

May 11, 2020

VIA ELECTRONIC FILING

Joel H. Peck, Clerk
c/o Document Control Center
State Corporation Commission
1300 E. Main Street
Richmond, VA 23219

Re: *Application of Virginia Electric and Power Company, For approval of a voluntary renewable energy rate, designated Rider TRG, pursuant to § 56-234 A of the Code of Virginia*
Case No. PUR-2019-00094

Dear Mr. Peck:

Pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure, please find the Comments and Objections of Advanced Energy Economy in the above-captioned matter.

Should you have any questions about this filing, please do not hesitate to contact me.

Sincerely,

/s/ William T. Reisinger

William T. Reisinger

cc: Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2019-00094

For approval of a 100 percent renewable energy tariff,
designated Rider TRG, pursuant to §§ 56-577 A 5
and 56-234 of the Code of Virginia

**COMMENTS AND OBJECTIONS IN RESPONSE TO HEARING EXAMINER'S
REPORT AND RECOMMENDATION OF
ADVANCED ENERGY ECONOMY**

Pursuant to the Hearing Examiner's April 20, 2020, Report and Recommendation ("Report") and Rule 120 C of the Commission's Rules of Practice and Procedure, Advanced Energy Economy ("AEE"),¹ by counsel, submits the following Comments and Objections in Response to the Hearing Examiner's Report.

INTRODUCTION

On May 31, 2019, Virginia Electric and Power Company, doing business as Dominion Energy Virginia ("Dominion" or "Company"), filed its application for approval of a "100 percent renewable energy tariff," designated Rider Total Renewable Generation ("Rider TRG"), pursuant to Va. Code § 56-577 A 5 ("Section A 5"). Dominion asserts that Rider TRG constitutes a

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. AEE's business members include large international technology companies, renewable energy developers, national and regional competitive electric suppliers, and other advanced energy companies. AEE's members also include current customers of Dominion that wish to procure all or a portion of their energy from renewable energy sources. 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. AEE is participating in this case on behalf of AEE, Virginia Advanced Energy Economy and the Advanced Energy Buyers Group.

voluntary renewable energy tariff under which customers could elect to obtain 100% of their energy requirements from a portfolio of generation assets “owned or contracted for by the Company that meet the definition of renewable energy in Code § 56-576.”² AEE participated in this proceeding to assess whether Rider TRG would meet the needs of Dominion’s commercial and industrial (“C&I”) customers who wish to purchase and use renewable energy and whether Rider TRG is in the public interest.

The Hearing Examiner’s recommendation that the Commission should approve Rider TRG appears based almost entirely on two findings: (1) that the resources within Rider TRG produce “renewable energy” as defined by Va. Code § 56-576 and (2) that Rider TRG is structured similarly to a tariff offered by Appalachian Power Company. Unfortunately, the Hearing Examiner’s analysis gives no weight to the most salient issues and evidence presented in this case. Among other deficiencies, the Hearing Examiner’s Report and Recommendation lacks:

Any analysis of whether the tariff is plainly contrary to the public interest, as the evidence indicated that it is;

Any analysis of whether the tariff is *de facto* contrary to public policy of the Commonwealth, as the evidence indicated that it is;

Any analysis of whether the tariff will meet the needs of Dominion’s customers, as the evidence demonstrated it will not; and

Any analysis, discussion, or recognition of the fact that Dominion’s customers uniformly oppose this so-called “voluntary”³ tariff option.

² Application at 2.

³ As discussed below, this tariff is not, in fact, “voluntary.” If approved, it would be a mandatory option for any customer that desires or is required to purchase and use renewable energy.

The Hearing Examiner also erred by rejecting evidence that Rider TRG is structured to be a REC purchase tariff and by ignoring evidence that Dominion designed Rider TRG to meet an erroneous “24/7” capacity standard that the Commission later rejected.

The Commission should reject the Hearing Examiner’s Report and Recommendation and deny Dominion’s application for the reasons expressed by the respondents and by *every single customer* who offered an opinion in this case.

COMMENTS & OBJECTIONS

A. The Hearing Examiner gives no weight to the undisputed evidence that Rider TRG will not meet the needs of Dominion’s customers.

