Virginia State Corporation Commission
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Case Number (if already assigned)	PUR-2017-00060
Case Name (if known)	Application of Virginia Electric and Power Company for approval of 100% renewable energy tariffs pursuant to subsection 56-577 A 5 and 56-234 of the Code of Virginia
Document Type	EXMO
Document Description Summary	Joint Motion to Dismiss of Strike or, in the Alternative, to Issue a ruling in Limine and Request for Expedited Consideration
Total Number of Pages	11
Submission ID	13556
eFiling Date Stamp	10/20/2017 4:15:21PM

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October 20, 2017

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., Collegiate Clean Energy, LLC., National Energy Marketers Association, and Appalachian Voices, enclosed for filing is *Joint Motion to Dismiss or Strike or, in the Alternative, to Issue a Ruling in Limine and Request for Expedited Consideration,* 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

Enclosures

cc: Certificate of Service

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

Application of
VIRGINIA ELECTRIC AND POWER COMPANY **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

JOINT MOTION TO DISMISS OR STRIKE OR, IN THE ALTERNATIVE, TO ISSUE A RULING IN LIMINE AND REQUEST FOR EXPEDITED CONSIDERATION

Pursuant to Rule 110 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-110, Direct Energy Services, LLC, Collegiate Clean Energy, LLC, National Energy Marketers Association, and Appalachian Voices (Environmental Respondents) (collectively "Joint Respondents")[1], by counsel, hereby moves the State Corporation Commission ("Commission") to dismiss the application filed in the above-referenced proceeding ("Application") or, at a minimum, to strike what Virginia Electric and Power Company ("Dominion" or "Company") has filed as rebuttal testimony. If the Hearing Examiner does not dismiss the Application or strike what Dominion has filed as rebuttal testimony, then Joint Respondents ask the Hearing Examiner to issue a ruling *in limine* that the CRG Rate Schedules are experimental rate schedules under Va. Code §56-234 that are ineligible to be treated as 100% renewable tariffs pursuant to Va. Code § 56-577 A 5. The Joint Petitioners respectfully request expedited consideration of this Joint Motion.

MOTION TO DISMISS OR STRIKE

On October 11 2017, Dominion filed the Rebuttal Testimony of Gregory Morgan, J. Scott Gaskill, and Brett A. Crable in this proceeding. Mr. Morgan's testimony claims to demonstrate

how the CRG Rate Schedules will "offer transparency in the supply pricing and ratemaking formula to allow a CRG customer and the Commission to know and understand the various factors driving the ultimate rate."[2] Mr. Morgan's rebuttal testimony thus introduces, on October 11, 2017, a crucial new component of the proposed CRG Rate Schedules—a ratemaking formula. As discussed below in the section of this Joint Response addressing a Ruling in Limine, Mr. Morgan's rebuttal testimony also introduces the new concept that the CRG Rate Schedules could be treated as experimental rate schedules. In essence, Mr. Morgan's rebuttal testimony goes beyond addressing critiques of the CRG Rate Schedules presented in pre-filed testimony when he seeks to introduce CRG Rate Schedules with entirely new elements that should have been included in Dominion's case-in-chief.

Dominion's election to file Mr. Morgan's rebuttal testimony with new components of such schedules on October 11, 2017, violates the June 1, 2017 *Order for Notice and Hearing*, which required the Company to file, on or before June 28, 2017, "any testimony and additional exhibits by which Dominion expects to establish its case."[3] Further, Dominion's election to file Mr. Morgan's rebuttal testimony with new components of such schedules also violates the Hearing Examiner's ruling of July 27, 2017 addressing Direct Energy's *Motion to Stay or Dismiss,* which squarely raised the issue of Dominion's failure to include a rate, or a formula for setting a rate, as a basis for granting the relief requested therein. The Hearing Examiner's ruling required all responses to the *Motion to Stay or Dismiss* to be filed on or before August 7, 2017. By waiting to address the existence of a formula rate until Mr. Morgan's rebuttal testimony was filed on October 11, 2017, Dominion also violated the July 27, 2017 Hearing Examiner's ruling.

