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March 23, 2018

VIA ELECTRONIC FILING

Joel H. Peck, Clerk
c/o Document Control Center
State Corporation Commission
Tyler Building, First Floor
1300 East Main Street
Richmond, VA 23219

Re: APPLICATION OF VIRGINIA ELECTRIC AND POWER COMPANY
For approval of 100% renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia
Case No. PUR-2017-00060

Dear Mr. Peck:

On behalf of Direct Energy Services, LLC. and National Energy Marketers Association, enclosed for filing is the *Comments on Hearing Examiner's Report of Direct Energy Services, LLC. and National Energy Marketers Association* in the above referenced matter.

The Commission's acknowledgment of this filing should be e-mailed to me at crobb@cblaw.com.

If you should have any questions regarding this filing, please call me at (804) 697-4140. Thank you for your assistance.

Sincerely,

Cliona Mary Robb

Cliona Mary Robb

Enclosures

cc: Certificate of Service

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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
For approval of 100% renewable energy tariffs
pursuant to §§ 56-577.A 5 and 56-234 of the
Code of Virginia

Docket No. PUR-2017-00060

COMMENTS OF
DIRECT ENERGY SERVICES, LLC AND
NATIONAL ENERGY MARKETERS ASSOCIATION

Direct Energy Services, LLC ("Direct Energy") and the National Energy Marketers Association ("NEM"), by counsel, hereby submit their comments ("Comments") on the Report of A. Ann Berkebile, Hearing Examiner, dated March 2, 2018 in the above referenced proceeding ("Report").

The Report's principal findings and conclusions regarding the application of Virginia Electric and Power Company ("Dominion" or "Company") for approval of the CRG Rate Schedules as 100% renewable energy tariffs pursuant to Va. Code §§ 56-577 A 5 and 56-234 ("Application") are as follows:

1. The Company failed to prove the CRG Rate Schedules qualify as "tariff[s] for electric energy provided 100 percent from renewable energy" as contemplated [by] § 56-577 A 5 of the Code;
2. The Company failed to prove the CRG Schedules are just and reasonable;
3. Dominion's request for approval of the CRG Rate Schedules pursuant to §§ 56-234 and 56-577 A 5 should be denied; and
4. The Commission should offer the Company the alternative of offering the CRG Rate Schedules as experimental rates under § 56-234 B of the Code, for a three year period following the conclusion of the first CRG enrollment period. [1]

[1] Report at 47.

Direct Energy and NEM support findings 1 through 3 and the associated conclusions, and they urge adoption of the Report's recommendations on those findings in their entirety. The Commission should deny the Application for the CRG Rate Schedules as proposed by Dominion. With respect to finding 4, if the Commission allows Dominion the option of offering the CRG Rate Schedules, it should only be on a limited basis as experimental rates under § 56-234 B of the Code, so as not to preclude competitive supplier offerings of 100% renewable products.

Failure to prove that CRG Rate Schedules qualify as § 56-577 A 5 Tariffs

When determining that Dominion failed to prove that the CRG Rate Schedules qualify as tariffs for electric energy provided 100 percent from renewable energy as contemplated by Va. Code § 56-577 A 5, the Hearing Examiner made this finding based on using the standard that Dominion insisted must apply: providing renewable energy to customers on a continuous hourly basis by matching the load of each participating customer in each hour of the year with renewable generation. Significantly, the Hearing Examiner clarified that she "make[s] no finding herein that the hourly standard is *required* for compliance with Subsection A 5," recognizing that "numerous participants in this case" had noted "Subsection A 5 makes no reference to an hourly matching standard."[2]

This determination is exactly right. Dominion insisted on reading into the 100% renewable energy standard under Va. Code § 56-577 A 5 a rigorous application that can be characterized as a "300 %" requirement: 100% renewable energy for 100% of the load for 100% of the time. Yet Dominion cannot live up to its own standard.

[2] Report at 42, footnote 126.

Having insisted on this standard, Dominion was held to the standard and found wanting. It provided no evidence as to crucial aspects needed to determine whether the 100% requirement was met:

1. the actual generation facilities in the CRG Portfolio
2. the type of renewable generation to be produced by these facilities
3. the actual capacity of the individual facilities
4. the total capacity of the CRG Portfolio
5. the actual annual, monthly, and hourly energy production performance of the facilities in the CRG Portfolio.[3]

The Report properly noted that this lack of information meant the Commission "has no means of verifying Subsection A 5 compliance."[4] Additionally, Dominion never addressed the metering and data issues raised by Direct Energy. Interval meters, even if read in very short increments of time, will only provide Dominion with an "after the fact" understanding of how much energy customers consumed, and it will not be possible for Dominion to go back in time to procure renewable energy for a shortfall.[5] Indeed, even Dominion recognized that such a high standard could not be achieved 100%, and it proposed the use of RECs for the "de minimis" times when operational interruptions in the delivery of renewable energy occurred.[6] However, the Commission has established in its 2008 orders initially addressing proposed Subsection A 5 tariffs that RECs will not count as 100% renewable energy under Va. Code § 56-577 A 5.[7] It