The Hearing Examiner gives no weight to the evidence Rider TRG would not meet the needs of Virginia customers who desire – or are required – to purchase and use renewable energy. AEE witness Caitlin Marquis explained why Rider TRG will not meet the needs of Dominion’s C&I customers. Ms. Marquis testified that any utility renewable program, to be utilized by C&I customers, must “drive impact” and must be cost based and “cost competitive.”⁴

1. Rider TRG would not result in the addition of any new renewable or carbon-free generation.

Ms. Marquis testified that for most C&I customers, “*impact* generally means incentivizing new, incremental renewable energy and carbon reductions that would not occur but for their involvement in a program or project.”⁵ C&I customers intend for their renewable energy purchases to support *additional* renewable energy resources. Witness Travis Wright, testifying for the Renewable Energy Buyers Alliance (“REBA”), similarly explained that REBA members are focused on achieving three things: additionality and impact, carbon reduction, and

⁴ Exhibit 8 (Marquis) at 7.

⁵ Exhibit 8 (Marquis) at 7.

competitive pricing.”⁶ Dominion intends to utilize the generation from facilities already in its portfolio to support Rider TRG. Therefore, customer participation would not drive deployment of new renewable energy.

2. *Rider TRG is not cost effective or cost based.*

Ms. Marquis testified that “customers expect to pay a competitive price that reflects the value of the asset or service they are purchasing.”⁷ The price customers pay for Rider TRG, however, would have no connection to the energy generated. Instead of connecting the Rider TRG price to the energy produced at the subject generating facilities, participating customers would pay a “balancing charge” and a “premium.” The “balancing charge” would credit “the generation component of base rates, fuel, and generation riders in amounts to hold nonparticipants substantially harmless.”⁸ The result of the balancing charge is that Rider TRG customers would pay *the exact same* generation charge amounts for *the exact same* generation resources as non-participating customers. As the evidence shows, for example, a non-participating customer using 1,000 kWh would pay \$2.29 per month for the Greenville natural gas rider charge, while a Rider TRG customer would pay the same credit amount corresponding to the exact same rider charge.⁹

The only difference between the total monthly bill paid by a Rider TRG customer and a non-participating customer, each using 1,000 kWh, is attributable to a Rider TRG “premium” of \$4.21. This “premium” represents the blended estimated REC values of generating resources in

⁶ Exhibit 11 (Wright) at 6.

⁷ Ex. 8 (Marquis) at 7.

⁸ See Application at 7.

⁹ Ex. 2 (Trexler Direct) at Schedule 2.

the Rider TRG portfolio.¹⁰ The premium will float based on the market value of RECs, but it has no connection to energy or capacity values.

B. Despite recognizing that participating customers would only pay for RECs, the Hearing Examiner rejected arguments that Rider TRG is a REC tariff.

The Hearing Examiner did not agree with the respondents that Rider TRG is a REC tariff – despite explaining precisely why participating customers would only be paying for RECs. The Hearing Examiner correctly explained that “[e]xcept for the Rider TRG premium, participating and non-participating customers pay the exact same amounts.” The only difference, the Hearing Examiner explained, is the “Rider TRG premium” amount, “which is designed to collect from participating customers the same amount the Company would have collected from third-party REC transactions.”¹¹

Customers participating in Rider TRG would pay for, and receive, only the REC output – not the energy or capacity output – of the Rider TRG portfolio. Said another way, the energy and capacity output of the portfolio would not be delivered to customers physically, financially, or by any other means. As Walmart explained, “the only things customers pay for is the REC, which is indistinguishable from a REC Purchase Program and cannot satisfy Section A 5.”¹²

There is no dispute that the charges under the proposed TRG rate are *not* based on the energy and capacity values of particular generating assets. There will be no change in how the resources are dispatched, and the energy from these resources will be neither “physically *nor* financially delivered to Rider TRG subscribers.”¹³ Customers would not receive power from the Rider TRG resources, but simply the knowledge that Dominion had retired RECs equal to their

¹⁰ See Application at 6. The Rider TRG premium price, which could change, is based on a blend of Tier I and Tier II RECs. Tr. 170-171.

¹¹ Report at 43.

