

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 7, 2019

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APPLICATION OF

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APPALACHIAN POWER COMPANY

CASE NO. PUR-2017-00179

For approval of a 100% renewable  
energy rider pursuant to § 56-577 A 5  
of the Code of Virginia

ORDER APPROVING TARIFF

On December 27, 2017, Appalachian Power Company ("Appalachian" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") for approval of a voluntary renewable energy rider, designated Rider WWS, pursuant to which participating customers would be able to purchase "electric energy provided 100 percent from renewable energy" pursuant to § 56-577 A 5 of the Code of Virginia ("Code").

Appalachian states in its Application that Rider WWS participants would receive 100 percent of their energy and capacity from a portfolio of resources owned or contracted by the Company that meet the definition of renewable energy in Code § 56-576 (collectively, "WWS Portfolio").<sup>1</sup> Appalachian states that the resources in the WWS Portfolio would include the Summersville, Buck, Byllesby, Claytor, Leesville, London, Marmet, Niagara, and Winfield hydro facilities and the Beech Ridge, Grand Ridge, Fowler Ridge, Camp Grove, and Bluff Point wind facilities.<sup>2</sup>

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<sup>1</sup> Ex. 3 (Application) at 4-5; Ex. 4 (Castle Direct) at 1. Under the Company's proposal, the WWS Portfolio would match renewable generation and participating load on a monthly basis. *See* Tr. 17.

<sup>2</sup> Ex. 3 (Application) at 5; Ex. 4 (Castle Direct) at 1-2. The Company stated in its Application that the output associated with the Bluff Point wind facility would be added to the WWS Portfolio once delivery from that facility began in January 2018. Ex. 4 (Castle Direct) at 2.

Appalachian states that Rider WWS would be priced at a premium over standard service based on the prevailing market value of retail renewable energy, using the market cost of renewable energy certificates ("RECs") as a proxy for this premium.<sup>3</sup> The Company is proposing a premium of \$0.00425 per kilowatt hour ("kWh") for all standard rate schedules.<sup>4</sup> The Company states that for a residential customer using 1,000 kWh per month who chooses to participate in Rider WWS, the monthly bill increase would be \$4.25.<sup>5</sup> In addition to the premium, the Company proposes that Rider WWS participants pay for standard service plus all riders except the fuel factor rider, non-renewable generation rate adjustment clauses, and generation costs in base rates.<sup>6</sup> The Company states that instead, participating customers would pay a "balancing" charge that credits the Company's base rates and these riders in amounts that keep non-participants unaffected by participation.<sup>7</sup>

On January 17, 2018, the Commission issued an Order for Notice and Hearing that, among other things, directed the Company to provide notice of its Application; established a procedural schedule, including scheduling a public evidentiary hearing; provided opportunities for interested persons to participate in this proceeding by filing either comments on the Application or notices of participation; directed the Commission's Staff ("Staff") to investigate

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<sup>3</sup> Ex. 3 (Application) at 8; Ex. 14 (Vaughan Direct) at 4.

<sup>4</sup> Ex. 3 (Application) at 8; Ex. 14 (Vaughan Direct) at 4.

<sup>5</sup> Ex. 3 (Application) at 9; Ex. 4 (Castle Direct) at 5.

<sup>6</sup> Ex. 14 (Vaughan Direct) at 4.

<sup>7</sup> *Id.* The Company asserts that the allowed incremental and non-incremental costs of the renewable generators would continue to be recovered from all customers through the fuel factor, base generation rates and the renewable energy portfolio standard ("RPS") rate adjustment clause ("RPS-RAC"). *Id.* at 5.

the Application and file testimony and exhibits summarizing Staff's investigation; and appointed a Hearing Examiner to conduct all further proceedings in this case.

Notices of participation were filed by Wal-Mart Stores East, LP, and Sam's East, Inc. (collectively, "Walmart"); Appalachian Voices; Collegiate Clean Energy, LLC ("Collegiate Clean"); the VML/VACo APCo Steering Committee ("Steering Committee"); Virginia Electric and Power Company ("Dominion"); Direct Energy Services, LLC; and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). The Commission also received written comments on the Application.

Appalachian filed the direct testimony of its witnesses coincident with the filing of its Application. On May 1, 2018, Walmart and Collegiate Clean filed the testimony of their witnesses. Staff filed the testimony of its witnesses on May 23, 2018. Appalachian filed rebuttal testimony on June 6, 2018.

The public evidentiary hearing was convened, as scheduled, on June 26, 2018. Counsel for the Company, Appalachian Voices, Collegiate Clean, the Steering Committee, Walmart, Dominion, Consumer Counsel, and Staff appeared. No public witnesses testified at the hearing.<sup>8</sup>

On September 25, 2018, the Hearing Examiner issued his report ("Report"). Comments on the Report were filed by Appalachian, Walmart, Collegiate Clean, Appalachian Voices, the Steering Committee, Consumer Counsel, and Staff.<sup>9</sup>

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.