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[3] Report at 42.
[4] Report at 42.
[5] Hearing Exhibit 9 (Lacey Testimony) at 27-28.
[6] Report at 42.
[7] *Order Approving Tariff* issued on December 3, 2008 in Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for approval of its Renewable Energy Tariff, Case No. PUE-2008-00044 at 11 (finding that a tariff that only offers RECs "is not a 'tariff for electric energy provided 100 percent from renewable energy' under Va. Code § 56-577 A 5"). *Order Approving Tariff* issued on December 3, 2008 in Application of Appalachian Power Company for approval of its Renewable Power Rider, Case No. PUE-2008-00057 at 6 (finding

should be noted also that Dominion did not offer any analysis of its definition of "de minimis." The Hearing Examiner appropriately found that Dominion's "undefined and unquantified REC usage further calls into question whether the CRG Rate Schedules will actually comply with Subsection A 5."[8]

Failure to prove that CRG Rate Schedules produce just and reasonable rates

As cited in the Report, the Commission previously "recognized that it may have a 'duty' to determine whether a proposed Subsection A 5 rate is just and reasonable pursuant to §56-234 A of the Code." In the Report's most significant passage, the Hearing Examiner explained why a just and reasonable standard was especially pertinent to an assessment of a 100% renewable energy tariff proposed by an incumbent utility under Va. Code § 56-577 A 5:

> In my view, it is particularly important for an incumbent electric utility to establish that the rate for a proposed Subsection A 5 tariff is just and reasonable *given the loss of competitive options for customers upon the approval of a Subsection A 5 tariff.* I also conclude that the determination of whether a rate is just and reasonable under Subsection A 5 is distinguishable from the determination of whether a *different type of voluntary rate, without the potential to preclude customer alternatives, is just and reasonable.* Stated somewhat differently, if the rate of an incumbent electric utility's Subsection A 5 tariff is unreasonably high, customers will be deterred from taking service at the tariff while at the same time being precluded from pursuing the competitive options which are contemplated by Subsection A 5. Based upon the evidence presented, I am unable to conclude that the CRG Rate Schedules will be just and reasonable and, as such, likely to provide customers with a non-cost-prohibitive (and realistic) option of obtaining 100 percent renewable energy.[9]

No party can reasonably dispute that the objective of Va. Code § 56-577 A 5 is to provide customers with access to 100% renewable energy. If the Commission were to accept as a Va. Code § 56-577 A 5 tariff an offering by an incumbent utility that is not just and reasonable, then

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that a REC tariff "is not a 'tariff for electric energy provided 100 percent from renewable energy' under § 56-577 A 5 of the Code").

[8] Report at 42.

[9] Report at 43-44 (emphasis added).

customers would essentially be limited to no rate at all. This outcome is not far-fetched, given the track record of previous schedules containing some renewable aspects that presumably were offered with the intention of attracting customers but that ended up with no customers. [10]

Dominion failed to provide specific rates for the Commission's approval. Instead, as the Report noted, Dominion contended that its formula rate would produce just and reasonable rates because "they will be based on market prices at the time that each participating customer signs the Requirements Contract." [11] Here, the Report replicated the assessment method used to assess Dominion's renewable claims. The Report adopted the yardstick that Dominion insisted must apply—market based rates—and found that Dominion had again failed to meet its own standard. The Report found that the inputs to the CRG formula would be based upon "internal Company forecasts and, as such, may not reflect actual market prices." [12] The Report then went further and expressed concerns that "the evidence demonstrates that customers may ultimately pay higher than market prices," which undermined Dominion's insistence that using the ratemaking formula would produce just and reasonable rates.[13]

In addition to concerns about internal Dominion forecasts, the Report recognized that market-based rates were "necessarily dependent upon the overall strength of the Company's solicitations for renewable resources" and Dominion had simply failed to present "evidence upon which to base a conclusion regarding the reasonableness of its solicitations."[14]

Even the inputs of Dominion's formula that were known produced no support to conclude the rates produced would be just and reasonable. Dominion insisted on using its most

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[10] *See, e.g.* Dominion's experience with Schedule RG whose rate design was so flawed that it was recently discontinued after garnering no customers, as documented in the final report submitted by Dominion, which is Hearing Exhibit 25.
[11] Report at 44.
[12] Report at 44.
[13] Report at 44.
[14] Report at 45.

recently approved ROE as a margin for PPA costs, which was flawed in several regards. First, it was "inconsistent with traditional ratemaking principles because a utility makes no up-front investment in a PPA justifying a return to compensate investors for the cost of their capital."[15] Second, Dominion's justification based on compensation for risks associated with the PPAs made little sense because such risks had an upside as well as a downside for Dominion.[16] Third, Dominion's justification based on being compensated for support costs also made little sense: the Hearing Examiner agreed with Staff that such costs "should be addressed though the inclusion of a specifically quantified, fact based, input into the CRG rate formula rather than through the "r" component of the formula without any form of quantification."[17] Overall, Dominion provided "absolutely no evidence in the record establishing a quantifiable nexus between the likely level of the Company's risk and the incorporation of its most recently approved ROE as a margin on PPA costs."[18]

Approval as Experimental Rates under Va. Code §56-234 B

The Report properly found that the CRG Rate Schedules fell short of the standards that Dominion insisted on using: a continuous hourly supply for whether the schedules were sufficiently "renewable" and market-based rates for whether the schedules produced just and reasonable rates. The Report nonetheless found that Dominion should be given the alternative of offering the CRG Rate Schedules as experimental rates under Va. Code §56-234 B.[19] If the Commission allows Dominion the option of offering the CRG Rate Schedules, it should be done *only* as experimental rates under Va. Code § 56-234 B.