¹² Walmart Brief at 14.

¹³ Ex. 8 (Marquis) at 15.

usage.¹⁴ Ms. Marquis gave examples of multiple utility renewable energy programs that *do* allocate energy and capacity to participating customers through the cost structure of their rates.¹⁵ These programs provide examples that Dominion could have followed if it wished to allocate the energy and capacity output of the Rider TRG portfolio to participating customers.

Because participating customers would pay only and receive RECs,¹⁶ Rider TRG is a REC tariff.¹⁷ If approved, it should not be approved under § 56-577 A 5.

C. The Hearing Examiner rejected evidence that Rider TRG was designed to meet an erroneous “24/7” peak load and a “renewable capacity” standard.

The Hearing Examiner erred by rejecting evidence that Dominion designed Rider TRG to meet an unreasonable “around-the-clock” standard, which the Commission later found to be unreasonable. Dominion filed Rider TRG on May 31, 2019. On July 15, 2019, Dominion initiated litigation seeking a declaratory judgment regarding the requirements of Va. Code § 56-577 A 5 (the “Declaratory Judgment Cases”). In the Declaratory Judgment Cases, Dominion asserted that in order to provide energy provided 100 percent from renewable energy, a utility or supplier must meet a “24/7” “renewable capacity” standard.¹⁸ Under Dominion’s proffered renewable capacity standard, a renewable energy tariff would have to serve the peak load of customers with 100% renewable energy at all times, in every hour of every day.¹⁹

¹⁴ See Application at 6.

¹⁵ Ex. 8 (Marquis) at 13.

¹⁶ The Company states that it will “retire the RECs associated with each megawatt-hour (‘MWh’) generated by the TRG Portfolio that the Company sells to participating customers.” Ex. 7 (Billingsley Direct) at 4.

¹⁷ See, e.g., Tr. 203, 226, 234. AEE witness Marquis testified that not only is Rider TRG a REC purchase tariff, but it is actually inferior to Dominion’s existing renewable energy certificate option, Rider G. Ex. 8 (Marquis) at 11-12.

¹⁸ See Case Nos. PUR-2019-00117 and PUR-2019-00118, Final Order at 17 (September 18, 2019).

¹⁹ Ex. 8 (Marquis) at 17-18 (citing hearing transcript from SCC Case. Nos. PUR-2019-00117 and PUR-2019-00118).

In particular, during the Declaratory Judgment Cases, Dominion argued that any utility or supplier serving customers under Section A 5 must demonstrate the following:

- a “contractual or ownership control of sufficient output rights to [renewable] generation to meet the peak requirements of customers and the full energy requirements of customers”;
- “the ability to serve peak load”;
- “the ability to provide energy on demand”;
- “capacity to deliver the [renewable] electrons on a 24/7 basis”;
- “rights to a certain amount of firm power on demand”; and
- “control of, and the ability to call upon, [a] renewable generation resource at any time during the month, day or night.”²⁰

When making these arguments, Dominion told the Commission that “[that’s] what we’ve offered in our TRG tariff.”²¹

In its final order in the Declaratory Judgment Cases, the Commission rejected the 24/7 standard proposed by Dominion, finding it to be “not necessary to ensure reliability of service.”²² The Commission also noted that Dominion’s proposed standard may “represent the most stringent matching requirement of any renewable energy market in the country.”²³

The Commission’s final order in the Declaratory Judgment Cases was entered on September 18, 2019, almost four months after Dominion filed its Rider TRG application. As Ms. Marquis explained, “the fact that Dominion designed [Rider TRG] to meet a more stringent standard than is required by the Commission for a program offered under § 56-577 A 5 raises

²⁰ Case Nos. PUR-2019-00117 and PUR-2019-00118, Final Order at 13 (September 18, 2019).

²¹ Ex. 8 (Marquis) at 18.

²² Final Order at 19.

