

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 1, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

Ex Parte: Allocating RPS costs to certain
customers of Appalachian Power Company

CASE NO. PUR-2020-00165

ORDER ESTABLISHING PROCEEDING

During its 2020 Session, the Virginia General Assembly enacted Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly. These duplicate Acts of Assembly, known as the Virginia Clean Economy Act ("VCEA"), became effective on July 1, 2020. The VCEA, *inter alia*, establishes mandatory renewable energy portfolio standards ("RPS") for Virginia Electric and Power Company ("Dominion") and Appalachian Power Company ("APCo" or "Company") (collectively "utilities") in new § 56-585.5 of the Code of Virginia ("Code").¹

Further, § 56-585.5 F of the Code provides that the utilities' costs of compliance with §§ 56-585.5 and 56-585.1:11 of the Code² "shall be recovered from all retail customers in the

¹ Subdivision D 4 of Code § 56-585.5 requires Dominion and APCo to submit to the State Corporation Commission ("Commission") plans and petitions for (i) approval of new solar and onshore wind generation capacity as well as energy storage projects ("RPS Filing"), and (ii) approval or update of cost recovery mechanisms therefor. The utilities are required to make RPS Filings annually, commencing in 2020 and concluding in 2035. By Order dated July 10, 2020, the Commission established dockets for Dominion and APCo to make their RPS Filings not later than November 2, 2020, in Case Nos. PUR-2020-00134 and PUR-2020-00135, respectively.

² As stated therein, such costs include "(i) costs of generation facilities powered by sunlight or onshore or offshore wind, or energy storage facilities, that are constructed or acquired by a Phase I or Phase II Utility after July 1, 2020, (ii) costs of capacity, energy, or environmental attributes from generation facilities powered by sunlight or onshore or offshore wind, or falling water, or energy storage facilities purchased by the utility from persons other than the utility through agreements after July 1, 2020, and (iii) all other costs of compliance, including costs associated with the purchase of [Renewable Energy Certificates] associated with RPS Program requirements pursuant to this section."

service territory of a Phase I [APCo] or Phase II [Dominion] Utility as a non-bypassable charge, irrespective of the generation supplier of such customer...."³ The statute establishes several exemptions from this non-bypassable charge, including exemptions for accelerated renewable energy buyers, PIPP eligible utility customers, advanced clean energy buyers, and qualifying large general service customers, all as described in the legislation.⁴

Section 56-585.5 F of the Code directs the Commission to establish proceedings for Dominion and APCo by September 1, 2020, to determine the amount of the utilities' costs of compliance with §§ 56-585.5 and 56-585.1:11 of the Code, net of benefits, to be allocated to retail customers within the utilities' service territory receiving electric supply service from non-utility suppliers. The statute requires that tariff provisions recovering these costs from such customers be implemented not later than January 1, 2021, and that such tariffs be updated and trued up on an annual basis.⁵

NOW THE COMMISSION, upon consideration of the foregoing and pursuant to the requirements of Code § 56-585.5 F, hereby establishes this docket. APCo shall file herein a tariff, together with supporting information and documentation, by which an allocation of its costs of compliance with §§ 56-585.5 and 56-585.1:11 of the Code, net of benefits, is proposed to be recovered from retail customers within its service territory that elect to receive electric supply from a supplier of electric energy other than APCo ("RPS Cost Allocation Filing" or "Filing").

³ Section 56-585.5 F of the Code.

⁴ *Id.* See Code § 56-576 for the definition of "Percentage of Income Payment Program (PIPP) eligible utility customer."

⁵ Section 56-585.5 F of the Code.

The Commission will, by separate Order, establish a docket in which Dominion will be directed to make its own RPS Cost Allocation Filing.

The Commission further takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.⁶ The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.⁷ Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless it contains confidential information, and require electronic service of pleadings on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) The Commission hereby establishes Case No. PUR-2020-00165 for the receipt and the Commission's consideration of APCo's RPS Cost Allocation Filing.

⁶ See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. See also, Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay At Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

⁷ See, e.g., *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

(2) All pleadings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁸ Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with Rule 5 VAC 5-20-170, *Confidential information*. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁹

(3) Pursuant to 5 VAC 5-20-140, *Filing and Service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Commission Staff ("Staff") in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120, *Procedure before Hearing Examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to rule on any discovery matters that may arise during the course of this proceeding, including any motion for protective order.