[15] Report at 45.
[16] Report at 45.
[17] Report at 45.
[18] Report at 45.
[19] Report at 46.

Approving the CRG Rate Schedules as experimental rates under Va. Code § 56-234 B *and* as 100% renewable energy tariffs under Va. Code § 56-577 A 5 would not be just, reasonable, or in the public interest because it would enable short term tariffs of an experimental nature to eliminate competitive supplier offerings of 100% renewable products on a more permanent basis.

While finding "insufficient evidence to support the approval of the CRG Rate Schedules under Subsection A 5," the Hearing Examiner nevertheless agreed with "Staff and Dominion that the approval of a tariff as an experiment under Va. Code §56-234 B does not appear to automatically preclude its approval under Subsection A 5 if the tariff also meets the 100 percent renewable energy requirements of Subsection A 5."[20] Direct Energy and NEM oppose the reasoning set forth in such dicta. First, Direct Energy and NEM's position goes back to the basic premise that the objective of Va. Code § 56-577 A 5 is to provide customers with access to 100% renewable energy. If a utility were allowed to cut off customer choice based on temporary access to an experimental rate, this could lead to the particularly egregious end result of no customer access to 100% renewable energy. Competitive suppliers cannot simply move in and out of the market based on the whims of a utility's temporary offerings. Serving a market requires a commitment of resources,[21] and allowing a utility to basically offer a teaser rate that literally knocks out competition and then allowing the utility to stop offering the rate would eliminate customer access to renewable energy in the same manner that a permanent but unjust and unreasonable rate would do—the experimental tariff would simply produce the same result in two steps rather than one step. In support of approving a utility's experimental offering as an approved tariff under Va. Code § 56-577 A 5, Dominion observed in its post hearing brief, "If

[20] Report at 47, footnote 157.
[21] Tr. 207-209.

the utility offers an approved tariff for electric energy provided 100 percent from renewable energy, the utility would be the exclusive provider for the eligible customer classes *for however long the utility offers such a tariff.*"[22] This would permit a utility to utilize a short term, experimental rate to thwart the development of competitive renewable options with no guarantee that utility offerings would provide an attractive, long term option for customers.

Moreover, in this case, where the Hearing Examiner has found that the CRG Rate Schedules *do not* qualify to be approved as 100% renewable energy "ordinary tariffs" under Va. Code § 56-577 A 5 as filed, it would be particularly inappropriate to find that the CRG Rate Schedules rate schedules *did* qualify to be approved as 100% renewable energy "experimental tariffs" under Va. Code § 56-577 A 5. At most, whether or not the CRG Rate Schedules provide 100% renewable energy would be one of the variables that the experiment would be designed to test.

In general, voluntary rates, tests and experiments are not appropriate candidates for being "approved tariffs" under Subsection A 5, even if the experiment is approved by the Commission, due to the uniquely disruptive impact of such approval. In this case in particular, approving the CRG Rate Schedules as experimental rates under Va. Code § 56-234 B *and* as 100% renewable energy tariffs under Va. Code § 56-577 A 5 is not appropriate. The Hearing Examiner could not reach "the conclusion that the CRG rates will be just and reasonable".[23] The Report also concluded that the CRG proposal did not provide sufficient evidence that it will "function as has been proposed."[24] With this significant lack of information in Dominion's case, the Hearing Examiner rightly concluded that Dominion did not prove that its "Rate Schedules qualify as

[22] Post-Hearing Brief of Virginia Electric and Power Company filed on January 16, 2018 at 47 (emphasis added).
[23] Report at 46.
[24] Report at 42, footnote 131.

'tariff[s] for electric energy provided 100 percent from renewable energy' under Subsection A 5." [25] Given these circumstances, the CRG Rate Schedules, if approved at all, should only be approved as experimental rates under Va. Code § 56-234 B, and in any case expressly denied the status of 100% renewable energy tariffs under Va. Code § 56-577 A 5.

Conclusion

Direct Energy and NEM respectfully ask that the Commission adopt the Report's principal findings and conclusions as discussed above.

Respectfully submitted,

DIRECT ENERGY SERVICES, LLC

NATIONAL ENERGY MARKETERS ASSOCIATION

March 23, 2018

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[25] Report at 43.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of these Comments was hand-delivered, emailed, and/or mailed, first-class postage prepaid, to the parties below on this 23rd day of March, 2018.

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