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<sup>8</sup> Tr. 13.

<sup>9</sup> Though the Steering Committee's comments on the Hearing Examiner's Report were filed out of time, the Commission will accept and consider those comments in this proceeding.

Code § 56-577 A 5 states in full:

5. After the expiration or termination of capped rates, individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:

a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory in which such a customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy; and

b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the exclusive service territory in which the customer is located to offer electric energy provided 100 percent from renewable energy, for the duration of such agreement.

This statute allows a customer to purchase "electric energy provided 100 percent from renewable energy" from a competitive service provider ("CSP"), if that customer's utility does not offer "an *approved* tariff for electric energy provided 100 percent from renewable energy" (emphasis added). As the Commission has previously noted, although this statute requires the utility's tariff to be "approved" by the Commission, it does not include an express standard of review for the Commission's approval, nor does it include any express limitations on what the Commission may determine is relevant to such review.<sup>10</sup>

In this regard, any tariff proposed under this statute must be evaluated on its own merits in determining whether it is just and reasonable and should be approved. For purposes of instruction but not limitation, the Commission further clarifies that certain basic principles inform our analysis of a 100 percent renewable energy tariff proposed under this statute:

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<sup>10</sup> See *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, Doc. Con. Cen. No. 180520057, Final Order at 5 (May 7, 2018); *Petition of Appalachian Power Company, For approval of a 100% renewable energy rider*, Case No. PUE-2016-00051, 2017 S.C.C. Ann. Rept. 339, 341, Final Order (Sept. 13, 2017).

- First, to be just and reasonable, the proposed tariff should include safeguards that hold non-participating customers substantially harmless.<sup>11</sup>
- Second, the tariff must supply the customer's full load requirements with electric energy provided 100 percent from "renewable energy" as defined by statute.<sup>12</sup>
- Third, the rates under such tariff should be reasonable for purposes of the renewable energy product that is being supplied.

As to the first principle, Appalachian's proposal herein includes safeguards that hold non-participating customers substantially harmless.<sup>13</sup>

As to the second principle, Appalachian's proposal identifies the specific renewable energy portfolio from which a customer's full load requirements will be supplied by 100 percent "renewable energy" as defined by statute.<sup>14</sup> In addition, the Commission finds that it is

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<sup>11</sup> Whether such a tariff produces *de minimis* or minor incidental effects on non-participating customers that do not violate this "substantially harmless" principle is a matter of fact to be determined in each case.

<sup>12</sup> Code § 56-576 states as follows:

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

<sup>13</sup> See, e.g., Ex. 14 (Vaughan Direct) at 5; Ex. 28 (Carr Direct) at 6-11; Ex. 33 (Castle Rebuttal) at 5; Appalachian Brief at 23-29; Tr. 264-65. Staff noted that Rider WWS may impact RPS-RAC customers and, thus, non-participants. Ex. 28 (Carr Direct) at 6-8, 10. Staff further found, however, that such impact is expected to be *de minimis*, and Appalachian proposes to subject both the balancing charge and the premium to periodic revisions to reflect current market conditions. *Id.* at 10; Ex. 14 (Vaughan Direct) at Schedule 1.

<sup>14</sup> See, e.g., Ex. 3 (Application) at 4-7; Ex. 4 (Castle Direct) at 2-5; Ex. 30 (Vaughan Rebuttal) at 4-5; Ex. 33 (Castle Rebuttal) at 2-5; Report at 24-26. As the Company noted, "Rider WWS offers to sell the *output* of the Company's renewable generation facilities. The Company will retire the RECs associated with that output, as is industry practice and as the Commission and the General Assembly [have] required. Rider WWS does not offer to merely purchase and retire RECs on behalf of APCo's customers . . ." Ex. 33 (Castle Rebuttal) at 3 (emphasis in original). In contrast, the Commission rejected a prior proposal from Appalachian under this statute, because the Company did not establish that the tariff provided the customer with 100 percent renewable energy. See *Application of Appalachian Power Company, For approval of its Renewable Power Rider*, Case No. PUE-2008-00057, 2008 S.C.C. Ann. Rept. 557, Order Approving Tariff (Dec. 3, 2008).

reasonable, for purposes of supplying 100 percent renewable energy under this statute, to match renewable generation with a participating customer's load on a *monthly* basis.<sup>15</sup>

As to the third principle, the Commission finds that the proposed tariff rates herein are reasonable for purposes of supplying electric energy provided 100 percent from renewable energy.<sup>16</sup> As an initial matter, the proposed tariff does not result in aggregate revenues that exceed aggregate costs plus a fair return.<sup>17</sup> Next, unlike market prices for undifferentiated electricity or natural gas, there currently are no standard, publicly available market prices for a "100 percent renewable energy" product (as fashioned by the Virginia statute) for the Commission to use for purposes of comparison. Nor are there other retail tariffs or market products directly equivalent to the Company's proposed 100 percent renewable energy product to use for comparison purposes.<sup>18</sup> The Commission concludes that it is reasonable in this instance to compare Appalachian's proposed tariff with available proxies presented in this proceeding, which we further find are reasonable for this purpose. Based on the instant record, the Commission finds that the tariff is reasonable when compared to proxies such as: the rates

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<sup>15</sup> See, e.g., Report at 26-28, 33; Appalachian Brief at 11-13; Tr. 65-67, 226-28. This finding does not preclude other matching standards from also being found reasonable in specific instances.

