

customers in Virginia.¹ Direct Energy is wholly owned by its parent company, Centrica plc, an international global Fortune 500 company that supplies energy and energy-related services to approximately 28 million customer accounts mainly in the United Kingdom, Ireland, and North America, through strong brands such as British Gas, Direct Energy and Bord Gáis Energy supported by around 12,000 engineers and technicians.

Direct Energy has filed an application for a competitive service provider license (“CSP License”) with the Commission in order to provide 100% renewable energy to residential customers located in the Dominion Virginia Power service territory.² As stated in its application, DES intends to satisfy the 100% renewable requirement by purchasing renewable power from several different types of renewable resources within the PJM footprint. The renewable generators will simultaneously inject energy into the grid to offset our customers’ load. The corresponding renewable attributes will be retired.

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¹ Gateway Energy Services Corporation and Direct Energy Business Marketing, LLC.

² This case has been docketed as Case No. PUE-2016-00088.

approves a 100% renewable energy tariff.³ In order to ensure the economic feasibility of its proposed entry into the Virginia energy market, Direct Energy must be assured that an approved Dominion Virginia Power 100% renewable energy tariff will not preclude Direct Energy from offering to serve its then-existing customers, as well as other customers who wish to take such service from Direct Energy.

Clearly, Virginia Code § 56-577 (A) (5) (a) precludes any competitive service providers from initiating a 100% renewable energy service product in the Dominion Virginia Power service territory once the Commission has approved a Dominion Virginia Power 100% renewable energy tariff. But Virginia Code § 56-577 (A) (5) (b) allows Direct Energy to continue to serve existing customers with a 100% renewable energy product “for the duration of such agreement.” However, Direct Energy will not be providing service pursuant to specific and individual “agreements” with such customers beyond that which is required by 20 VAC 5-312-80 (C); it will instead be offering service generally to all customers in a particular class (residential, commercial or industrial) pursuant to standardized rates and terms and conditions associated with providing this product. In this case, the existing customers to which Direct Energy may continue to market its services after acceptance of a Dominion Virginia Power 100% renewable energy tariff is most reasonably construed to mean Dominion’s overall customer base. Accordingly, Direct Energy should be able to serve new customers even after Dominion Virginia Power offers an approved 100% renewable energy tariff. A contrary result, in which a competitive service provider is unable to market to new customers after a certain event, would make it inefficient, uneconomical and impractical for any competitive service

³ Virginia Code § 56-577 (A) (5) (b).

provider, including Direct Energy, to participate in the Virginia market under the existing rules on a widespread basis in the Dominion Virginia Power service territory.

It would be illogical for the Virginia General Assembly to prohibit Direct Energy or any competitive service provider from continuing to market and serve additional customers once Dominion Virginia Power begins to offer a 100% renewable energy tariff. No retail business can survive if it cannot do business with new customers. This is certainly true in the retail energy market, in which customers move on and off a system with regularity, reacting to price signals and relocating in and out of utility service territories. Consequently, it is most reasonable to interpret Virginia Code § 56-577 (A) (5) (b) to allow Direct Energy to continue to serve additional customers to the class of customers to which it is marketing at the time that the Commission approves a Dominion Virginia Power 100% renewable energy tariff.

Virginia Code §67-101 establishes Virginia's clean energy policy objectives. These objectives include increasing reliance on renewable sources of energy that pollute less than traditional sources of energy, such as coal, and recognizing the need to foster alternative sources of energy as vital components of a diversified portfolio of energy resources. To achieve these objectives, the Virginia General Assembly enacted the Commonwealth Energy Policy, Virginia Code §67-102, which includes supporting the research and development of, and promoting the use of, renewable energy sources, as well as promoting the generation of electricity through technologies that do not contribute to greenhouse gases and global warming. All agencies of the Commonwealth, including the Commission, are required to recognize the elements of the Commonwealth Energy Policy and act in a manner consistent with the Policy when taking discretionary action with regard to energy issues. Allowing competitive service providers such as Direct Energy to continue to market 100% renewable energy to additional members of a

customer class to which they are presently marketing⁴ will both complement and serve to further the Commonwealth Energy Policy rather than stifle it.

