

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, DECEMBER 16, 2013

REGULATORY OFFICE
UTILITY CONTROL CENTER
2013 DEC 16 P 1:53

131230024

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2012-00142

For approval to establish a renewable generation
pilot program pursuant to § 56-234 of the
Code of Virginia

FINAL ORDER

On December 20, 2012, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or the "Company") filed with the State Corporation Commission ("Commission") an application for approval to establish a Renewable Generation Pilot Program ("Application") pursuant to § 56-234 of the Code of Virginia ("Code"). In its Application, the Company seeks approval to establish a Renewable Generation Pilot Program ("RG Pilot Program" or "Program"), including a new experimental and voluntary tariff, Rate Schedule RG – Renewable Energy Supply Service ("Rate Schedule RG").

Dominion Virginia Power states that it created the proposed Program: (1) in response to requests by customers to purchase a larger portion of their energy requirements from renewable energy resources than they currently receive from the Company's existing generation mix, and (2) to further promote the development of renewable energy in the Commonwealth of Virginia ("Commonwealth").¹

The Company states that the Program will only be available to non-residential customers served under Rate Schedule GS-3 or GS-4 with (1) demands greater than 500 kilowatts; and (2) individual account planned purchases of renewable energy between 1,000,000 kilowatt-hours

¹ Ex. 2 (Application) at 1 and 3.

("kWh") and 24,000,000 kWh annually (as determined by the customer).² The Program, as proposed, will have a three-year enrollment period, subject to a limitation of planned deliveries of 240,000,000 kWh annually, in aggregate, or 100 customers, whichever limit may be reached first.³ The Company states that the purchase price under Rate Schedule RG will represent energy and its associated renewable attributes only, and the remainder of the customer's energy requirements, as well as its capacity requirements, will continue to be provided under Rate Schedule GS-3 or GS-4, as applicable.⁴

Under the proposed Program, the participating customer may request a specific type of renewable energy resource, provided it meets the definition of "renewable energy" in § 56-576 of the Code and otherwise satisfies Program requirements.⁵ The customer also may request that the Company purchase the customer's renewable energy under Rate Schedule RG from a specific facility as long as that facility meets certain Program requirements.⁶ As proposed in the Program, qualifying renewable energy resources may be located outside of the Company's service territory but must be within the geographic scope of the PJM wholesale market and interconnected with PJM.⁷

The Company states in the Application that it will use commercially reasonable efforts to negotiate and execute agreements to obtain electric generation from renewable energy facilities

² *Id.* at 4 and 8.

³ *Id.* at 3 and 8.

⁴ *Id.* at 4. The Company states that the customer's additional purchase of renewable energy under the Program will substitute for the equivalent amount of undifferentiated energy (*i.e.*, energy having no identifiable attributes) that the customer would have otherwise purchased under its principal rate schedule. *Id.*

⁵ *Id.* at 5-6.

⁶ *Id.* at 6. See Ex. 8 (Muchhala Direct), for an explanation of these requirements.

⁷ Ex. 2 (Application) at 5.

from which participating customers desire to purchase renewable energy.⁸ Ultimately, however, the Company proposes that it will make the final selection of renewable energy suppliers from whom the renewable energy is purchased under Rate Schedule RG.⁹ The agreement between the Company and renewable energy supplier is called a renewable energy purchase and sales agreement ("REPSA"), in which the participating customer will be recognized and identified as a third-party beneficiary.¹⁰

A second contract between the Company and the participating customer ("customer contract") will define the terms and conditions of the customer's renewable energy purchases, including the assignment of all risks for such purchases under Rate Schedule RG to the customer.¹¹ The Company states that both the customer and the renewable energy supplier must agree to the negotiated terms of the customer contract and the REPSA, and both agreements will hold the Company harmless.¹²

The Company proposes that the renewable energy to be provided under the Program will be authenticated by Renewable Energy Certificates ("RECs").¹³ Each such REC equals one megawatt-hour of electricity.¹⁴ Once the RECs are entered in the renewable energy supplier's PJM Generation Attribute Tracking System ("GATS") account, the REPSA requires the supplier

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ *Id.* In order to manage Program costs and avoid multiple REPSAs for one customer, each participating customer is permitted to select only one renewable resource. *Id.*

¹¹ *Id.*

¹² *Id.* at 7.

¹³ Ex. 8 (Muchhala Direct) at 5.

