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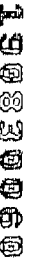
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August 16, 2019

Via Electronic Filing

Mr. Joel H. Peck, Clerk
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1300 East Main Street - 1st Floor
Richmond, VA 23219

**Re: Petition of Virginia Electric and Power Company For Declaratory Judgment
Case. No. PUR-2019-00118**

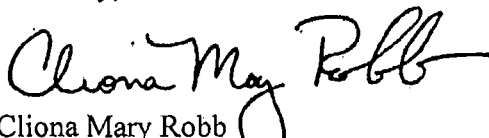
Dear Mr. Peck:

Enclosed for filing on behalf of Costco Wholesale Corporation is the *Brief of Costco Wholesale Corporation* in the above referenced matter.

The Commission's acknowledgment of this filing should be e-mailed to me at crobb@t-mlaw.com.

If you should have any questions regarding this filing, please call me at (804) 799-4128. Thank you for your assistance.

Sincerely,


Cliona Mary Robb

Enclosures

cc: Certificate of Service

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF)
VIRGINIA ELECTRIC AND POWER)
COMPANY) Case No. PUR-2019-00118

FOR DECLARATORY JUDGMENT

BRIEF
OF
COSTCO WHOLESALE CORPORATION

Pursuant to the August 8, 2019 Scheduling Order (“Scheduling Order”) of the State Corporation Commission (“Commission”), Costco Wholesale Corporation (“Costco”), by counsel, respectfully submits its *Brief* concerning the Petition for Declaratory Judgment submitted by Virginia Electric and Power Company (“Dominion” or “Company”) in this proceeding (“Petition”). For the reasons set forth below, and for the reasons stated by Costco in its August 6, 2019 *Reply to Response of Dominion to Calpine’s Motion for Temporary Relief and Request for Expedited Action* (“Costco Reply”), the Commission should dismiss the Petition and order Dominion to process immediately all pending enrollment requests for Calpine Energy Solutions, LLC (“Calpine”) that Dominion has delayed or rejected under Va. Code § 56-577 A 5 (“Section A 5”).

The Commission’s Scheduling Order allows the parties to address what the minimum standards are, or should be, for energy to qualify as “electric energy provided 100 percent from renewable energy” under Section A 5, as well as the Commission’s authority to establish such standards and “any other issue that the participant asserts as relevant.” Calpine addresses the breadth of these issues in its brief filed today, and Costco supports the analysis set forth in the

Calpine Brief. Costco in this Brief will focus its analysis on Dominion's false claims regarding customer impacts and will address the existing standards for Section A 5 and the Commission's authority to revise such standards.

From the perspective of a customer seeking to exercise its right to purchase "electric energy provided 100 percent from renewable energy" under Section A 5, Costco believes it is imperative that the Commission immediately dismiss the Petition and order Dominion to process the pending Section A 5 enrollments. Such a result is justified because Dominion has no credible basis for the Petition, which chills the entire competitive marketplace in Virginia during a critical time when Dominion's application for approval of Section A 5, Rider TRG, is pending.¹ This constitutes monopolistic behavior that is inconsistent with the customer's right to purchase renewable energy pursuant to Section A 5.

Dominion claims that the Petition is "frankly, for the benefit of the customers here [in the Calpine proceeding] and also the customers who are not here, to receive their full load requirements around the clock, including peak, with electrons delivered from renewable power—renewable energy."²

Costco witness Shay Reed rejected the assessment that the Petition benefitted customers. She stated that Costco has suffered from Dominion's pausing the Calpine enrollments, noting that

By pausing the enrollments, we haven't basically, been able to fulfill the contract obligation that we completed with Calpine. This has resulted in budgeting issues and accounting issues and all kinds of other impacts.³

¹ See Tr. at 61-63 (Calpine witness Berry describing the harm to Calpine's market both within and outside Virginia); Tr. at 113 (Dominion witness Trexler acknowledging that when Dominion gets a Section A 5 tariff like Rider TRG approved, CSPs can not longer solicit new customers under Section A 5).

² Tr. at 31 (Dominion opening statement).

³ Tr. at 71-72.

