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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

**COMMENTS IN RESPONSE TO HEARING EXAMINER’S REPORT AND RECOMMENDATION BY
ADVANCED ENERGY ECONOMY, INC.**

Pursuant to the Hearing Examiner’s March 2 Report and Recommendation (“Report”) and Rule 120 C of the Commission’s Rules of Practice and Procedure, Advanced Energy Economy, Inc. (“AEE”),¹ by counsel, submits the following Comments in Response to the Hearing Examiner’s Report.

INTRODUCTION

On May 9, 2017, Dominion Energy Virginia (“Dominion” or “Company”) filed its Application for approval of what it characterizes as voluntary 100% renewable energy tariffs (the “CRG Rate Schedules”), which would offer participating customers the opportunity to obtain 100% of their energy supply from renewable energy resources. The CRG Rate Schedules are proposed under §§ 56-577 A 5 and 56-234 of the Code of Virginia. The CRG Rate Schedules would be available to customers with peak measured demands of 1,000 kW or greater.²

¹ Any opinions expressed during this proceeding represent the positions of AEE as an organization but do not necessarily represent the views of any particular member of AEE. For information about AEE’s membership, please visit AEE’s website at <https://www.aee.net/join>.

² Application at 1.

AEE is a national association of businesses and business leaders with a mission to make the global energy system more secure, clean, and affordable.³ AEE supports efforts to provide customers with additional options to meet their renewable energy goals, including utility-sponsored programs such as renewable energy tariffs. However, upon close consideration of the design of the CRG Rate Schedules, and the implications of the approval on alternative customer options, AEE believes that approval of the CRG Rate Schedules would limit, rather than expand, customer opportunities to pursue renewable energy. In direct testimony and in a post-hearing brief submitted in this case, AEE recommended that the Commission not approve the Application. AEE’s post-hearing brief noted that AEE could support approval of the CRG Rate Schedules as an experimental rate under Va. Code § 56-234 B, rather than a permanent program under Va. Code § 56-577 A 5, leaving open the option that customers currently have to purchase renewable energy through competitive service providers.

The Hearing Examiner’s Findings and Recommendations are consistent with the arguments advanced by AEE in this case. As explained in more detail below, AEE recommends that the Commission adopt the Hearing Examiner’s Report.

COMMENTS

- A. AEE supports utility programs that can be expected to *increase* – rather than restrict – customers’ access to renewable energy.**

As explained in the direct testimony of AEE witness Caitlin Marquis, AEE supports efforts to provide customers with additional options to meet their renewable energy goals, including utility-sponsored programs such as renewable energy tariffs. Ms. Marquis noted in her

³ As stated in its July 31, 2017, Notice of Participation in this case, AEE’s business members include large international technology companies, national and regional competitive electric suppliers, and other advanced energy companies. AEE’s members include current customers of Dominion that wish to procure all or a portion of their energy from renewable energy sources.

testimony that many large Virginia customers have set ambitious renewable energy targets, and that these customers wish to have access to a variety of options to pursue renewable energy in the Commonwealth to achieve these targets.⁴ Ms. Marquis also highlighted several aspects of the CRG Rate Schedules that AEE finds favorable, including a competitive procurement process allowing participation by third-party developers, provisions allowing aggregation of meters by participants, and customer exemption from current and future fuel riders.⁵ However, utility renewable energy tariffs are only beneficial if they meet the needs of customers. As explained in more detail below and as outlined in the Hearing Examiner's Report, there are several concerning and/or uncertain aspects of the CRG Rate Schedules that warrant its rejection.

B. AEE supports the Hearing Examiner's finding that Dominion's request for approval of the CRG Rate Schedules as a 100% renewable energy tariff under Va. Code § 56-577 A 5 warrants additional scrutiny due to the implications for alternative customer options.

As was made clear by the Company and by respondents in this case, approval of Rate Schedules CRG under Va. Code § 56-577 A 5 would remove the option currently available to many customers to procure renewable energy from competitive service providers. Because approval of the CRG Rate Schedules could eliminate existing customer rights, AEE noted that "the stakes are higher here."⁶ AEE encouraged the Commission to take this into account when assessing whether the CRG Rate Schedules have been proven to be "just and reasonable."