¹⁴ *Id.*

to transfer the certificates to the Company.¹⁵ The renewable energy will be deemed delivered to participating customers once the REC (or RECs) is transferred to the Company's PJM GATS account.¹⁶ As ultimately determined and directed by these customers, the Company will then either retire the RECs on behalf of the customers or transfer them to the customers.¹⁷ If transferred, the customers can either retire the RECs or "transfer, sell or take other action consistent with [their] ownership."¹⁸

Company witness Swanson testified that the Company would retire the RECs on the customer's behalf, if directed by the customer, but would not sell them on the customer's behalf.¹⁹ Company witness Corsello testified that, although it is unlikely, if the customer wished to sell the RECs back to the Company, it would be an option for the customer.²⁰ Ms. Corsello further testified that in that event, the Company could then count such RECs toward its renewable energy portfolio standard goals; however, the energy supplied by the renewable generator pursuant to a REPSA would no longer be considered "renewable energy" delivered to the customer under this Program.²¹

As proposed by the Company, the customer will be responsible for all costs associated with its purchases of renewable energy under Rate Schedule RG, including a monthly

¹⁵ *Id.*

¹⁶ Tr. 144 (Muchhala).

¹⁷ Ex. 8 (Muchhala Direct) at 5.

¹⁸ *Id.* at 5-6.

¹⁹ Tr. 234 (Swanson).

²⁰ Tr. 315 (Corsello).

²¹ Tr. 319 (Corsello).

administrative charge of \$500.²² The Company asserts that there will be no impact regarding the allocation of fixed costs to either the Virginia jurisdiction or the participant's customer class, outside of fuel accounting.

The Application specifically asks the Commission to: (1) approve the Company's proposed RG Pilot Program, including its associated experimental rate schedule, Rate Schedule RG – Renewable Energy Supply; and (2) provide such further relief as deemed necessary or appropriate.

The Commission issued an Order for Notice and Hearing in this case on January 11, 2013, which, in part, ordered Dominion Virginia Power to provide notice of its Application to the public; provided interested parties an opportunity to comment on or participate in the case; set a public hearing date; and established dates for the filing of pre-filed and rebuttal testimony. Notices of participation were filed by MeadWestvaco Corporation, Collegiate Clean Energy, LLC ("Collegiate"), Iberdrola Renewables, LLC, Mr. Michel A. King ("Mr. King"), and the Chesapeake Climate Action Network, Appalachian Voices, and the Virginia Chapter of the Sierra Club (collectively, "Environmental Respondents"). On March 19, 2013, Mr. King filed testimony on his own behalf, and Collegiate filed the direct testimony of Charles J. Packard. On April 9, 2013, the Commission Staff ("Staff") filed the testimony of Allison F. Samuel. On April 23, 2013, Dominion Virginia Power filed the rebuttal testimony of Diane O. Corsello.

A public hearing was held on May 7, 2013. Counsel for Dominion Virginia Power, Collegiate, the Environmental Respondents, and Staff were present at the hearing. Mr. King also appeared *pro se* at the hearing. One public witness, Anthony Smith, appeared and testified on

²² Ex. 2 (Application) at 6-9.

behalf of Secured Futures, Inc. Following the hearing, the parties and the Staff were permitted to file post-hearing briefs.

The Environmental Respondents requested that the Commission approve the proposed Program subject to the following modifications: (1) include a mechanism allowing for an increase of the Program cap (above 240,000,000 kWh or 100 customers) if the cap is met before the expiration of the three-year pilot period;²³ (2) prioritize contracting with eligible clean, renewable energy suppliers sited within the Commonwealth;²⁴ and (3) require the Company to provide clear information to the customer (relative to purchase price and other factors) before and during the REPSA negotiation process.²⁵

Mr. King requested, among other things, that the Commission require the Company to retire RECs used to authenticate the renewability of the energy supplied under the Program.²⁶ Mr. King also requested that the Commission's final order include a provision prohibiting the Company from rebundling undifferentiated energy from the grid with RECs and marketing the product as renewable energy.²⁷

Collegiate recommended that the Commission approve the Program only under certain conditions. Specifically, Collegiate asserted that the Commission should require that: (1) the Company advise customers that energy purchased under the Program does not constitute 100% renewable energy under § 56-577 A 5 of the Code (*i.e.*, the energy supplied has both a renewable component and non-renewable component and is distinct from wholly renewable energy that

²³ Post-Hearing Brief of Environmental Respondents at 3, 4-7.

²⁴ *Id.* at 3, 7-9.

²⁵ *Id.* at 3, 9-11.

²⁶ Ex. 19 (King Direct) at 2-3.