Ms. Reed attested to the accuracy of the detailed impacts on Costco set forth in the Costco Reply,⁴ which were described in paragraphs 10 to 14 of the Costco Reply as follows:

10. In addition to limiting Costco's ability to achieve cost savings (an issue which is extremely confidential and proprietary), limiting its ability, now and in the future, to purchase renewable energy from CSPs we may chose in forms and on terms we may negotiate, would significantly and irreparably harm Costco.

11. Costco reasonably believed that a Section A 5 offering from a CSP was viable based on Costco's understanding that there were existing Section A 5 sales in Dominion's service territory and based on the fact that, ever since Section A 5 had been applicable starting in 2007, no "renewable capacity" requirement had been raised and found applicable, despite numerous utility challenges to CSP sales under Section A5.

12. In reliance upon these circumstances, Costco spent considerable time and effort to enter into a Section A 5 contract, which entailed negotiating with CSPs, creating company fiscal budgets based upon the contract signed in April for enrollment of meters in June, notifying operators of Costco warehouses in Virginia (which may have resulted in energy savings being allocated to other business costs), and reducing carbon contribution expectations.

13. Even Dominion acted as though a Section A 5 offering from a CSP was viable because 3 of Costco's 28 accounts are now being supplied with a Section A 5 offering from a CSP, and for the remaining 25 accounts, neither Costco nor Calpine received an enrollment rejection notice in the ordinary course of business, as evidenced by these facts:

- a. Dominion notified Calpine that all of Costco's accounts were enrolled.
- b. Calpine subsequently notified Costco that all of its accounts were enrolled.
- c. 3 of the 28 accounts are currently being treated by Dominion as being served by Calpine.
- d. For the remaining 25 accounts, Costco was never notified by Dominion that a pause was placed on their enrollments.
- e. For the remaining 25 accounts, Calpine was not notified by Dominion that a pause was placed on the enrollments.
- f. It was only after Calpine recognized that its usage volumes for billing purposes were not as expected, and made inquiries with Dominion as to the reason for the discrepancy, that Calpine discovered that Dominion had paused the enrollments.
- g. At no point did Dominion notify Costco of any enrollment delay, and in fact Dominion failed to produce information about an enrollment delay to Costco after Costco requested this information.

⁴ Tr. at 71.

14. Dominion's approach of processing some Costco accounts while without notice pausing other Costco accounts has resulted in Costco spending additional time and effort. Dominion invoiced Costco on the 3 completed accounts with distribution only values, failing to provide information to Calpine of having done so. This situation has caused a significant issue with GAAP requirements for customer financial statement because GAAP requires when reporting sales to reasonably represent any outstanding costs related to achieving those sales. By not providing Calpine with the volumes to bill on these 3 accounts, Costco has been required to utilize additional effort to meet required GAAP rules. In order to do so, Costco must manually estimate costs which is an inconsistent, labor intensive process that must be ongoing until final resolution of Calpine billing.⁵

In addition to the hardships imposed on Costco by Dominion's handling of the Calpine enrollments, Ms. Reed expressed her frustration that Dominion was holding itself to a monthly balancing standard under Rider TRG while insisting that Calpine be held to a standard involving "green energy [that is] . . . 24 by 7 by 365."⁶

Under cross examination, Dominion witness Greg Morgan would not concede that the Rider TRG held Dominion to a monthly balancing standard.⁷ This is in sharp contrast to the Rider TRG application and supporting testimony, which in multiple portions of the application describe a monthly balancing standard in no uncertain terms:

The Company will manage Rider TRG subscriptions to provide enough energy and capacity within the existing TRG portfolio to handle deviations from expected portfolio generation or expected customer load *on a monthly basis*. The company will compare the subscribed customer load to the *monthly* generation by the TRG portfolio and ensure that the generation exceeds the load with a reasonable margin for deviations.⁸

Rider TRG will advance this public policy objective by providing customers access to a hundred percent renewable energy supplied directly from the Company. The Company will assemble a portfolio of qualifying renewable resources to meet a hundred percent of the generation component for participating

⁵ Costco Reply at 3-5.

⁶ Tr. at 73-74.

⁷ See, e.g., Tr. at 88 ("That is one paragraph among a much more complete filing that says that").

