COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 20, 2015

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

For approval and certification for the proposed Remington Solar Facility pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia, and for approval of a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia

CASE NO. PUE-2015-00006

FINAL ORDER

On January 20, 2015, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion" or "Company") filed with the State Corporation Commission ("Commission") an Application for approval and a certificate of public convenience and necessity ("CPCN"), pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia ("Code"), to construct and operate a 20 megawatt ("MW") utility-scale solar electric generating facility near the town of Remington in Fauquier County, Virginia ("Remington Solar Facility" or "Facility"). Dominion proposes to build the Remington Solar Facility on a 280-acre parcel of land owned by the Company, located across from the Company's existing natural gas-fired Remington Power Station.[1]

Through its Application, the Company also requested Commission approval of a rate adjustment clause, designated Rider US-1, pursuant to Code § 56-585.1 A 6.[2] Dominion seeks

[1] Ex. 3 at 6.

[2] The Company's Application was also filed pursuant to the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.*, and Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility, 20 VAC 5-302-10 *et seq.*

Commission approval of the proposed Rider US-1 to recover costs of the Remington Solar Facility, including distribution facilities to interconnect the Facility to the Company's system.[3]

Pursuant to Code § 56-585.1 A 7, the "Commission's final order regarding any petition filed pursuant to subdivision . . . 6 shall be entered not more than . . . nine months . . . after the date of filing of such petition." Pursuant to Code § 56-580 D, the "Commission shall complete any proceeding under this section . . . involving an application for a certificate . . . required for the construction or operation by a public utility of a small renewable energy project . . . within nine months following the utility's submission of a complete application therefore."

On February 20, 2015, the Commission issued an Order for Notice and Hearing that, among other things, assigned a Hearing Examiner to conduct further proceedings, directed Dominion to provide public notice of its Application, established a procedural schedule, permitted interested persons an opportunity to file comments on the Application or to participate in this proceeding as a respondent, and scheduled an evidentiary hearing.

On July 15, 2015, the hearing was convened. The Company, the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"), Appalachian Voices and the Chesapeake Climate Action Network ("Environmental Respondents"), the Maryland DC Virginia Solar Energy Industries Association ("Solar Association"), and the Commission's Staff ("Staff") participated in the hearing.[4] In addition, public witnesses provided testimony on the Application.

On September 24, 2015, Chief Hearing Examiner Deborah V. Ellenberg issued a report ("Report") that explained the procedural history of this case, summarized the record, and made

[3] Ex. 3 at 12.

[4] The Virginia Committee for Fair Utility Rates filed a notice of participation, but did not participate in the hearing.

findings and recommendations. On October 1, 2015, the Company, Consumer Counsel, and Environmental Respondents filed comments on the Report.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Application is denied without prejudice for the Company to submit, if it chooses, a new application requesting approval of the Remington Solar Facility.

Code of Virginia

Code § 56-580 D states in part as follows:

> The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest . . . . Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

Code § 56-46.1 A states in part as follows:

> Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact.[5]
>
> In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited

[5] Section 56-580 D contains a nearly identical provision applicable specifically to generation facilities.

> to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

Code § 56-585.1 A 6 states in part as follows:

> To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of . . . one or more other generation facilities . . . .
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> A utility seeking approval to construct a generating facility shall demonstrate that it has considered and weighed alternative options, including third-party market alternatives, in its selection process.

Code § 56-585.1 D states as follows:

> The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources, the Commission shall consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and shall also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by consumers.

Code § 56-596 A states "[i]n all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth."

CPCN and Rider US-1

A contested issue in this proceeding is whether Dominion has satisfied the requirement of Code § 56-585.1 A 6 for the Company to demonstrate that it has considered and weighed alternative options, including third-party market alternatives, during its process for selecting the Remington Solar Facility. The Code specifically requires this type of demonstration when, as in this case, a utility such as Dominion seeks Commission "approval to construct a generating facility."[6] Consumer Counsel asserts that Dominion has failed to satisfy this statutory requirement.[7]

The Commission has applied the statutes above, which includes liberally construing the relevant provisions of the Code and recognizing certain types of renewable facilities are in the public interest. As a "small renewable" solar project, the Remington Solar Facility is one type of generation resource that the General Assembly has identified as in the public interest.[8] The General Assembly, however, has not declared it to be in the public interest that renewable power can *only* be obtained from the CPCN applicant's own self-build project, such as proposed herein

[6] Code § 56-585.1 A 6.