²⁷ Post-Hearing Brief of Michel A. King at 6.

consists of both renewable supply and capacity);²⁸ (2) Dominion advise customers that there are alternative renewable energy supply options (providing both renewable energy and renewable capacity);²⁹ and (3) Dominion be prohibited from imposing unreasonable requirements on non-Program suppliers and non-Program customers purchasing wholly renewable supply pursuant to § 56-577 A 5 a of the Code.

In its rebuttal testimony, the Company responded to Collegiate's testimony regarding the relevance of § 56-577 A 5 of the Code to the proposed Program; specifically, the provision of 100% renewable energy pursuant to that Code section. The Company asserted that "the Commission needs to provide a framework or additional guidance on what constitutes 100% renewable energy to be offered by both utilities and competitive service providers . . . in order to comply with Va. Code § 56-577 A 5."³⁰ The Company requested that the Commission initiate a rulemaking proceeding to provide that framework and additional guidance.³¹

Staff does not object to the Company's proposed RG Pilot Program but expressed some concerns, specifically about whether the Program will actually stimulate the development of Virginia-based renewable energy (as the Company claims) and whether this Program "is necessary to acquire information which is or may be in the furtherance of the public interest," as required by § 56-234 of the Code.³² Staff acknowledged, however, that the information the Company plans to collect and provide to the Commission on an annual basis³³ "may be in the

²⁸ Ex. 21 (Packard Direct) at 13; Post-Hearing Brief of Collegiate Clean Energy, LLC at 7.

²⁹ Tr. 301 (Packard).

³⁰ Ex. 23 (Corsello Rebuttal) at 4.

³¹ Ex. 23 (Corsello Rebuttal) at 5; Post-Hearing Brief of Virginia Electric and Power Company at 29-32.

³² Ex. 22 (Samuel Direct) at 11.

³³ Ex. 2 (Application) at 7; Ex. 3 (Corsello Direct) at 9.

furtherance of the public interest in that it may help to assess whether this type of program does indeed result in the further development and use of renewable energy in the Commonwealth."³⁴ Staff therefore recommends certain reporting requirements.³⁵

Staff also expressed concerns about the potential impact of the Program on the Company's fuel factor, despite the Company's representations that this pilot is a "self-contained program" and that the participating customers will be responsible for the price of the renewable energy delivered to them.³⁶ The Staff recommended certain reporting requirements in order to track the effect of the RG Pilot Program on the Company's fuel factor.³⁷

Staff also recommended that the Company be required to include, in its annual Program reports, the actual costs associated with its administration of the Program in order to determine whether the \$500 administrative fee is, and remains, proportionate to its actual administrative expenses.³⁸ In addition, since the renewable energy to be provided under the Company's proposed RG Pilot Program will be authenticated by RECs, Staff recommended that if the Commission approves the Program, the Company be required to provide, in its annual reports, certain information regarding the RECs registered under the Program.³⁹

³⁴ Ex. 22 (Samuel Direct) at 11.

³⁵ Post-Hearing Brief of the Staff of the State Corporation Commission ("Staff Brief") at 8.

³⁶ Ex. 2 (Application) at 6; Tr. 58, 67 (Corsello). Company witness Swanson testified that when a customer under the Program receives power from a renewable generator, the Company's fuel expenses will go down – the result of the Company "backing down [its] generation" by the equivalent amount of kWh delivered to a customer under Schedule RG. Tr. 250-251 (Swanson). Conversely, as Mr. Swanson testified, if a renewable generator who has contracted to provide power under the Program produces less power than it contracted to produce, the Company will be required to supply the customer's remaining power needs, thereby increasing the Company's fuel expenses. Tr. 251-252 (Swanson).

³⁷ Staff Brief at 10.

³⁸ *Id.* at 11.

³⁹ *Id.* at 13.

In its post-hearing brief, Staff proposed that each customer contract under the Program "contain a 'regulatory out' provision excusing customers from further performance under these contracts, if and when the Commission eliminates Schedule RG, a voluntary and experimental tariff."⁴⁰ Staff asserted that its proposal recognizes the Commission's statutory authority to modify or discontinue any experimental rate established pursuant to § 56-234 of the Code. Staff further asserted that the proposed "regulatory out" provision is proposed as a contractual remedy to protect customers from the obligation of holding harmless or indemnifying the Company for the purchase of renewable power that the customers could not lawfully obtain in the event the Commission terminated Rate Schedule RG.⁴¹

According to Dominion Virginia Power, the proposed "regulatory out" provision may cause suppliers to require a higher price or other concessions to enter into contracts to provide renewable energy. Further, the Company asserts that contracts or customer participants under other Commission-approved pilot programs or other experimental rate schedules routinely run longer than the explicit term of the associated pilot or experiment itself. Moreover, the Company believes that the proposed "regulatory out" provision would limit pilot participation by potential providers as well as interested customers and thereby potentially reduce many of the intended benefits of the program.⁴²

On July 17, 2013, the Hearing Examiner issued her Report in this proceeding. The Hearing Examiner generally recommended approval of the proposed RG Pilot Program and

⁴⁰ *Id.*

⁴¹ *Id.* at 14-15.