AEE, therefore, strongly supports the Hearing Examiner's finding that "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

⁴ See Ex.7 (Marquis) at 6-7.

⁵ See Ex.7 (Marquis) at 5.

⁶ Tr. 26.

approval of a Subsection A 5 tariff.”⁷ The Report also correctly concludes that “the determination of whether a rate is just and reasonable under Va. Code § 56-577 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.”⁸ The Hearing Examiner explains that if a rate proposed under Va. Code § 56-577 A 5 is unjust or unreasonable, “customers will be deterred from taking service under the tariff while at the same time being precluded from pursuing the competitive options which are contemplated by Subsection A 5.”⁹

The Hearing Examiner correctly finds that customers would actually be harmed by such approval of a voluntary rate that is not just and reasonable, and that this potential for harm warrants additional scrutiny. In the context of the CRG Rate Schedules, significant upfront uncertainty (described in Section C below), certain problematic design features (described Section D below), and limited customer support (described Section E below) all take on a heightened importance that would not exist were the program proposed under a different section of the Code, and all support rejection of the proposal.

C. AEE agrees with the Hearing Examiner that there remains significant uncertainty in the proposed CRG Rate Schedules, and that there is insufficient evidence to conclude that the CRG Rate Schedules are just and reasonable in the context of Va. Code § 56-577 A 5.

AEE agrees with the Hearing Examiner that there is insufficient evidence in the record to find that the CRG Rate Schedules would produce just and reasonable rates. AEE recognizes that some successful voluntary utility renewable energy programs may contain elements that cannot be known in advance, including price and resource selection.¹⁰ However, as noted above,

⁷ Report at 43.

⁸ Report at 43.

⁹ Report at 43.

¹⁰ See Ex. 7 (Marquis) at 17.

heightened scrutiny is necessary to ensure that a program approved under Va. Code § 56-577 A 5 will provide customers with a cost-competitive offering that can meet the different needs of commercial and industrial customers. Significant uncertainty in the CRG Rate Schedules with respect to both price and resource selection makes such a determination impossible prior to rollout of the program.

Regarding price, Dominion references other programs and offerings that include formula rates where the cost to customers is not known upfront, and AEE does not as a rule take issue with this approach. However, Ms. Marquis also stated in her direct testimony that, “in the context of Va. Code § 56-577 A 5, the CRG Rate Schedules would block customer access to renewable energy options from competitive service providers and replace them with a renewable energy offering that has an uncertain price... [making it] difficult to assess whether Schedules CRG will present a viable option or not and therefore whether Dominion’s proposal is just and reasonable and in customers’ best interest.”¹¹ The Hearing Examiner’s Report similarly cites “substantial uncertainties associated with the operation of the Company’s ratemaking formula” when stating that there is “insufficient evidence” to determine that the CRG Rate Schedules will be just and reasonable.¹²

Regarding resource selection, Dominion has merely said that it will “endeavor” to meet customers’ needs,¹³ but has not explained how resource selection decisions will be made, how customer preferences would be incorporated, how conflicts between customer preferences would be resolved, how different price and non-price criteria would be weighed, how the Company would accommodate the needs of customers with 100% carbon-free requirements, or how

¹¹ Ex. 7 (Marquis) at 18-19.

¹² Report at 46.

¹³ See Application at 5-6.

customers and the Commission would be assured that customers are receiving the best available resources to meet their specific needs, at a fair price. The Hearing Examiner's Report agrees with AEE's concerns on this point, noting that "the determination that the CRG rates will be market-based (and, as such, just and reasonable under Dominion's theory) is necessarily dependent upon the overall strength of the Company's solicitations for renewable resources... however, Dominion has presented no evidence upon which to base a conclusion regarding the reasonableness of its solicitations."¹⁴ AEE is additionally concerned that customers and the Commission have a limited ability to assess these key factors during program implementation.

