

**Virginia State Corporation Commission
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20230314

Case Number (if already assigned) PUR-2022-00124

Case Name (if known) PETITION OF VIRGINIA ELECTRIC AND POWER COMPANY For approval of its 2022 RPS Development Plan under § 56-585.5 of the Code of Virginia and related requests

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March 14, 2023

VIA ELECTRONIC FILING

Mr. Bernard Logan, Clerk
c/o Document Control Center
State Corporation Commission
1300 East Main Street, 1st Floor
Richmond, VA 23219

Re: Petition of Virginia Electric and Power Company For approval of its 2022 RPS Development Plan under § 56-585.5 D 4 of the Code of Virginia and related requests; Case No. PUR-2022-00124

Dear Mr. Logan:

Please find enclosed for filing with the State Corporation Commission ("SCC" or "Commission") the Comments of Walmart Inc. to the Hearing Examiner Report in the above-referenced case.

All parties are being served a copy of this filing in accordance with the attached Certificate of Service. Pursuant to the Commission's Rules of Practice and Procedure, 5 VAC 5-20-140, and the Commission's *Order Requiring Electronic Service* entered on April 1, 2020, Case No. CLK-2020-00007, Walmart is providing service of documents in this case via email only unless a party requests otherwise.

Please contact me if you have any questions.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By 
Carrie H. Grundmann
(VA Bar No. 76817)

Counsel to Walmart Inc.

CMH:sds
Attachments
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Comments of Walmart Inc. to Hearing Examiner Report upon the following parties to this proceeding.

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Dated: March 14, 2023

20230314

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF)	
)	
VIRGINIA ELECTRIC AND POWER)	CASE NO. PUR-2022-00124
COMPANY)	
)	
For approval of its 2022 RPS Development)	
Plan under § 56-585.5 of the Code of Virginia)	
and related requests)	

COMMENTS OF WALMART INC. TO HEARING EXAMINER REPORT

Walmart Inc. ("Walmart"), by counsel, pursuant to the Virginia State Corporation Commission's ("Commission" or "SCC") Rules of Practice and Procedure, 5 Va. Admin. Code § 5-20-120C and the Report of D. Mathias Roussy, Jr., Hearing Examiner, issued March 1, 2023 ("Report"), hereby files the following Comments to the Report.

INTRODUCTION

Walmart largely supports the recommendations set forth in the Report. In particular, Walmart believes that the Commission should adopt the following specific recommendations from the Report:

1. The Commission should adopt the cost allocation methodology put forward by Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Company" or "Dominion") for purposes of this case, and it should defer any decision on cost allocation and rate design to Case No. PUR-2021-00156. Report, p. 147. Should any alternative cost allocation or rate design be adopted in Case No. PUR-2021-00156, any impacted riders can be trued up in a future proceeding.
2. The Commission should order Dominion to study ways to ensure that customers get the best-priced projects, including pricing for third-party power purchase agreements ("PPAs"), which may include adoption of the downward bid refresh mechanism applicable to the solar procurement process being undertaken by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC presently pending before the North Carolina Utilities Commission. Report, p. 158; *see also* Exhibit 55, pp. 3-4.

- 3. The Commission should direct Dominion to adopt more flexible pricing terms in its Request for Proposal ("RFP") process, including a range of price escalators, rather than requiring all bidders to include a 2.5 percent per year price escalator in their bids. Report, p. 158.

The Report also discussed the parties' positions concerning the language in Va. Code § 56-585.5 (D) ("Subsection D") of the Virginia Clean Economy Act ("VCEA") concerning the split of ownership of resources as between the Company and third parties. Report, p. 161. Walmart agrees with the Report that the Commission has the authority and discretion to decide whether Dominion has correctly interpreted this provision of the VCEA. In fact, Walmart focuses its limited Comments below to ask the Commission to render a decision on this important issue.

