

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

SCC-CLERK'S OFFICE  
DOCUMENT CONTROL CENTER

CASE NO. PUR-2017-00060

For approval of 100 percent renewable  
energy tariffs pursuant to §§ 56-577 A 5 and  
56-234 of the Code of Virginia

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HEARING EXAMINER'S RULING

August 14, 2017

On May 9, 2017, Virginia Electric and Power Company ("DEV" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") requesting the Commission's approval of six renewable energy tariffs, collectively designated as CRG Rate Schedules, pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia ("Code"). As proposed, the CRG Rate Schedules would allow existing or new non-residential customers with peak measured demand of 1,000 kilowatts ("kW") or greater to voluntarily elect to purchase 100% of their energy needs from renewable energy resources.

On June 1, 2017, the Commission issued an Order for Notice and Hearing ("Procedural Order") that, among other things, docketed this matter; established a schedule for the filing of notices of participation and prefiled testimony; scheduled a hearing on October 18, 2017; and assigned a Hearing Examiner to conduct all further proceedings in this matter and file a final report.<sup>1</sup>

Direct Energy Services, LLC ("Direct Energy"); Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"); Appalachian Power Company ("APCo"); Northern Virginia Electric Cooperative ("NOVEC"); Appalachian Voices ("Environmental Respondents"); the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Secure Energy Futures, L.L.C. ("Secure Energy"); Advanced Energy Economy, Inc. ("AEE"); Mid-Atlantic Renewable Energy Coalition ("MAREC"); National Energy Marketers Association ("NEM"); and Collegiate Clean Energy, LLC ("Collegiate") filed notices of participation in this case.

On July 26, 2017, Direct Energy filed a Motion to Dismiss or to Stay Proceeding ("Motion"). Among other things, Direct Energy argued that the Commission should dismiss the Application because: (1) the Company failed to provide a basis for the Commission to determine if the rates to be charged under the CRG Rate Schedules are just and reasonable; (2) the Company failed to provide a basis for the Commission to determine if the CRG Rate Schedules constitute a tariff for electric energy provided 100% from renewable energy or for determining whether the CRG Rate Schedules are in the public interest; and (3) the Company is already permitted to enter into the types of special contracts contemplated by the CRG Rate Schedules pursuant to § 56-235.2 of the Code.<sup>2</sup> In the alternative, Direct Energy argued that this case

<sup>1</sup> Procedural Order at 4.

<sup>2</sup> Motion at 6-14.

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should be stayed until: (1) the Commission has reached a decision in, and all appeals have been resolved associated with, Case No. PUE-2016-00051 (“APCo REO Case”),<sup>3</sup> a case involving APCo’s request for the approval of a proposed 100% renewable energy tariff; and (2) the Supreme Court of Virginia has resolved an appeal of the Commission’s decision in Case No. PUE-2016-00094 (“Direct Energy DJ Order”),<sup>4</sup> wherein Direct Energy requested a declaratory judgment concerning the ability of competitive service providers (“CSPs”) to market 100% renewable energy in Virginia.<sup>5</sup>

By Ruling dated July 27, 2017 (“July 27<sup>th</sup> Ruling”), I established an expedited pleadings schedule associated with the Motion.

In accordance with the July 27<sup>th</sup> Ruling, DEV, Staff of the Commission (“Staff”), Consumer Counsel, AEE, NEM, the Environmental Respondents, and Collegiate filed written responses to the Motion on August 7, 2017.<sup>6</sup> Staff and Consumer Counsel take no position regarding the Motion.<sup>7</sup> Collegiate, NEM, and the Environmental Respondents support the Motion in its entirety.<sup>8</sup> Furthermore, although AEE takes no position regarding Direct Energy’s request for the dismissal of the Application, AEE supports a stay of this proceeding until after the Commission has reached a decision in APCo’s REO Case and the Supreme Court of Virginia has resolved the Company’s appeal of the Direct Energy DJ Order.<sup>9</sup>

In contrast, the Company opposes both Direct Energy’s request for dismissal and its request for a stay. With regard to the request for dismissal, DEV asserts that the Company and its customers will be prejudiced if the Application is dismissed “without the opportunity to develop the evidentiary record and to participate and be heard in accordance with the

<sup>3</sup> *Petition of Appalachian Power Company, For approval of a 100% renewable energy rider*, Case No. PUE-2016-00051.