²³ Case Nos. PUR-2019-00117 and PUR-2019-00118, Final Order at 20 (September 18, 2019).

concerns that the resulting price and portfolio of resources may not be appropriate.”²⁴ The Commission expressed *precisely* the same concern in its final order, noting evidence that Dominion’s proposed standard “could significantly increase the cost of providing service under Section A 5.”²⁵

In addition to potentially increasing costs, the Commission also found that Dominion’s proposed renewable capacity standard could affect the resources that could compose a renewable energy offering. The Commission noted that a 24/7 standard would “significantly hinder a customer’s right to purchase” certain types of energy, such as wind and solar:

Dominion’s “100% of the time” standard would also significantly hinder a customer’s right to purchase, as permitted by Section A 5, electric energy provided from wind and solar generation due to the intermittent nature of these resources. For example, a CSP that had 100 megawatts of offshore wind generation and 100 megawatts of customer peak load would not meet Dominion’s “100% of the time” standard, because wind power is intermittent and does not generate electricity when the wind does not blow, requiring the delivery of electrons from other generators. Indeed, a CSP with a portfolio consisting of 100% solar generation – no matter how much nameplate capacity met or exceeded peak load – would be prohibited from serving even a *single customer* under Dominion’s “100% of the time” standard, because such a portfolio could not produce electricity at night.²⁶

Dominion has admitted that Rider TRG was designed to meet this erroneous “100% of the time” standard proffered in the Declaratory Judgment Cases.²⁷ The Company’s decision to design the Rider TRG portfolio to meet an unreasonably stringent standard may have required the Company to include higher-cost dispatchable resources, including the Virginia City coal facility and the Hopewell, Altavista, and Southampton biomass facilities. In the current

²⁴ Ex. 8 (Marquis) at 18.

²⁵ Case Nos. PUR-2019-00117 and PUR-2019-00118, Final Order at 20 (September 18, 2019).

²⁶ Case Nos. PUR-2019-00117 and PUR-2019-00118, Final Order at 20 (September 18, 2019) (emphasis original).

²⁷ Ex. 8 (Marquis) at 18.

proceeding, Dominion testified that to meet a 24/7 standard, you need to “have assets that [are] providing energy during all hours.” Dominion also conceded that it would “probably not” be possible to offer a solar or wind tariff that would satisfy a 24/7 requirement.²⁸

The composition of Rider TRG has a significant effect on the tariff price. The Commission Staff, for example, found that removing the dispatchable biomass units from Rider TRG would lower the cost of the program by over 50%, reducing the Rider TRG premium from \$4.21 to \$1.78.²⁹ The types of resources in a so-called “renewable energy tariff” could also impact whether that tariff will be attractive to customers.

Dominion’s customers – who stand to lose the ability to purchase the type of renewable energy they choose – at a minimum deserve the right to evaluate a tariff based on a correct legal standard.

D. The Hearing Examiner does not recognize that Rider TRG will *not* be “voluntary” for those customers who must purchase and use renewable energy.

The Hearing Examiner gives no weight to the legal consequences of Dominion’s decision to file Rider TRG under § 56-577 A 5. The respondents presented unrefuted evidence that Rider TRG will not satisfy the needs of customers. But what makes Dominion’s Rider TRG proposal uniquely harmful are the legal consequences of Commission approval. If the Commission approves Rider TRG, and finds it to be a 100% renewable energy offering under Section A 5, then all Dominion customers would lose their existing rights to purchase 100% renewable energy from competitive service providers (“CSPs,”) which are currently serving customers in Dominion’s service territory.³⁰

²⁸ Tr. 452.

²⁹ Ex. 16 (Pratt) at 21.

³⁰ See, e.g., Tr. 40, 224, 465; see also Ex. 8 (Marquis) at Attachment 8.

At the hearing, Dominion emphasized repeatedly that Rider TRG would be “voluntary,” suggesting that if customers don’t like Rider TRG, they don’t have to sign up for it:

“Rider TRG is a voluntary tariff, okay. It’s not a tariff that, you know, is going to be mandated on any customer they can volunteer for it.”³¹

...

“Again, as I mentioned, Rider TRG is a voluntary tariff. And as I mentioned yesterday, we recognize that it may not fit the needs of all customers. And none of our products probably do that, but it is something that we think customers will like.”³²

...