⁴² Dominion Virginia Power Post-Hearing Brief at 28-29.

adopted Staff's reporting recommendations.⁴³ The Hearing Examiner also recommended that several key constraints concerning the Program be articulated in the Commission's final order. These recommended constraints would prohibit the Company from: (i) contracting with affiliates for the purchase of renewable energy in connection with the Program; (ii) utilizing RECs associated with the Program to meet the Company's RPS goals; and (iii) representing that the proposed Rate Schedule RG constitutes a tariff for customer purchase of electric energy provided 100% from renewable energy within the meaning of § 56-577 A of the Code.⁴⁴ The Report also recommended that the Commission's order emphasize that if Program customers sell the RECs issued in connection with renewable energy purchased under the Program, the power purchased is no longer renewable energy for purposes of this Program.⁴⁵ The Hearing Examiner did not recommend that the customer contracts include a "regulatory out" provision, as proposed by Staff.⁴⁶ Finally, the Hearing Examiner recommended that the Commission initiate a rulemaking proceeding relative to the application of § 56-577 A of the Code.⁴⁷

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Code of Virginia

The Company seeks approval to establish its RG Pilot Program under § 56-234 B of the Code, which provides in pertinent part:

⁴³ Hearing Examiner's Report at 20-21.

⁴⁴ *Id.* at 21-22.

⁴⁵ *Id.* at 22.

⁴⁶ *Id.* at 23.

⁴⁷ *Id.*

[N]o provision of the law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in the furtherance of the public interest.

We adopt the findings and recommendations of the Hearing Examiner as modified herein, including the Hearing Examiner's recommended reporting requirements. In addition, the Commission adopts the constraints and clarifications recommended by the Hearing Examiner and mentioned herein.⁴⁸ At this time, however, we find that it is not necessary to initiate a rulemaking proceeding regarding § 56-577 A of the Code, as requested by the Company and recommended by the Hearing Examiner.

Further, the Commission does not adopt the Environmental Respondents' recommendation that the Program include a mechanism whereby the Company may increase the Program cap should the Program become fully subscribed prior to the expiration of the three-year pilot period. Dominion, *sua sponte*, may make a request to expand the parameters of the Program if or when appropriate.

With regard to Collegiate's request for consideration of issues relating to the application of § 56-577 A of the Code, we agree with the Hearing Examiner's conclusion that this is not the appropriate forum to address such issues. Collegiate's issues are more relevant to a proceeding instituted pursuant to § 56-577 A of the Code rather than in this proceeding—a docket established to review the Company's application for a renewable generation pilot program.

⁴⁸ See Hearing Examiner's Report at 21-22. By this Order, we do not, however, approve the sample REPSA and customer contract attached to the Company's Application or any of their illustrative provisions. As the Company clearly noted in both its Application and at the hearing of this matter, the actual REPSAs and customer agreements utilized in the Program will be individually negotiated on a customer-by-customer basis. Thus, no term or condition of the sample agreements attached to the Application should be deemed to have any approval or endorsement of this Commission.

The Commission will not require customer contracts under this program to incorporate a "regulatory out" provision as proposed by the Staff. The Commission also shares the concern articulated by the Hearing Examiner that the "regulatory out" provision could result in higher prices for renewable energy sold under the RG Pilot Program and will not adopt such a provision on this record.

Finally, Mr. King's Request for Leave to File Comments on the Hearing Examiner's Report Out-of-Time is denied for the reasons provided in the Company's response to Mr. King's request.⁴⁹

Accordingly, IT IS ORDERED THAT:

(1) The Company's Application is granted, subject to the reporting requirements recommended by the Hearing Examiner and adopted herein.

(2) Upon implementation of the RG Pilot Program, the Company shall file with the Commission's Divisions of Energy Regulation and Utility Accounting and Finance its experimental Rate Schedule RG – Renewable Energy Supply.

(3) This matter is continued.

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 Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

⁴⁹ See Response of Virginia Electric and Power Company to Michel A. King's Request for Leave to File Comments on the Hearing Examiner's Report Out-of-Time, dated September 25, 2013.