<sup>4</sup> *Petition of Direct Energy Services, LLC, For a declaratory judgment*, Case No. PUE-2016-00094, Final Order (Mar. 15, 2017).

<sup>5</sup> Motion at 14-21.

<sup>6</sup> See Response of Virginia Electric and Power Company in Opposition to Direct Energy Services, LLC’s Motion to Dismiss or Stay Proceeding (“Company Response”); Staff Letter responding to Motion (“Staff Response”); Consumer Counsel Letter responding to Motion (“Consumer Counsel Response”); Letter designated as the Response of Advanced Energy Economy, Inc. (“AEE Response”); Response of National Energy Marketers Association in Support of Motion of Direct Energy Services, LLC to Dismiss or Stay Proceeding (“NEM Response”); Environmental Respondents’ Response to the Motion of Direct Energy Services, LLC (“ER Response”); and Response of Collegiate Clean Energy, LLC in Support of Motion of Direct Energy Services, LLC to Dismiss or Stay Proceedings (“Collegiate Response”). Secure Futures submitted a Response of Secure Futures, LLC to the Motion of Direct Energy Services, LLC to Dismiss or Stay Proceeding (“Secure Futures Response”) electronically on August 7, 2017. However, because it was not received until after 5 p.m. it was not technically filed until August 8, 2017, the day after the deadline established in the July 27<sup>th</sup> Ruling.

<sup>7</sup> Staff Response; Consumer Counsel Response at 2. Consumer Counsel does, however, acknowledge that the Motion “identifies a number of valid questions and legal issues concerning [DEV’s] application, including how the proposed CRG tariffs satisfy the requirements of Code § 56-234.” *Id.*

<sup>8</sup> Collegiate Response at 2 (although Collegiate does not specifically address Direct Energy’s request for a stay, Collegiate represents that it supports the Motion for all of the reasons stated within it); NEM Response at 2-3; ER Response at 6-16. Secure Futures also supports the Motion.

<sup>9</sup> AEE Response at 2.

Commission's Procedural Order."<sup>10</sup> In addition, the Company asserts that Direct Energy's reliance upon the Hearing Examiner's Report in the APCo REO Case, as support for the dismissal of the Application, is inappropriate because the Commission has not yet reached a final decision in the APCo REO Case.<sup>11</sup> Furthermore, the Company maintains that Direct Energy's request for dismissal is inconsistent with its justification for requesting a stay.<sup>12</sup>

DEV also argues that there is no valid basis for a stay because: (1) the Commission often considers issues of first impression in multiple overlapping cases; (2) the APCo REO Case involves different facts from those pertaining to the Company's CRG Rate Schedules; (3) none of the conclusions reached by the Commission in the Direct Energy DJ Order are "determinative of the precise question before the Commission in this proceeding;" and (4) granting an indefinite stay would not advance judicial economy and would prejudice the Company and its customers.<sup>13</sup>

Direct Energy filed its reply in support of the Motion on August 11, 2017.<sup>14</sup> As a preliminary matter, Direct Energy emphasizes that Staff and the respondents who elected to respond to the Motion do not oppose the dismissal of the Application or stay of this proceeding.<sup>15</sup> Furthermore, Direct Energy contests DEV's assertion that a record must be developed in this case before the Application is dismissed. Instead, Direct Energy asserts that "no matter what evidence is presented, the CRG Rate Schedules for which [DEV] seeks approval cannot possibly be found to be reasonable and just or in the public interest."<sup>16</sup> Moreover, Direct Energy maintains that its partial reliance upon the Hearing Examiner's Report in the APCo REO Case as support for the dismissal of the Application is not inappropriate.<sup>17</sup> Furthermore, Direct Energy notes that the Company failed to address many of the substantive arguments made by Direct Energy in support of dismissal.<sup>18</sup>