We’re offering in Rider TRG a program, again a voluntary program, that a customer can sign up for and a month later walk away from if they decide to. They can come and go as they want.”³³

In most cases, if customers don’t like a particular “voluntary” tariff option, they simply wouldn’t subscribe. No customer is harmed. But, as Ms. Marquis explained, “[b]ased on Virginia’s unique retail access law, even permitting the utility to *offer* this voluntary tariff could harm customers.”³⁴ Rider TRG would not be voluntary for those customers who desire to purchase renewable energy – including customers who are required to do so due to a corporate sustainability mandate. In fact, this is one of the reasons the Department of Mines, Minerals, and Energy described Rider TRG as “detrimental to state energy goals.”³⁵

Before offering a tariff that rescinds customer rights to purchase renewable energy – leaving such tariff as a customer’s *only* renewable energy option – the utility should at a minimum demonstrate that the proposal is reasonably designed to meet the needs and desires of

³¹ Tr. 437.

³² Tr. 440.

³³ Tr. 442.

³⁴ Ex. 8 (Marquis) at 22 (emphasis original).

³⁵ November 14, 2019, Comments of the Department of Mines, Minerals, and Energy.

its customers; is based on a correct interpretation of applicable law; and is at a minimum not detrimental to the public policy of the Commonwealth.

E. The Hearing Examiner fails to consider that Rider TRG would reallocate energy generated at “Premium Rider” facilities – facilities for which customers have been paying enhanced rates of return for years.

Several of the Rider TRG facilities – including the Altavista, Hopewell, and Southampton biomass facilities and the Virginia City coal plant – receive or have received ratepayer funded rate of return on equity (“ROE”) bonuses of between 100 and 200 basis points. As discussed above, AEE has argued that Rider TRG constitutes a REC-only tariff due to the fact that participating customers would not receive physical or financial delivery of the energy generated by the Rider TRG portfolio and would pay only for RECs. If, however, the Commission agrees with Dominion that participating customers would in fact “receive 100 percent of their energy and capacity from [the Rider TRG facilities],” then non-participating ratepayers would necessarily lose the energy, capacity, and other benefits provided by certain renewable facilities for which they have made bonus ROE payments to Dominion.

This potential reallocation of the energy from “premium rider facilities” would be unfair to ratepayers. To the extent that customers would now lose the energy and environmental benefits for which they have been paying premium rates, such customers will not be held harmless. In response to discovery requests from AEE, Dominion declined to provide the bonus ROE amounts that ratepayers have already contributed to fund the Rider TRG facilities.³⁶

F. If the Commission approves Rider TRG, the Commission should include the sunset provision proposed by the Hearing Examiner.

If the Commission is inclined to approve Rider TRG, the Commission should approve the six-month sunset proposed by the Hearing Examiner. As the Hearing Examiner recognizes,

³⁶ Ex. 8 (Marquis) at Attachment 7.

“[a]pproval of Rider TRG would, by operation of law, restrict CSPs from offering services to Rider TRG-eligible customers within Dominion Energy’s service territory” and that “[a] sunset provision would limit that restriction if there is inadequate customer interest in Rider TRG.” Such a provision should be viewed as a minimum consumer protection, which could mitigate the harm to customers and the renewable energy market in the event that Rider TRG is not utilized by customers. If Rider TRG is approved subject to a sunset provision, the Commission should require the marketing disclosures recommended by the Hearing Examiner and Staff.³⁷ Such marketing disclosures should also explain that Rider TRG is being offered on an experimental basis and subject to a sunset provision. The Commission should take any other steps necessary to ensure that customers are sufficiently informed regarding the resource portfolio before signing up for Rider TRG, including customers who currently subscribe to another renewable energy certificate rate schedule.

CONCLUSION

The parties in this proceeding presented voluminous evidence that Rider TRG (1) will not meet the needs of commercial renewable energy buyers, (2) is unanimously opposed by residential and governmental customers, (3) was designed to meet an unreasonably stringent standard, and (4) is detrimental to the Commonwealth’s public policy objectives. The Commission should reject the recommendations of the Hearing Examiner and deny Dominion’s application.

Respectfully submitted,

ADVANCED ENERGY ECONOMY

By counsel

³⁷ See Report at 46.

/s/ William T. Reisinger

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May 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served this 11th day of May, 2020, by first class mail and/or e-mail to:

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