⁸ 5 VAC 5-20-10 *et seq.*

⁹ As noted in the Commission's Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

(5) On or before October 5, 2020, APCo shall file, with the Clerk of the Commission, its RPS Cost Allocation Filing in accordance with Code § 56-585.5 F.

(6) In addition to the information required by Ordering Paragraph (5), APCo shall include additional information and analyses in its Filing as provided in the Attachment to this Order. The Filing shall include an index that identifies the specific location(s) within that Filing corresponding to the questions and issues for which utility responses are required.

(7) An electronic copy of the public version of APCo's RPS Cost Allocation Filing, once filed, may be obtained by downloading unofficial copies of the public version of the Filing and other documents filed in this case from the Commission's website:

<https://scc.virginia.gov/pages/Case-Information>.

(8) On or before November 2, 2020, any interested person or entity may file written comments on APCo's Filing with the Clerk of the Commission by following the instructions on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. All comments shall refer to Case No. PUR-2020-00165.

(9) On or before November 2, 2020, any interested person may participate as a respondent in this proceeding by filing, with the Clerk of the Commission at: <https://scc.virginia.gov/clk/efiling/>, a notice of participation in accordance with the Commission's Rules of Practice. Such notice of participation shall include the email addresses of such parties or their counsel. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by

5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00165.

(10) Within three (3) business days of receipt of a notice of participation as a respondent, APCo shall serve a copy of the public version of its 2020 RPS Cost Allocation Filing on the respondent.

(11) On or before November 2, 2020, any interested person or entity may file, with the Clerk of the Commission at: <https://scc.virginia.gov/clk/efiling/>, a request that the Commission convene a hearing on the Company's RPS Cost Allocation Filing. Requests for hearing must include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. All such filings shall refer to Case No. PUR-2020-00165.

(12) A copy of any requests for hearing and notices of participation simultaneously shall be sent to counsel for the Company identified in its 2020 RPS Cost Allocation Filing.

(13) The Staff shall investigate the Company's Filing. On or before November 19, 2020, the Staff shall file with the Clerk of the Commission a Staff Report containing its findings and recommendations and promptly shall serve a copy of the Staff Report on counsel to the Company and all respondents.

(14) On or before December 4, 2020, APCo may file with the Clerk of the Commission (i) any response to any requests for hearing and any comments filed by interested persons in this proceeding, and (ii) any rebuttal to the Staff Report.

(15) Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(16) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.¹⁰ Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq.*

(17) The Commission's Division of Public Utility Regulation shall promptly transmit electronically a copy of this Order to individuals, entities or organizations identified by the Commission Staff as potentially having an interest in this proceeding,¹¹ and shall also make available an electronic copy of this Order on the Division of Public Utility Regulation's section of the Commission's website: <https://scc.virginia.gov/pages/Utility-Regulation>.

(18) This matter is continued.

¹⁰ The assigned Staff attorney is identified on the Commission's website, <https://scc.virginia.gov/pages/Case-Information>, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2020-00164 in the appropriate box.

¹¹ No entity or individual is considered part of the official Service List in this case unless and until they file a Notice of Participation in this case.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: William K. Castle, Director, Regulatory Services, VA/TN, Appalachian Power Company, d/b/a/ American Electric Power Company, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219, wkcastle@aep.com; Noelle J. Coates, Senior Counsel - Regulatory Services, American Electric and Power Company, 1051 E. Cary Street, Suite 1100, Richmond, Virginia 23219, njcoates@aep.com; C. Meade Browder, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia, 23219, Mbrowder@oag.state.va.us; and the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

ATTACHMENT

1. Identify all existing customers that potentially qualify as "accelerated renewable energy buyers" under § 56-585.5 G.
 - (a) Provide the total annual load for 2019 associated with these customers.
 - (b) Provide the total peak load for 2019 associated with these customers.
2. Identify all existing customers that potentially qualify as "advanced clean energy buyers" under § 56-585.1:11 that (i) had an aggregate load over 100 megawatts in 2019; and (ii) with an aggregate amount of at least 200 megawatts of solar or wind energy supply currently under contract with a term of 10 years or more from facilities located within the Commonwealth.
 - (a) Provide the total annual load for 2019 associated with these customers.
 - (b) Provide the total peak load for 2019 associated with these customers.