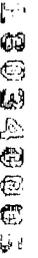
Furthermore, in the absence of a utility 100% renewable energy offering under Va. Code § 56-577 A 5, customers considering other renewable energy offerings, including Rate Schedule MBR and the newly proposed Schedule RG¹⁵ and Schedule RF,¹⁶ would be able to assess whether those utility offerings will meet their needs or whether they would be better served by a competitive service provider ("CSP") offering 100% renewable energy after they receive price information from the utility for participation in one of those options.¹⁷ If the Commission approves the CRG Rate Schedules, customers interested in pursuing renewable energy will not be able to make such comparisons.

¹⁴ See Report at 45.

¹⁵ Case No. PUR-2017-00163.

¹⁶ Case No. PUR-2017-00137.

¹⁷ AEE also acknowledges that, at present, customers have limited options to turn to CSPs to purchase renewable energy. Direct Energy witness Lacey explained during cross-examination that CSPs consider multiple factors when making the investment to move into a new market, including potential market size and risk. The potential for utilities to introduce 100% renewable energy offerings (with no clearly defined definition or standard for approval) that can eliminate customers' access to competitively provided renewable energy presents a significant risk that limits market entrance by CSPs. A signal from the Commission preserving customers' access to renewable energy offerings from CSPs would likely unleash investment in the Commonwealth, resulting in additional options for customers in Virginia.



D. AEE shares the Hearing Examiner’s concerns regarding the cost of the CRG Rate Schedules and their ability to meet customer needs.

AEE supports the Hearing Examiner’s finding that the CRG Rate Schedules may not provide a “realistic” renewable energy option that would meet customer needs. In this regard, the Hearing Examiner stated that, “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 for obtaining 100 percent renewable energy.”¹⁸

Specifically, AEE remains unsatisfied that Dominion has exhausted all options to minimize the cost of participation for customers. By including a full return on equity for any power purchase agreement (“PPA”) under the program, and by mandating that all customers participating under the CRG Rate Schedules purchase 100% renewable energy on a 24/7 continuous basis—a requirement that has not been included in any other voluntary utility renewable energy program across the country—the program is unlikely to compete with the prices that customers pay for renewable energy elsewhere. AEE expects that many customers will be unwilling or unable to accept the higher premium that results from these design decisions. The Hearing Examiner’s Report correctly finds that there is “insufficient evidence to support the conclusion that the CRG rates will be just and reasonable (and likely to attract customers),” citing “substantial uncertainties associated with the operation of the Company’s ratemaking formula” and “Dominion’s unsupported and unreasonable margin proposals.”¹⁹ Given these shortcomings, AEE agrees with the Hearing Examiner’s conclusion that the program should not be found to be just and reasonable.

¹⁸ Report at 44.

¹⁹ See Report at 46.



E. AEE shares the Hearing Examiner’s concern that the CRG Rate Schedules appear to have minimal customer support, despite significant customer demand for renewable energy in Virginia.

In addition to the failure of the application to provide clear indicators that customer needs would be satisfied by the CRG Rate Schedules, the record in this case provides little evidence that any customers support approval of Dominion’s proposal. In response to AEE discovery, Dominion could not identify a single customer that had expressed interest in the program.²⁰ The Hearing Examiner also noted that “no potential customers filed supportive comments in this docket or elected to participate as respondents to support the CRG Rate Schedules” and further that “the only evidence of customer support for the CRG proposal came in the form of three verbatim letters attached to a Company discovery response.”²¹ In contrast, customers and other stakeholders *have* collaborated with Dominion in the development of other voluntary renewable energy offerings and/or weighed in to support such offerings, including the newly-proposed Schedule RF and Schedule RG.²² AEE believes the lack of customer support for the CRG Rate Schedules is relevant here, since approval of Dominion’s Application would eliminate current customer rights.

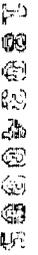
This lack of interest is particularly notable given that numerous Virginia-based companies have clearly demonstrated their interest in pursuing renewable energy to meet their electricity needs. In 2016, 18 companies with operations in the Commonwealth submitted a letter to the Commission in Case No. PUE-2016-00051, which made clear that these companies desire multiple options to purchase and use renewable energy.²³ In the letter, the businesses

²⁰ See Ex. 7 (Marquis) at Attachment B; see also Tr. 64.

²¹ Report at 44, note 139.