[7] *See, e.g.*, Consumer Counsel's Comments on the Report at 23 ("But Dominion must satisfy the requirements of Va. Code § 56-585.1 A 6. Dominion has not satisfied those requirements."). Consumer Counsel also states that "[t]here is no doubt that the Company views the Remington solar facility as a cost being incurred to assist Virginia in complying with [the Clean Power Plan ('CPP') emission guidelines proposed by the Environmental Protection Agency pursuant to Section 111(d) of the Clean Air Act]." Consumer Counsel's Comments on the Report at 21 (citing testimony of Dominion Witness Rogers). The Commission notes that details regarding CPP compliance are uncertain at this point, including the means of cost recovery. As previously explained by the Commission, and quoted by Consumer Counsel, "[s]ignificant questions remain, however, as to when Dominion will incur Section 111(d) compliance costs and, when incurred, whether the Company would recover those costs through existing base rates or would seek to recover them through rate increases in [rate adjustment clauses]." *Id.* at 20 (citation and internal quotations omitted).

[8] *See, e.g.*, Code § 56-580 D. "[S]mall renewable energy project[s]" include solar generation facilities "with a rated capacity not exceeding 100 [MWs]." Code § 10.1-1197.5. Other types of generation facilities that the General Assembly has identified as in the public interest include other types of "small renewable" facilities and certain coal-fired generation facilities. *Id.*; Code § 56-585.1 A 6.

by Dominion, or at *any* price, no matter how burdensome to consumers.[9] The statutory requirement that an applicant must demonstrate that "third-party market alternatives" have been considered and weighed during the applicant's selection process expresses the General Assembly's clear intent that serious and credible efforts must be made to determine whether there are third-party market options available to provide this renewable power at prices less burdensome to consumers than the applicant's self-build option. The plain language of Code § 56-585.1 A 6 does not exempt renewable facilities (or any facilities deemed to be in the public interest) from this demonstration required for our approval of a proposed generation facility.

Further, Code § 56-585.1 D specifically authorizes the Commission to consider, among other things, the "reasonableness or prudence" of utility proposals, including proposals for cost recovery pursuant to Code § 56-585.1 A 6, and, in doing so for renewable facilities such as the Remington Solar Facility, to consider the extent to which such proposed facilities are "likely to result in unreasonable increases in rates paid by consumers."[10]

Based on the record developed in this case, we find that the record does not demonstrate that the Company considered and weighed alternative options, including third-party market alternatives, during the selection process for the Remington Solar Facility, as required by Code

[9] We also note that parties to this proceeding have recognized that amendments to Code § 56-585.1 A 6 were passed by the General Assembly in its 2015 Regular Session (Senate Bill 1349 and House Bill 2237), which identify as in the public interest the construction or purchase by an investor-owned utility of solar generation facilities up to an amount that does not exceed 500 MWs. As held by the Supreme Court of Virginia, "when a statute is amended while an action is pending, the rights of the parties are to be decided in accordance with the law in effect when the action was begun, unless the amended statute shows a clear intention to vary such rights." *Washington v. Commonwealth of Virginia*, 216 Va. 185, 193, 217 S.E. 2d 815, 823 (1975). Nothing in the language of these amendments shows a clear intention that this solar legislation should operate retroactively. Regardless, we note that these amendments, even if applied to the Application, do not obviate the "third-party market alternatives" demonstration required under Code § 56-585.1 A 6 or the Commission's authority to evaluate the reasonableness or prudence of costs proposed for recovery from consumers, as discussed herein.

[10] Code § 56-585.1 D.

§ 56-585.1 A 6. Nor do we find that Dominion has established that the costs of the Facility proposed to be paid by consumers would be reasonable or prudent, based on the record.

The record indicates, for example, that the Company "primarily relied on [the] North Carolina solar market for the purposes of evaluating third-party market alternatives."[11] The Company, however, testified that North Carolina solar facilities identified in the record by Dominion already sell power under existing agreements with the Company at Schedule 19 tariff rates approved by the North Carolina Utilities Commission, are subject to mandatory purchase obligations, or both.[12] Given this evidence, the Company has not established how, during the selection process for the Remington Solar Facility, such resources were – or reasonably could be – considered "alternative options" to selecting the Facility.[13]

The Solar Association and public witnesses, including the executive director of the Mid-Atlantic Renewable Energy Coalition and the director of the Virginia Chapter of the Sierra Club, all testified that a request for proposal ("RFP") process – which Dominion did not conduct in an analysis of third-party market alternatives to the Remington Solar Facility[14] – could have

[11] Ex. 11. *See also* Ex. 27 at Exhibit JAS-1.

[12] Tr. 134-138; Ex. 7 at 13-16, Schedule 1.

