:11CV630, 2012 WL 2905110, at *5 (E.D. Va. July 16, 2012) (finding a Letter of Intent no more than an unenforceable "agreement to agree").

[22] Motion at 2.

[23] *See* Rider WWS Order.

Coordination Tariff and related Commission rules.[24] Section 17.3 provides that:

> The Company may take and shall not be liable for actions against a CSP when such actions are . . . determined by the Company to be necessary to prevent or limit actions by the CSP which are illegal, fraudulent, or detrimental to the provision of Electric Distribution Service . . . even though such action by the Company may adversely affect the . . . services supplied by the Company to the CSP.[25]

These sections permit the Company to halt the enrollment of customers when it is unable to verify that the service they will be provided is legal.

19. Further, even assuming the Terms and Conditions and CPS Coordination Tariff did not expressly provide the Company the authority to halt enrollments when a CSP was engaging in illegal practices, when the Retail Access rules, the Terms and Conditions, and the CSP Coordination Tariff are read as a harmonious whole, as they must be, it is clear that in ensuring that the incumbent utility can police and inquire whether CSP's are acting consistent with the law when seeking to provide service to customers that, these rules vest the incumbent utility with the obligation to neither be ignorant of nor complicit with such contrary behavior, and to take appropriate action when such behavior is discovered. In short, these rules are meant to protect customers, and the incumbent is authorized to (and should) take appropriate action to ensure customers' interests are protected. Indeed, a reading of this regulatory scheme that authorizes the incumbent to ask for evidence of a CSP's compliance, but requires the incumbent to transfer customers to the CSP even when that evidence falls short of showing such CSP

---

[24] *See* Motion at 9. Specifically, Section XXIV(C) of the Company's Terms and Conditions states that "[t]he Company may discontinue or deny services to any Provider to prevent utilization of the Company's services by such Provider in connection with practices which are illegal, or which are detrimental to the provision of Electric Service to other Customers of the Company. The Company may discontinue or deny services to any Provider if the Provider fails to comply with the Company's CSP Coordination Tariff and related rules ...."

[25] Along similar lines, Section 8.8.2 of the CSP Coordination Tariff also defines noncompliance with the Tariff to include "CSP's failure to provide Electricity Supply Service provided 100 percent from renewable energy in accordance with § 56-576 and § 56-577 of the Code of Virginia, if the CSP has provided an affidavit or other proof of its intention to do so."

compliance, would essentially render the scheme meaningless. Such a result would be contrary to law.[26]

20. Calpine also cites Section A5 in support of its argument that the Company must transfer its customers, regardless whether Calpine has provided proper evidence that it is complying with that Section. Section A5 provides that "individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted ... [t]o purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth...."[27] Section A5, however, is based on the express condition that the energy being provided to the customer is "100 percent from renewable energy," which, as the Company's Petition explains in detail, is not met by Calpine's proposed service based on its purported substantiation thus far.

21. More than once in the Motion, Calpine says that it "looks forward to establishing in the course of this proceeding that it will supply customers served under Section A 5 with 100% renewable energy"[28] and "looks forward to the opportunity to provide a full response to the Petition,"[29] and that in the meantime, Dominion Energy Virginia should be required to process all enrollment requests submitted by Calpine.[30] But as the movant seeking the extraordinary relief of a temporary injunction, Calpine bears the burden of demonstrating the likelihood of its success on the merits of this case *now*, as part of its Motion. The requirement that a moving party must show the likelihood of success on the merits means Calpine cannot ask the Commission to issue an expedited temporary injunction now, but wait to show it is likely to

---

[26] *See, e.g., Lynchburg Div. of Soc. Servs. v. Cook*, 276 Va. 465, 483, 666 S.E.2d 361, 370 (2008) ("[E]very part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary." (quoting *Hubbard v. Henrico Ltd. P'ship,* 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998)).

[27] *Id.* at 16.

[28] *Id.* at 3-4.

[29] *Id.* at 4.

[30] *Id.*

succeed on the merits of the case until some later point in this proceeding.[31] In short, in order to be lawfully able to serve customers under Section A5, Calpine must *first* show that it can meet the terms of the statute – not the other way around.

Calpine Cannot Show Irreparable Harm

22. As discussed above, Calpine *must* show irreparable harm to obtain the requested relief. Calpine, though, makes little attempt to establish irreparable harm. Its support appears to amount only to generalized arguments that its customers may choose to no longer seek service from Calpine based on the questions raised in this proceeding.[32] As a preliminary matter, if Calpine seeks to provide service that is unlawful in the Commonwealth, there cannot be any harm at all should the temporary injunction not be granted. Relatedly, that customers may no longer choose Calpine as a CSP for 100% renewable energy due to its inability or unwillingness to meet the requirements of Section A5 also does not constitute harm, much less irreparable harm. Finally, Calpine claims that the refusal to process Calpine's enrollments harms its current and potential customers but provides no explanation of why that might be, let alone any support or substantiation that it will suffer any immediate and irreparable harm from maintaining the *status quo* while the legality of the service it intends to provide is resolved.[33]

23. In fact, the parties that will be harmed if Calpine's request for a temporary injunction is granted are customers who switch to Calpine, having been misled into believing they will receive renewable energy, when in fact they will not. In addition, and as discussed, non-participating customers also will bear the burden of the unlawful switching of customers

---

[31] Beyond that, prior to filing the Petition, the Company asked Calpine more than once to substantiate that it could and would provide 100% renewable energy to customers as required by Section A5, as interpreted by the Commission. The information provided by Calpine failed to do so, essentially ignoring the question of capacity.