²² See, e.g., Facebook participation in development of Dominion’s proposed Schedule RF; Wal-Mart participation in development of Dominion’s proposed Schedule RG; and February 23, 2018, Letter by Apex Clean Energy in Case No. PUR-2017-00137, supporting approval of Dominion’s proposed Schedule RF.

²³ Ex. 7 (Marquis) at Attachment A.



requested “an explicit legal framework allowing companies choices to procure, lease, and access renewable energy resources from the state’s utilities and from private third-party sellers.” The letter further articulates why companies require multiple options, stating that “[m]ajor businesses often use multiple policy mechanisms to procure renewable energy depending on financing, suitability of a site, length of contract, and a variety of additional considerations that may be different for each company.” The companies also specified the types of options they are looking for, stating that “Virginia would meet the needs of a wide range of companies by allowing choice—including options to pursue PPAs, negotiate direct arrangements, and opt-into costcompetitive renewable energy tariffs, subscribe to community solar, and pursue other policy mechanisms tailored to the needs of large buyers.” Signatories to the letter spanned a range of industries, from retailers like Walmart and Best Buy to technology companies like Microsoft and Intuit to manufacturers like Mars Inc. and Unilever.

The key essential elements of an effective renewable energy tariff to meet the needs of a range of customers were outlined in a recent policy brief published by AEE.²⁴ To be effective, a renewable energy tariff should:

1. Avoid impacts on nonparticipating customers;
2. Include program pricing that reflects actual market pricing and program costs;
3. Allow for competitive project selection;
4. Enable development of new renewable energy, beyond business-as-usual;
5. Allow a range of customers to participate; and
6. Include varied or flexible offerings to meet the needs of different customers.

²⁴ See Making Corporate Renewable Energy Purchasing Work for All Utility Customers, available at <http://info.aee.net/making-corporate-renewable-energy-purchasing-work-for-all-utility-customers>.

These elements, derived from customer and developer experience across the country, provide a set of benchmarks against which to assess the CRG Rate Schedules.

As noted previously, AEE has significant concerns regarding the price and competitiveness of the program (numbers two and three) and its ability to respond to customer demand for new renewable energy (number four). AEE also notes that most customers seeking to purchase renewable energy (even those with a 100% renewable energy target) do not have a requirement to source renewable energy on a 24/7 basis, and AEE is not aware of any customers that have requested such an offering in Virginia. Furthermore, a program that requires customers to purchase renewable energy that fits certain operational requirements and that limits customers' otherwise available options to pursue renewable energy cannot be considered consistent with the principle of including varied or flexible offerings to meet the needs of different customers (number six).

F. AEE has no objection to the Hearing Examiner's conclusion that the CRG Rate Schedules could be approved as experimental rates under Va. Code § 56-234 B, provided that the CRG Rate Schedules are not also found to eliminate customer rights to purchase 100% renewable energy pursuant to Va. Code § 56-577 A 5.

Finally, this case has raised several important legal issues. In particular, the Commission must determine whether the CRG Rate Schedules, if approved, would constitute "experimental rates" and whether an experimental tariff may lawfully block competition that is authorized pursuant to Va. Code § 56-577 A 5. AEE believes that, considering all the evidence submitted in this case, the CRG Rate Schedules do indeed constitute experimental rates and may only be approved pursuant Va. Code § 56-234 B. In this regard, AEE agrees with the arguments advanced in the *Joint Motion to Dismiss or Strike or, in the Alternative, to Issue a Ruling in Limine and Request for Expedited Consideration* filed by Direct Energy Services, LLC,

Collegiate Clean Energy, LLC, and Appalachian Voices (“Joint Respondents”) on October 20, 2017.

Section 56-234 B of the Code of Virginia provides that “[i]t shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions.” This is a foundational standard applicable to every public utility operating in the Commonwealth. The statute goes on to provide only one exception to this standard, stating that:

“[h]owever, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest.”

It is clear that customers taking service under the CRG Rate Schedules would pay different rates. They would not be charged “uniformly” for electric service. As Staff witness Pratt confirmed at the hearing, the CRG Rate Schedules, “would produce a separate rate for each customer, so they wouldn’t be uniform.”²⁵ Dominion also concedes that the CRG Rate Schedules may need to be approved as a trial program.²⁶ Therefore, these non-uniform rates may only be approved if the Commission finds that “such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest.”