In addition, Direct Energy asserts that it has appropriately advocated, in the alternative, for a stay.<sup>19</sup> Direct Energy argues that a stay of this case is proper if the Application is not dismissed because the Commission's decision in the APCo REO Case and the Supreme Court of Virginia's resolution of the appeal of the Direct Energy DJ Order "will not only provide guidance" but will also "define the interests of the parties and determine how they should proceed to protect their interests in this case."<sup>20</sup>

Upon consideration of this matter, I find it appropriate to take Direct Energy's request for the dismissal of the Application under advisement. Although I agree with Consumer Counsel that the Motion raises a number of valid issues pertaining to the statutory requirements for the

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<sup>10</sup> Company Response at 3.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> *Id.* at 5-7.

<sup>14</sup> See Reply of Direct Energy Services, LLC in Support of its Motion to Dismiss or to Stay Proceedings ("Reply").

<sup>15</sup> *Id.* at 1-3.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> *Id.* at 5-6.

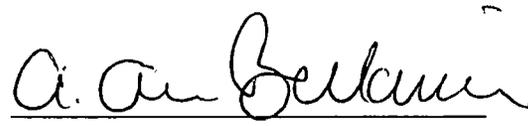
<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* at 7.

approval tariffs, such as the CRG Rate Schedules,<sup>21</sup> I also conclude that the Commission should be afforded the opportunity to consider such issues in the context of a fully developed record.<sup>22</sup> Under the circumstances, I intend to address the arguments made by Direct Energy for the dismissal of the Application (and supported by several other respondents in this case) in my final report after the evidentiary hearing in this case.

Furthermore, I find it appropriate to deny Direct Energy’s request for a stay. I recognize that the Commission’s Final Order in the APCo REO Case (and the Supreme Court of Virginia’s decision associated with any appeal of such Final Order) is likely to be instructive when considering whether the CRG Rate Schedules should be approved as 100% renewable energy tariffs under § 56-577 A 5 of the Code. However, such a Final Order (or appeal) may not be dispositive in the present case given the differences between the CRG Rate Schedules and the renewable energy tariff proposed by APCo. Similarly, I conclude that the questions likely to be considered by the Supreme Court of Virginia in the appeal of the Direct Energy DJ Order (relating to the ability of CSPs to provide 100% renewable energy within DEV’s service territory) are not directly relevant to the issues presently before the Commission – that is, whether DEV’s Application meets applicable statutory standards and whether the CRG Rate Schedules constitute 100% renewable energy tariffs as contemplated by § 56-577 A 5 of the Code.<sup>23</sup> Moreover, I recognize that any uncertainty associated with the Commission’s decision in the APCo REO Case or the Supreme Court of Virginia’s decision on the appeal of the Direct Energy DJ Order does not preclude any party in this case from taking a position on the Application.<sup>24</sup>

Accordingly, **IT IS DIRECTED THAT** the Motion is denied, in part, and taken under advisement, in part, as specified in this Ruling.



A. Ann Berkebile  
Hearing Examiner

Document Control Center is requested to mail a copy of the above Ruling 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, Tyler Building, First Floor, Richmond, VA 23219.

<sup>21</sup> See Consumer Counsel Response at 2.

<sup>22</sup> If the Commission disagrees with Direct Energy’s arguments regarding dismissal or the Hearing Examiner’s ultimate conclusions regarding the sufficiency of the Application, the development of a full record should assist the Commission in deciding whether to approve the proposed CRG Rate Schedules in accordance with §§ 56-234 and 56-577 A 5 of the Code.

<sup>23</sup> See Company Response at 6.

<sup>24</sup> My decision to deny Direct Energy’s request for a stay at this time does not necessarily preclude possible future modifications to the procedural schedule in this case should the Commission’s final decision in the APCo REO Case warrant such modifications.