⁸ Tr. at 72-73 (quoting from paragraph 15 of the TRG application in Case No. PUR-2019-00094, emphasis added).

customers' electricity supply service energy and capacity needs *on a monthly basis* at just and reasonable rates.⁹

On a monthly basis, the Company will compare the subscribed customer load to the monthly generation by the TRG portfolio and ensure that the generation matches the load, with a reasonable margin for deviations.¹⁰

The Company will manage Rider TRG subscriptions to provide enough energy and capacity within the existing TRG portfolio to handle deviations from expected generation or expected customer load. *On a monthly basis*, the Company will compare the subscribed customer load *to the monthly generation* by the TRG portfolio and ensure that the generation exceeds the load, with a reasonable margin for deviation.¹¹

Despite asserting that the Rider TRG application described “a portfolio capable of round the clock service,” Mr. Morgan could not recall whether the TRG application at any point mentions serving load on an hourly basis.¹² Nowhere in the 54 page application is the term “hourly” used.

Ms. Reed expressed further skepticism with Dominion’s claim that Calpine’s monthly balancing product was not “green” enough for Dominion customers:

It’s unrealistic for anyone to believe that, in the existing marketplace or by anyone, that green energy can be 24 by 7 by 365. And similar to Kroger, we’re getting as close as we possibly can, realistically understanding that the wind is not going to blow sometimes, the waves aren’t going to move at some point, solar is, you know, not going at night, and there has to be some reasonable balancing that indicates that we know 24/7 is not realistic. I mean, we’re 20-plus years away from being 24/7.

And Dominion cannot provide that. And holding them or any other utility or retailer or anyone to that standard is just an impossibility at this point.¹³

Despite its own customer rejecting the use of an hourly balancing standard, and despite the obvious use of a monthly balancing standard for its proposed Section A 5 tariff, Dominion stubbornly clung to its insistence that the Commission essentially prohibit Calpine from using a

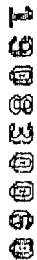
⁹ Tr. at 89 (quoting from paragraph 26 of the TRG application in Case No. PUR-2019-00094, emphasis added).

¹⁰ Tr. at 92 (quoting from the one page summary at the outset of Mr. Billingsley’s testimony filed as part of the TRG application in Case No. PUR-2019-00094, emphasis added).

¹¹ Tr. at 94 (quoting from page 4 of Mr. Billingsley’s testimony filed as part of the TRG application in Case No. PUR-2019-00094, emphasis added).

¹² Tr. at 95.

¹³ Tr. at 73-74.



monthly balancing standard due to concerns about CSPs gaming the monthly standard. Yet when pressed about any evidence that a CSP has ever met a monthly load standard solely with supply provided on the last day of the month, Mr. Morgan admitted that “we have no evidence of that.”¹⁴

This was merely an extreme example of what could happen:

I only use that as sort of, I guess, an extreme example of what could occur
I’m not suggesting and I don’t want to come across as suggesting that’s the intent of any party here or otherwise. But I’m just suggesting that it could happen.¹⁵

In summary, Costco’s assessment of the Petition is that Dominion seeks to deny its customers access to Section A 5 purchases from Calpine by insisting that the Commission apply an hourly balancing standard that (a) Dominion did not apply to itself in its Rider TRG application and that (b) Dominion claims is justified based on CSPs gaming the system despite Dominion having no evidence that this has ever occurred and despite Dominion not even wanting to suggest that any party to this proceeding has the intent to do that. The absurdity of Dominion’s position is obvious and should result in the immediate dismissal of the Petition and the enrolling of Calpine’s accounts.

Costco now turns to the larger issues addressed in the Commission’s Scheduling Order concerning what the minimum standards are, or should be, for energy to qualify as “electric energy provided 100 percent from renewable energy” under Section A 5, as well as the Commission’s authority to establish such standards.

Concerning what the minimum standards are, the most relevant Commission precedent is the final order approving APCo’s Section A 5 tariff, Rider WWS. In that final order, the Commission established that supplying a customer’s full load requirements with electric energy provided 100 percent from renewable energy pursuant to Section A 5 was satisfied when APCo

¹⁴ Tr. at 95.

¹⁵ Tr. at 96.