The record evidence revealed that there were eight conforming PPAs, all of which were lower cost than the Company-owned CE-3 Projects, that were not put forward for approval in this case. See Transcript ("Tr."), Vol. 2, p. 279, lines 15-20 and p. 281, line 20 to p. 282, line 282, line 10 (Appalachian Voices ("Environmental Respondent") witness Abbott). Thus, in the absence of a Commission decision on the split of ownership as between the Company and third-party PPAs, it appears that customers will pay more for VCEA compliance.

I. THE COMMISSION SHOULD FIND THAT 35 PERCENT IS A FLOOR FOR THIRD-PARTY OWNED RESOURCES UNDER SUBSECTION D OF THE VCEA.

In the hearing to consider the proposed Second Stipulation in the Coastal Virginia Offshore Wind ("CVOW") Project, Case No. PUR-2021-00142, Commissioner Jagdmann recognized that the impact of the \$9.8 billion for CVOW plus the \$4 billion for the CE-1, CE-2, and CE-3 Projects is significant, stating that these increased costs "will harm all [VCEA] goals when we get affordability issues."¹ Commissioner Jagdmann warned all participants in that case, Dominion

¹ *Application of Virginia Electric and Power Company For approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1.11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia, Case No. PUR-2021-00142, Tr., Day 5 (Nov. 21, 2022), p. 73, line 14 to p. 74, line 23.*

included, that they needed to "pay very close attention" to the affordability issue.² It is in the context of Commissioner Jagdmann's prior warnings on affordability that Walmart asks the Commission to decide the proper split of Company versus third-party-owned resources consistent with Subsection D of the VCEA.

Walmart believes that Subsection D of the VCEA sets a floor, not a target, of 35 percent for third-party-owned resources.³ While the remaining 65 percent *may* be owned by Dominion, the language of the VCEA does not mandate that they *must* be. The relevant language of Subsection D states that "the remainder [of VCEA resources proposed for approval], in the aggregate, being from construction or acquisition by such Phase I utility." Va. Code § 56-585.5 D(1)(a). Neither the term construction nor the term acquisition is defined. The Commission should exercise its discretion to define these terms in a way that lowers the cost to customers of VCEA compliance.

In the absence of a Commission decision, Dominion has made it clear that it will continue to view the 35 percent as a target, and it will continue to propose that it own 65 percent of VCEA resources. The impact of this interpretation is cost additive for customers, which is what the evidence in this case confirms. There were eight conforming – meaning they met the Company's own requirements – PPAs in this case that the Company did not move forward with. Every single one of those PPAs were *less expensive than* the Company-owned CE-3 Projects. *See* Transcript, Vol. 2, p. 279, lines 15-20 and p. 281, line 20 to p. 282, line 282, line 10 (Abbott). Customers were harmed by the Company's failure to move forward with these eight PPAs for at least two reasons: (1) instead of this 125 MW of cheaper resources, Dominion presumably opted to propose more expensive Company-owned resources; and (2) by failing to move forward, the Company forfeited

² *Id.*

³ For the sake of brevity, Walmart incorporates its legal arguments as set forth in its Post-Hearing Brief filed in this case on February 6, 2023.

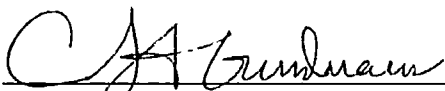
these less expensive projects. According to the Company, they "notified these non-winning bidders last April [2022] and can no longer hold these bidders to the as-bid PPA price." Exhibit 63, p. 7, lines 3-12. It is not in the best interest of customers for Dominion to fail to move forward with projects that meet all of Dominion's screening criteria simply to allow Dominion to maintain its interpreted 35/65 percent ownership split. The Commission should address this issue and find that the "remainder, in the aggregate," as set forth in Subsection D obligates Dominion to put forward the best projects, regardless of whether they are Company- or third-party-owned projects, for the remaining 65 percent of VCEA resources.

CONCLUSION

For all of the reasons set forth above, Walmart respectfully requests that this Commission adopt the Report in its entirety. Walmart further respectfully requests that the Commission issue a ruling concerning the proper interpretation of the VCEA as it relates to the split of ownership of resources as between Dominion and third parties.

Respectfully submitted,

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Dated this 14th day of March, 2023.

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