[32] *See* Motion at 19.

[33] Motion at 14, 16.

sought by Calpine.

The Balance of the Equities and Public Interest Favor Dominion Energy Virginia

24. The Motion also makes only a passing reference to the balance of the equities, which Calpine claims tips in favor of granting the temporary injunction.[34] To satisfy this prong of the test for issuance of a temporary injunction, Calpine repeats the same unsubstantiated assertions it offers for purported irreparable harm. Calpine claims that while the customers who would be switched if the temporary injunction is granted could always be switched back should the Commission find that Calpine's service does not comply with the requirements of Section A5, those customers "may well be lost forever" if they are not switched now.[35] Calpine provides no support for this self-serving statement. Moreover, the balance of equities here is inextricably tied to the merits – i.e., whether Calpine's proposed service complies with the law. And Calpine has done nothing in its Motion to establish its compliance with the law. Calpine is essentially arguing that it should be allowed to proceed with providing a service despite the serious questions about the legality of that service raised in the Petition, which Calpine declines to address now, saying instead that it "looks forward" to doing so at some point in the future.[36]

25. The balance of equities actually favors denying the Motion and maintaining the *status quo* until the questions are resolved. If the *status quo* is maintained, customers will continue to receive reliable service from the Company that they undoubtedly are entitled to legally receive. If the Commission later finds that Calpine's service does in fact comply with Section A5, these customers would be able to switch consistent with the provisions of Section A5. However, if the Commission grants the temporary injunction and then later finds that

---

[34] Motion at 15.
[35] Motion at 19.
[36] Motion at 3-4.

Calpine's service does not comply with Section A5, those customers will have been obtaining an unlawful service. As discussed in the Petition, this will cause harm to both these customers as well as all other customers on the Company's system who cannot or choose not to obtain service from a CSP.[37]

26. Additionally, and perhaps most importantly, the public interest weighs against pushing Calpine's unsubstantiated enrollment requests through when the legality and validity of those enrollment requests is dubious. As noted above, injunctive relief typically is intended to maintain the *status quo* until the dispute is resolved by the decisionmaker. Here, the public interest favors maintaining the *status quo* for all customers, both those who are seeking to begin taking service from a CSP and those who do not intend to switch providers, until this matter is addressed by the Commission through a final order rendered in this proceeding.

27. Significant time, energy, and resources have been invested over the past decade in attempting to define the parameters of proper service under Section A5. While the Commission has explicitly approved certain offerings as compliant with Section A5's requirements, Calpine now appears to be pushing well beyond the clearly defined parameters of the offerings previously approved by the Commission.[38] Especially given the depth of the Commission's precedent on this issue, the Commission should maintain the *status quo* until it can rule on the underlying legal issues before allowing Calpine to proceed with providing a service that appears to disregard much of this clear precedent. Maintaining the *status quo* means denying Calpine's request for extraordinary relief.

Other Arguments Raised in the Motion Have No Merit

28. In addition to failing to establish its right to injunctive relief, the Motion raises

---

[37] Petition at 4, 14.
[38] *See, e.g., id.* at 12-14.

many arguments that appear to be intended to distract the Commission from the true issue at the heart of this proceeding.

29. First, Calpine cites Commission Case No. PUR-2018-00039—in which APCo requested that the Commission revoke a CSP's license based, in part, on the CSP's failure to adequately respond to a request under 20 VAC 5-312-70 E ("Rule 70 E")[39]—for its argument that Dominion Energy Virginia should be required to process all enrollment requests while Dominion Energy Virginia's Petition remains pending for decision by the Commission.[40] That case is distinguishable, however, because there was no request for temporary injunctive relief and there was no controversy regarding the enrollment of any new customers. The *status quo* was maintained and the CSP continued to provide service to its existing customers during the pendency of the proceeding. APCo's petition requested only that, after ruling on the underlying legal issue, "the Commission revoke [the CSP's] license, or at the very least, suspend the license until [the CSP] can demonstrate that the energy it delivers to customers is, in fact, 100 percent renewable...."[41] That request lends no support to Calpine's request for a temporary injunction here.