[13] We also do not find that the Company's market curve projections for purchased power satisfy the requirements of the Code. In addition, the record does not demonstrate the extent to which Dominion evaluated an 18 MW landfill gas project in Suffolk, or an 80 MW solar project in Accomack County. These two Virginia projects were not identified in the Company's Application or direct testimony. When identified in response to discovery from Staff, the Company did not include information necessary to determine how or when they were evaluated by the Company, much less whether they were considered and weighed as part of the process for selecting the Facility. Ex. 27 and 27-C at 17-18, Exhibit JAS-1, Exhibit JAS-2. Indeed, the Company testified that it would not consider the landfill gas project applicable to developing a solar resource like the Remington Solar Facility. Tr. 104. The record regarding these two projects is, at best, undeveloped and unsupported, and does not satisfy the requirements of the Code.

[14] *See, e.g.*, Ex. 11.

provided evidence as to whether lower-cost alternatives exist to provide this renewable power.[15] We agree.

In addition, the Commission notes that Consumer Counsel urges us to rule that evidence of actual alternatives, if not a formal RFP process, is required in all CPCN cases.[16] Indeed, the record indicates that Dominion is now conducting an RFP process to obtain additional solar power.[17] A serious and credible RFP process would certainly be relevant to whether a CPCN applicant has met the Code's requirement to consider and weigh third-party market alternatives in the Company's selection process; however, we do not need to rule herein that a formal RFP must always be performed in a CPCN case in order to fulfill the demonstration required by Code § 56-585.1 A 6 regarding alternative options, including third-party market alternatives. There may be other credible methods to meet the statute's requirement. In this case, we need only determine whether the record herein demonstrates that what Dominion *did* do meets the statutory requirement, and we find that it does not.

Environmental Respondents ask us to rule that the demonstration regarding "alternative options" required by Code § 56-585.1 A 6 "is not satisfied simply by considering other means of procuring the identical resource proposed by the Company . . . and should include expanded commitments to energy efficiency (demand-side management), market purchases, and other supply-side resources . . . ."[18] We note that the cost of the other resource types that the Environmental Respondents identify as "alternative options" could be lower or higher than the Remington Solar Facility, and not all resources are comparable. The record herein demonstrates

[15] *See, e.g.*, Ex. 21; Tr. 13-20; Tr. 183-215.

[16] *See, e.g.*, Consumer Counsel's Comments on the Report at 4-12.

[17] Tr. 225-231.

[18] Environmental Respondents' Comments on the Report at 3.

that the estimated cost of Dominion's proposed Facility would be $2,350/kW and the Facility would initially have an average annual capacity factor of 22%.[19] By comparison, the estimated cost of Dominion's combined-cycle gas generating station under construction in Brunswick County is $934/kW, with a much higher expected capacity factor.[20] The General Assembly, of course, has declared that solar and other renewable projects up to a size specified by the Code are in the public interest, but the cost of such projects, compared to other renewable alternatives, remains important to the General Assembly and the Commission's evaluation. The comparatively high cost to consumers and low capacity factor of Dominion's proposal herein underscore that serious and credible efforts, as required by the General Assembly, must be made to determine whether lower cost alternatives for obtaining renewable power are available in the market from third parties. That was not done by Dominion in this case. As discussed above, however, we need only determine whether the record herein demonstrates that Dominion's efforts meet the statutory requirement, and we find that they do not.

Based on the record, including but not limited to the evidence specifically discussed herein, we find that Dominion has not satisfied the statutory requirements for our approval of the Application, and we find that Dominion has not established that the costs proposed to be paid by consumers would be reasonable or prudent. Accordingly, we reject Dominion's Application without prejudice. Dominion is free to refile an application that meets all statutory requirements,

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[19] *See, e.g.*, Ex. 14 at 9; Ex. 7 at 7-8. An annual capacity factor is a measure of the actual energy produced by a generation facility during a year relative to the theoretical maximum total energy the facility could produce if it were to operate at full production during the entire year.

[20] *See, e.g.*, *Application of Virginia Electric and Power Company, For approval and certification of the proposed Brunswick County Power Station and related transmission facilities pursuant to §§ 56-580 D, 56-265.2, and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider BW, pursuant to § 56-585.1 A 6 of the Code of Virginia*, Case No. PUE-2012-00128, 2013 S.C.C. Ann. Rep. 302, 308, Final Order at 16 (Aug. 2, 2013).

including the Code's requirement regarding third-party market alternatives, and that establishes the reasonableness and prudence of any costs proposed for recovery from consumers.

Accordingly, IT IS ORDERED THAT the Application is denied without prejudice and this matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.