<sup>16</sup> In contrast, the Commission rejected prior proposals under this statute that did not satisfy this principle. See *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, Doc. Con. Cen. No. 180520057, Final Order at 7 (May 7, 2018) (rejecting the utility's proposal because there was too much uncertainty in the proposed rates to determine that they were reasonable); *Petition of Appalachian Power Company, For approval of a 100% renewable energy rider*, Case No. PUE-2016-00051, 2017 S.C.C. Ann. Rept. 339, 341, Final Order (Sept. 13, 2017) (rejecting the utility's legal argument that it did not need to establish that the proposed rates were reasonable).

<sup>17</sup> Code § 56-235.2 A. See, e.g., Ex. 14 (Vaughan Direct) at 6-7; Ex. 30 (Vaughan Rebuttal) at 6-7; Ex. 33 (Castle Rebuttal) at 5; Appalachian Brief at 13-31. Further, as asserted by Appalachian, it "calculated the Rider WWS rate to ensure that it captured all costs of providing 100% renewable energy to certain customers who elect such service." Appalachian Comments on Report at 15.

<sup>18</sup> See, e.g., Appalachian Comments on Report at 14.

charged to multiple customers by the only CSP providing 100 percent renewable energy under Code § 56-577 A 5 in Appalachian's service territory;<sup>19</sup> the market price of RECs;<sup>20</sup> and premiums paid by customers nationally in "green pricing" programs.<sup>21</sup>

Next, as discussed by the Hearing Examiner, Code § 56-585.2 F of Virginia's RPS program includes the following requirement (emphasis added):

F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers *to the extent feasible*.

We agree with the Hearing Examiner that a utility does not have the unilateral authority to determine what is "feasible" under this statute.<sup>22</sup> Rather, any such determination must be supported by a finding of the Commission. The statute, however, does not define how the Commission is to determine such feasibility; thus, the Commission must exercise its discretion in this regard. In the instant case and based on the record herein, the Commission approves Appalachian's request and finds that it is not feasible for the Company to apply towards its RPS goals the renewable energy from existing renewable energy sources that is being supplied to customers under its 100 percent renewable energy tariff.

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<sup>19</sup> See, e.g., Appalachian Brief (confidential version) at 20-22.

<sup>20</sup> See, e.g., Ex. 3 (Application) at 8; Ex. 14 (Vaughan Direct) at 4; Ex. 28C (Carr Direct) at 8-10; Ex. 30 (Vaughan Rebuttal) at 2. The renewable energy premium built into Rider WWS is specifically based on the going and projected value of the RECs produced by the generators in the WWS Portfolio. See, e.g., Ex. 14 (Vaughan Direct) at 4.

<sup>21</sup> See, e.g., Ex. 4 (Castle Direct) at 6; Ex. 12; Appalachian Brief at 19-20. The United States Department of Energy's National Renewable Energy Laboratory reports that the national average premiums for "green pricing" programs were about \$0.018/kWh for residential customers and \$0.017/kWh for non-residential customers. See, e.g., Ex. 12 at 10. The Company's proposed renewable energy premium is \$0.00425/kWh. See, e.g., Ex. 3 (Application) at 8; Ex. 14 (Vaughan Direct) at 4.

<sup>22</sup> See, e.g., Report at 22.

Having approved Rider WWS, the Commission further finds that such tariff may be "offered" under the terms of Code § 56-577 A 5 until it becomes fully subscribed, or until the Company fails to accomplish the monthly matching of load and supply as approved herein.<sup>23</sup>

Finally, the Company shall comply with the reporting requirements recommended by Staff.<sup>24</sup>

Accordingly, IT IS ORDERED THAT:

(1) Rider WWS is approved as set forth herein.

(2) Within 30 days hereof, Appalachian shall file Rider WWS, as approved by this Order Approving Tariff, with the Clerk of the Commission and the Commission's Division of Public Utility Regulation and Utility Accounting and Finance. The Clerk of the Commission shall retain such filings for public inspection in person and on the Commission's website:

<http://www.scc.virginia.gov/case>.

(3) The Company shall file annual reports on Rider WWS commencing May 1, 2019, and continuing until further order of the Commission.

(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 shall also be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

A True Copy  
Teste:



Clerk of the  
State Corporation Commission

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<sup>23</sup> See, e.g., Report at 28, 33.

<sup>24</sup> See, e.g., Report at 10-12; Ex. 26 (White Direct) at 17-18; Tr. 227; Ex. 28 (Carr Direct) at 11.