Finally, AEE agrees with the legal arguments advanced by the Joint Respondents that an experimental rate approved under Va. Code § 56-234 B cannot simultaneously block competition

²⁵ Tr. 259.

²⁶ Company witness Morgan, for example, admits that the CRG Rate Schedules constitute a novel and “untested” approach to providing energy service to customers. Dominion, therefore, proposed that the CRG Rate Schedules should be offered during a three-year trial period, after which the Commission could evaluate whether the program should be extended. See Ex. 19 (Morgan Rebuttal) at 6.

as a “tariff consisting of 100% renewable energy” pursuant to Va. Code § 56-577 A 5.²⁷ The Hearing Examiner does not address whether the Commission could approve the CRG Rate Schedules as “experimental” tariffs, while at the same time permitting such temporary experiments to preclude competition under Va. Code § 56-577 A 5.²⁸ Such a finding could create years of uncertainty in Virginia, during which time clean energy suppliers and purchasers would be unsure of the rules for access to competitive energy supply. This uncertainty could impede Virginia’s developing advanced energy market, potentially encouraging corporate purchasers and clean energy suppliers to locate facilities or do business elsewhere. Such a scenario would most certainly *not* support the public interest contemplated by Va. Code § 56-234 B.

CONCLUSION

For the reasons discussed above, AEE supports the Findings and Recommendations in the Hearing Examiner’s Report. While AEE supports utility efforts to provide new renewable options for customers, AEE cannot support Dominion’s Application as proposed. The CRG Rate Schedules contain significant design flaws, and as a result may not satisfy the needs of potential customers. Perhaps most importantly, AEE is concerned that approval of the CRG Rate Schedules as proposed by Dominion could actually restrict – rather than expand – renewable energy options for Dominion’s customers. AEE urges the Commission to adopt the Hearing Examiner’s Findings and Recommendations.

²⁷ See Joint Motion to Dismiss or Strike or, in the Alternative, to Issue a Ruling in Limine and Request for Expedited Consideration at 5-6 (October 20, 2017), filed by Direct Energy Services, LLC, Collegiate Clean Energy, LLC, and Appalachian Voices.

²⁸ See Report at note 157.

Respectfully submitted,

ADVANCED ENERGY ECONOMY, INC.

By Counsel

/s/ William T. Reisinger

Eric W. Hurlocker

William T. Reisinger

GreeneHurlocker, PLC

1807 Libbie Avenue, Suite 102

Richmond, VA 23226

(804) 864-1100

EHurlocker@GreeneHurlocker.com

WReisinger@GreeneHurlocker.com



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was, this 23rd day of March, 2018, served by first-class mail, postage prepaid, to:

Joseph K. Reid, III, Esquire
Elaine Sanderlin Ryan, Esquire
McGuire Woods, LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219

C. Meade Browder, Jr., Esquire
Senior Assistant Attorney General
Office of Attorney General
Division of Consumer Counsel
202 N. 9th Street
Richmond, VA 23219

Lisa S. Booth, Esquire
Dominion Energy Services
RS-2 Law Department
120 Tredegar Street
Richmond, VA 23219

Ashley B. Macko, Esquire
Office of General Counsel
State Corporation Commission
P.O. Box 1197
Richmond, VA 23218

Michael J. Quinan, Esquire
Cliona M. Robb, Esquire
Christian & Barton, LLP
909 E. Main Street, Ste. 1200
Richmond, VA 23219

Patrick A. Toulme, Esquire
Vice President and Counsel
10323 Lomond Drive
Manassas, VA 20109

James R. Bacha, Esquire
AEP Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Carrie M. Harris, Esquire
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Ste. 500
Winston-Salem, NC 27103

Noelle J. Coates, Esquire
AEP Service Corp.
1051 East Cary Street
Suite 1100
Richmond, VA 23219

Lara R. Brandfass, Esquire
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, East
Charleston, WV 23501

William C. Cleveland, Esquire
Southern Environmental Law Center
201 West Main Street, Ste. 14
Charlottesville, VA 22902

/s/ William T. Reisinger