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[1] The group of respondents filing this motion does not include the following respondents: Appalachian Power Company, Walmart, Northern Virginia Electric Cooperative, the Office of the Attorney General's Division of Consumer Counsel, or the Commission Staff.

[2] Morgan Rebuttal Summary.

Dominion appears to view the addition of its formula rate as significant when it states that it now considers its Application to be "a formula rate filing" and believes that this aspect of its Application supports Commission approval because a formula rate filing "is neither new or novel for electric utilities."[4] Even if that is the case, the treatment of the CRG Rate Schedules as a formula rate is certainly new and novel at this stage in the proceeding. Dominion does not offer any explanation as to why Dominion ignored both the *Order for Notice* and the Hearing Examiner's July 27, 2017 ruling and waited until October to make its "formula rate filing."

On the contrary, in its *Response in Opposition to Direct Energy Services, LLC's Motion to Dismiss or Stay Proceedings* filed on August 7, 2017, Dominion claimed that Direct Energy "improperly seeks to short-cut this procedural schedule, at its earliest stage, and deny the development of a complete evidentiary record for the Commission's consideration."[5] Dominion also claimed that "its Application meets the standard of review for proposed rates filed under Va. Code § 56-234."[6]

Based on Dominion's initial application filed on May 9, 2017, its testimony and exhibits filed on June 28, 2017, its *Response in Opposition* filed on August 7, 2017, and its responses to discovery,[7] certain respondents on August 23, 2017, and the Commission Staff on September 27, 2017, filed testimony that addressed the Application's failure to satisfy the applicable legal standards. Mr. Morgan's rebuttal testimony now presents entirely new evidence concerning a rate formula and also, as described below, concerning the experimental nature of the CRG Rate Schedules. Dominion apparently believes that adding its ratemaking formula will support

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[3] *Order for Notice and Hearing* issued on June 1, 2017 in the Application of Virginia Electric and Power Company for approval of 100 percent renewable energy tariffs pursuant to §§56-577 A 5 and 56-234 of the Code of Virginia, PUR-2017-00060, at 9.
[4] Morgan Rebuttal at 9.
[5] *Virginia Electric and Power Company's Response in Opposition to Direct Energy Services, LLC's Motion to Dismiss or Stay Proceedings* filed on August 7, 2017 ("*Response in Opposition*"), at 3.
[6] *Response in Opposition* at 4.

approval of its Application, and the Joint Respondents, as discussed below, believe that making the CRG Rate Schedules experimental will impact whether they qualify as approved tariffs under Va. Code § 56-577. Yet Mr. Morgan provides no explanation as to why this evidence was not included on June 28, 2017 as part of Dominion's case in chief or why Dominion, at a minimum, did not address its formula rate on August 7, 2017, in response to the *Motion to Stay or Dismiss* that specifically criticized the Application for lacking details concerning its rate.

On its face, Dominion's rebuttal testimony demonstrates that its case-in-chief omitted critical details. Further, such omissions made it impossible for any respondent or for the Commission's Staff to submit pre-filed written testimony evaluating the yet-to-be revealed elements of Dominion's proposed CRG Rate Schedules. Dominion thus has unfairly and improperly sought to prevent the development of a complete evidentiary record for the Commission's consideration.

Accordingly, the Application should be dismissed. If Dominion wants the Commission to consider the new version of the CRG Rate Schedules presented for the first time on October 11, 2017, Dominion should be required to file a new application.

If the Application is not dismissed, Dominion's rebuttal testimony should, at a minimum, be stricken. Surely Dominion should not be rewarded for failing to comply with the Order for Notice and Hearing and the Hearing Examiner's July 27, 2017 ruling. All parties to the case should not be denied the opportunity provided in the Order for Notice and Hearing to conduct adequate discovery and submit written expert testimony that is fully informed regarding key aspects of the CRG Rate Schedules.