30. Calpine also cites Commission Case No. PUR-2018-00134 – in which APCo sought to revoke a CSP's license based on its failure to meet the specific capacity obligations established by PJM Interconnection, LLC ("PJM"). Again, there was no request for temporary injunctive relief and no issue about halting the processing of enrollment requests received from

---

[39] The primary finding of the Commission in this proceeding was that the renewable energy certificates associated with the renewable energy sold by a CSP must be retained or retired when that renewable energy is sold to a CSP's customers in order for the CSP to be providing 100% renewable energy. *See* Final Order at 6, *Appalachian Power Company v. Collegiate Clean Energy, LLC*, Case No. PUR-2018-00039, Doc. Cen. Con. No. 180920362, Sept. 21, 2018).

[40] Motion at 4.

[41] Complaint, *Appalachian Power Company v. Collegiate Clean Energy, LLC*, Case No. PUR-2018-00039 at 13-14 (Feb. 28, 2018).

the CSP. Indeed, APCo did not seek to have the CSP discontinue serving its customers during the pendency of the proceeding, instead maintaining the *status quo* until the Commission could rule on the underlying legal issue.

31. Additionally, rather than address the merits of the actual controversy in this proceeding, Calpine expends considerable energy in its Motion attempting to rebut an argument that was not made in the Petition. Specifically, Calpine attempts to link the Company's references to Section 10 of its CSP Coordination Tariff regarding the process the Company follows prior to enrolling customers with a CSP and separate references to the authority under Rule 70E to request information from a CSP.[42] In the Petition, the Company simply explained that Rule 70E permits the Company, as a local distribution company, to request information to substantiate the CSP's claims regarding the service it purports to offer, and that the Company submitted a request for information to Calpine as authorized by this rule.[43] Calpine responded with very limited information that failed to show it intends to provide electric energy that is provided 100 percent from renewable energy.[44] While the Company does not believe that Calpine's responses to the Company's requests under Rule 70E have established that the service it intends to provide meets the requirements of Section A5, non-compliance with Rule 70E is not the basis on which the Company has halted the enrollment of customers. Instead, based on these responses, it does not appear to the Company that Calpine intends to provide service to customers that complies with Section A5. Accordingly, the Company is unable to confirm that the enrollment requests are "valid," which is the threshold issue before the Company can proceed to accept and process an enrollment request as described in Section 10 of the CSP Coordination

[42] *See* Motion at 7.
[43] *See* 20 VAC 5-312-70 E.
[44] *See* Petition at 6, 15.

Tariff. The reference to 20 VAC 5-312-80 in Section 10.1 of the CSP Coordination Tariff does not obviate the need to consider the threshold issue, but instead confirms certain aspects of the process that should be followed when the CSP submits a *valid* enrollment request.

32. Therefore, for the reasons set forth above, Calpine has failed to show that the well-established grounds for obtaining temporary injunctive relief have been met, and its Motion should be denied.

CONCLUSION

WHEREFORE, Petitioner Dominion Energy Virginia respectfully requests that the Commission enter an order (i) denying Calpine's Motion and any relief requested therein, and (ii) granting Dominion Energy Virginia such other relief as the Commission may deem appropriate.

Respectfully submitted,

By: /s/ Stephen C. Piepgrass
Counsel

Lisa S. Booth
Paul E. Pfeffer
David J. DePippo, Esq.
Virginia Electric and Power Company
120 Tredegar Street
Richmond, VA 23219-4306
804-819-2288
804-819-2458
804-819-5607

Brooks M. Smith, Esq.
Stephen C. Piepgrass, Esq.
Troutman Sanders LLP
Building, 1001 Haxall Point, Richmond, VA 23219
804-697-1414
804-697-1320
brooks.smith@troutman.com
stephen.piepgrass@troutman.com

VERIFICATION

I, Robert Trexler, Director-Regulation, of Virginia Electric and Power Company, have read the Petition for Declaratory Judgment of Virginia Electric and Power Company, Case No. PUR-2019-00117, and the foregoing Response of Virginia Electric and Power Company, know the contents thereof, and state under penalty of perjury, pursuant to Virginia Code § 8.01-4.3, that the facts contained therein are true and correct to the best of my information, belief, and knowledge.

/s/ Robert Trexler
Signature

Director-Regulation
Title

July 31, 2019
Date

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that on this 31st day of July, 2019 a true copy of the foregoing Response of Virginia Electric and Power Company was delivered by hand or mailed, first-class, postage prepaid, to the following:

K. Beth Clowers, Esq.
Ashely B. Macko, Esq.
State Corporation Commission
Tyler Building, 10th Floor
Richmond, Virginia 23219

C. Meade Browder, Jr. Esq.
Division of Consumer Counsel
Office of Attorney General
202 N. 9th Street
Richmond, Virginia 23219

Brian R. Greene, Esq.
GreeneHurlocker, PLC
1807 Libbie Avenue, Suite 102
Richmond, Virginia 23226

Cliona Mary Robb, Esq.
Michael J. Quinan, Esq.
Christian & Barton LLP
909 East Main Street
Richmond, Virginia 23219

/s/ Stephen C. Piepgrass

39584428v3