“identifies the specific renewable energy portfolio from which a customer’s full load requirements will be supplied by 100 percent ‘renewable energy’ as defined by statute” and in addition “match[es] renewable generation with a participating customer’s load on a *monthly* basis.”¹⁶ The Commission cited in support of its monthly balancing standard¹⁷ the portions of the Hearing Examiner’s Report that addressed the following:

- APCo’s recognition that “a monthly standard ‘acknowledges the practical realities of the generation of electricity, such as unscheduled outages, failure of the distribution system, interruptions in fuel supply for non-intermittent resources like land-fill gas facilities, and orders from PJM that generating units back off production due to grid congestion.”¹⁸
- Consumer Counsel supporting monthly balancing based on “the increased costs associated with an hourly standard” and a monthly interval being “less costly” “not be[ing] inconsistent with APCo’s Open Access Tariff.”¹⁹
- Appalachian Voices concern that “an hourly standard would be a market suppressant” and noting that “customers’ current electricity bills are measured on a monthly basis and that net metering uses a matching standard.”²⁰
- Collegiate Clean Energy’s observation that “an hourly standard is more difficult for suppliers to meet” and its indication that it “has nonetheless been operating under the assumption that an hourly standard applies under Code § 56-577 A 5.”²¹
- Dominion’s arguments against a monthly interval and instead recommending an “around the clock” standard that “Dominion ‘contended comports with the operating realities of full requirements service’ and asserted that Virginia law requires

¹⁶ January 7, 2019 Rider WWS Final Order in PUR-2017-00179 at 5-6 (emphasis in original).

¹⁷ January 7, 2019 Rider WWS Final Order in PUR-2017-00179 at 5-6 “find[ing] it is reasonable, for purposes of supplying 100 percent renewable energy under [Section A 5], to match renewable generation with a participating customer’s load on *monthly* basis” and citing in footnote 15 to “Report at 26-28, 33.”

¹⁸ September 25, 2018 Rider WWS *Report of D. Mathias Roussy, Jr., Hearing Examiner* in PUR-2017-00179 at 26-27.

¹⁹ Rider WWS Hearing Examiner’s Report at 27.

²⁰ Rider WWS Hearing Examiner’s Report at 27.

²¹ Rider WWS Hearing Examiner’s Report at 27.

electric utilities to participate in a regional energy market that clears hourly.”²²

- The Hearing Examiner’s observation that one result of an “around the clock” standard, as recommended by Dominion, would be that a “sizeable portfolio of wind and solar generation—the only two resources concurrently incentivized with double credits under the 2007 RPS enactment—could not provide ‘100 percent . . . renewable energy’ to even one customer under Code § 56-577 A 5.”²³

Consequently, a reasonable reading of the Commission’s position regarding an appropriate balancing standard is that *a monthly balancing standard is sufficient* and that the Commission *does not embrace an hourly balancing standard* notwithstanding Collegiate Clean Energy’s ability to meet such a standard.

This reading of the Commission’s position—the existence of a monthly standard and the non-existence of an hourly standard— is reinforced by the Commission’s subsequent order on June 11, 2019 where the Commission recognized Collegiate Clean Energy’s ability to hourly balance load and nonetheless expressly declined to apply a renewable capacity standard to a CSP²⁴ and in particular did not use that opportunity to adopt an hourly balancing standard for a CSP providing renewable energy pursuant to Section A 5.²⁵ This reading of the Commission’s position—the existence of a monthly standard and the non-existence of an hourly standard or a renewable capacity standard— is further reinforced by Dominion’s own Section A 5 tariff

²² Rider WWS Hearing Examiner’s Report at 27.

²³ Rider WWS Hearing Examiner’s Report at 27.

²⁴ June 11, 2019 Final Order in PUR-2018-00134 at 6 (“Appalachian has not established that the adoption of a renewable capacity standard based on PJM’s wholesale reliability requirement is reasonable in this case.”)

²⁵ June 11, 2019 Final Order in PUR-2018-00134 at 6-7 (noting that the Commission found “that it is reasonable to apply similar standards to both utilities and CSPs” and that Collegiate was “meeting or exceeding the [monthly balancing] standard applied to the extent that Collegiate is: (1) providing ‘renewable energy’ as defined by statute; and (2) matching renewable energy generation with customer load on an *hourly* basis” (emphasis in original)).

application, which, as discussed above, never uses the term “renewable capacity” and which never uses the term “hourly.”