[7] *See, e.g.* Morgan Rebuttal testimony at 5 (noting that Staff relied on Dominion's discovery responses concerning

MOTION TO ISSUE A RULING IN LIMINE

In his Rebuttal Testimony filed on October 11, 2017, Mr. Morgan changes the nature of the CRG Rate Schedules by stating that they are not necessarily permanent. He states that Dominion

> would not oppose a condition in the final order [for the SCC] to revisit the program three (3) years from the conclusion of the first CRG Rate Schedule enrollment period, at which time the Company would agree to return to the Commission with a further application to continue, modify, or terminate the CRG Rate Schedules. This approach would permit interested customers to enroll in the program and to take service on the CRG Rate Schedules for the duration of their individual Requirements Contract, while allowing the opportunity to collect information and customer feedback concerning the program implementation to enable the Company and the Commission to monitor and evaluate its effectiveness.[8]

In addition to Joint Respondents' concern that Dominion seeks to interject this critical change into its proposed CRG Rate Schedules in its rebuttal testimony and thus prevent a full evidentiary record from being developed, Joint Respondents also are concerned that approval of the CRG Rate Schedules will eliminate the ability of retail customers in Virginia to purchase renewable energy from competitive service providers for the pendency of the three-year experimental period and subsequent evaluation. Upon Commission review at that time, the experimental rate could be deemed a failure, like previous Dominion renewable supply experiments,[9] further hampering Virginia's renewable goals and further harming participating and non-participating customers interested in a 100% renewable product. Dominion's rebuttal testimony indicates that, due to "some unique features which are as yet untested," Dominion would not oppose revisiting the program in three years from the conclusion of the enrollment period so the Commission could determine whether the program could continue, be modified, or

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the lack of a specific pricing proposal and an unknown amount of Company discretion).

[8] Morgan Rebuttal at 6.

[9] *See e.g.* Morgan Rebuttal testimony at 7 (describing the need to replace the expired Schedule RG presumably due to negative feedback and experience with the original Schedule RG).

terminated.[10] This new approach to the CRG Schedules, discussed for the first time in Dominion's rebuttal testimony, suggests that the CRG Schedules are being offered on an experimental basis pursuant to Va. Code § 56-234. As such, the schedules cannot logically or reasonably be considered eligible for approval as 100% renewable energy tariffs under Va. Code § 56-577 A 5. That is, Commission approval of a tariff for an *experimental* rate simply cannot, logically or reasonably, be the basis for the *permanent* denial of customers' rights to purchase 100% renewable energy supplies from competitive suppliers. Nor can Commission approval of a rate offered merely on an experimental basis, due to unique features that are untested, represent approval of a 100% renewable energy tariff that would result in the permanent exclusion from the marketplace of competitive service providers willing to offer such energy.

It is crucial for Joint Respondents to have a Commission ruling on whether the newly revised CRG Rate Schedules, which now appear to be offered on an experimental basis, are eligible to be considered as a 100% renewable energy tariff offered under Va. Code § 56-577 A 5. Such a ruling would establish whether the CRG Schedules would *expand* renewable options for customers or whether, instead, they would *reduce* such options. Indeed, such a ruling may well affect the extent of participation of some Joint Respondents in this case and could result the withdrawal of certain of them altogether.

Accordingly, if the Hearing Examiner does not dismiss the Application, then Joint Respondents request that the procedural schedule be suspended until the Hearing Examiner has issued a ruling *in limine* that the CRG Rate Schedules are experimental rate schedules under Va. Code §56-234 that are ineligible to be treated as 100% renewable tariffs pursuant to Va. Code § 56-577 A 5. Due to the need to prepare for the evidentiary hearing scheduled for December 4, 2017, the Joint Respondents respectfully request expedited consideration of this Joint Motion.

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[10] Morgan Rebuttal at 6.

In closing, the Joint Respondents emphasize that this Joint Motion should not be read to concede that Dominion's rebuttal testimony adds elements that are sufficient to make the Application acceptable under Virginia law. The Joint Respondents expect to address the sufficiency of Dominion's rebuttal testimony as provided under the current or revised procedural order in this proceeding.

October 20, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Joint Motion* was hand-delivered, emailed, and/or mailed, first-class postage prepaid, this 20th day of October 2017, to each person listed below.

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