Significantly, the Commission noted in Rider WWS that its finding concerning monthly balancing standard “does not preclude other matching standards from also being found reasonable in specific instances.”²⁶ Indeed, during the hearing held on August 7, 2019 in this proceeding, Judge Jagdmann discussed how the Commission recently approved a monthly balancing but recognized that other jurisdictions apply an annual balancing standard to renewable energy:

I think we heard some jurisdictions, they balance on a yearly basis. We have approved an application recently where they balance on a monthly basis, meaning get enough green in the month. So, you know, there are varying standards. It’s worth looking into.²⁷

This means that there is no credible support in the record for the Commission having previously adopted an hourly balancing standard, nor is there credible support in the record that the Commission would in the future adopt an hourly balancing standard. Dominion has no right to usurp the Commission’s authority as to what balancing standard must apply to renewable supply under Section A 5. If the Commission wants to go beyond its current guidance as to a monthly balancing standard being sufficient for a utility tariff approved under Section A 5, then the best mechanism for weighing the pros and cons of an hourly standard, a daily standard, a monthly standard, or an annual standard would be a generic rulemaking. The Commission’s authority for such a rulemaking is clearly established in the Commission’s Rules of Practice and Procedure, which in Rule 100 A provides a mechanism for establishing general rules and regulations:

- A. Promulgation of general orders, rules, or regulations. Before promulgating a general order, rule, or regulation, the commission shall, by order upon an application or upon its own motion, require reasonable notice of the contents of the proposed general order, rule, or regulation, including publication in the Virginia Register of Regulations, and afford interested

²⁶ January 7, 2019 Rider WWS Final Order in PUR-2017-00179 at. 6, footnote 15.

²⁷ Tr. at 25.

persons an opportunity to comment, present evidence, and be heard. A copy of each general order, rule, and regulation adopted in final form by the commission shall be filed with the Registrar of Regulations for publication in the Virginia Register of Regulations.²⁸

Such a rulemaking should take into account the rationale for Section A 5, which is to facilitate the purchase of renewable energy by customers.²⁹ Costco strongly believes that this is best achieved by a standard that is no more stringent than a monthly standard, and indeed may be best achieved by a standard that is less stringent than a monthly standard. As discussed during the hearing, a monthly standard is an outlier that makes it more difficult for retail customers to procure renewable energy within Virginia as compared to retail customers outside Virginia:

.... I will say that in developing this product, one of the most difficult parts was, after you understand what you think it needs to be, we have to go out and find renewable suppliers who can provide that, who can offer monthly matching, who can identify a specific portfolio, *because that's not how renewable energy is usually purchased. It's a more stringent standard than we see typically in the renewable energy markets.*

So the process of negotiating that contract with our wholesale supplier took several months. And that's why it was pretty heavily redacted when we provided it, because we consider that pretty sensitive. You know, that contract language itself is not-the-shelf industry standard stuff. But we do have provisions to address shortfalls in what the supplier is able to do.³⁰

Unless and until the Commission completes a rulemaking on such a standard, Costco urges the Commission to continue the status quo of imposing a standard that is no more stringent than a monthly balancing standard in order to encourage ongoing adoption of renewable energy as a viable option for retail customers in Virginia.

Respectfully submitted,

²⁸ 5 VAC 5-20-100 A.

²⁹ See, e.g. a prior Commission order, affirmed on appeal, that the General Assembly has given "special status" to renewable energy. *Petition of Direct Energy Servs, LLC*, Case No. PUE-2014-00094, Order on Reconsideration at 2 (Apr. 26, 2017), *aff'd Virginia Elec. & Power Co. v. State Corp. Comm'n*, 295 Va. 256 (2018).

³⁰ Tr. at 51 (Calpine witness Berry).

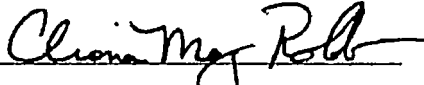
COSTCO WHOLESALE CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was emails, hand-delivery, and/or sent via first-class mail to the parties listed below this 16th day of August, 2019:



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