B. Offering a 100% Renewable Energy Product to Commercial and Industrial Customers.

Virginia Code § 56-577 (A) (3) allows commercial and industrial customers whose demand for the previous calendar year exceeded five MWs to purchase energy from a competitive service provider. The General Assembly has predicated this ability on the requirements in Virginia Code §§ 56-577 (A) (4) and (5). In light of the requirement in Virginia Code § 56-577 (A) (5) (b) that a customer may continue to purchase 100% renewable energy from a competitive service provider for the duration of the power purchase agreement, Direct Energy must be assured that an approved Dominion Virginia Power 100% renewable energy tariff will not preclude Direct Energy from offering to serve its then-existing commercial and industrial customers whose demand exceeds five MW customers, as well as future similarly situated customers who wish to take such service from Direct Energy.

The analysis of this issue follows the same inquiry to be used to determine whether Direct Energy may secure additional customers in Dominion Power's service territory after an approved Dominion Power 100% renewable energy tariff.

C. Exemption from Minimum Five Year Stay Provision of 20 VAC 5-312-80 (Q).

The Commission's regulations implementing Virginia Code § 56-577 (C) do not address whether individual or aggregated customers with a demand of 5 MW or greater receiving 100% renewable energy from a competitive service provider must provide five years' notice to the

⁴ Although Direct Energy does not intend at this time to serve commercial and industrial customers until after initially marketing its 100% renewable product to residential customers, it is necessary for Direct Energy to obtain guidance on the offering of this product to commercial and industrial customers.

investor owned utility in order to return to the investor owned utility. Such a minimum stay requirement would make it virtually impossible for Direct Energy to attract such customers for its 100% renewable product. It is therefore essential that the Commission determine that individual or aggregated customers with a demand of 5 MW or greater receiving 100% renewable energy from a competitive service provider be exempt from five year stay requirement in 20 VAC 5-312-80 (Q).

3. Jurisdiction

The Commission has jurisdiction over the controversy described herein, as the Petitioner is seeking interpretations of Virginia Code §§ 56-577 (A) and (C), as well as regulations promulgated by the Commission pursuant to these statutory provisions. The Commission is given authority over the terms of service of sales of electric energy within the Commonwealth pursuant to Va. Const. art. IX, § 2. Accordingly, the issues raised by the Petitioner’s request for declaratory judgment as described in this petition fall well within the Commission’s jurisdiction.⁵

Although the present dispute involves the Petitioner and Dominion Virginia Power, there is a more broad question properly before the Commission – under what conditions can a licensed retail supplier of electricity generated from a renewable energy resource be assured that its investment in supplying that supply is protected, thus encouraging suppliers of 100% renewable energy to market services in Dominion Virginia Power’s service territory. A restrictive approach to the interpretation of the aforementioned statutes and regulations would effectively foreclose

⁵ *Piedmont Env’t Council v. Virginia Elec. And Power Co.*, 278 Va. 553, 567, 684 S.E.2d 805, 813 (2009) (“The [Electric Utility Regulation] Act further provided that ‘the Commission shall continue to regulate ... to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth,’ quoting Virginia Code §§ 56-580 (A) and 56-579 (D) (1)). See also *Virginia Elec. And Power C. v. State Corp. Comm’n*, 219 Va. 894, 899, 252 S.E.2d 333, 337 (1979) (“Under the provisions of Article IX § 2 of the 1971 Constitution, Code § 12.1-12, and Code § 56-35 the Commission is required to regulate public utilities.”).

Direct Energy, or any other supplier of renewable energy, from making the investment necessary to provide this service in Dominion Virginia Power's service territory.

4. Conclusion

There is an actual controversy that exists regarding whether Direct Energy, once it obtains its CSP License, is authorized by Virginia Code § 56-577 (A) (5) to

A. continue to provide a 100% renewable energy product to existing and future Dominion customers once Dominion Virginia Power has in place an approved tariff to provide 100% renewable energy in its service territory;

B. provide a 100% renewable energy product to commercial and industrial customers whose demand for the previous calendar year exceeded five MWs; and

C. indicate to commercial and industrial customers that they are not subject to the five year minimum stay provision because they are purchasing a 100% renewable energy product from Direct Energy.

In light of the above, the Petitioner respectfully request that the Commission resolve these questions as set forth in the Petition and enter a declaratory judgment that Direct Energy, upon the receipt of its CSP License, may offer its 100% renewable energy product in Dominion Virginia Power's service territory according to the terms requested above. The Commission should keep in mind that Virginia Code § 56-596 requires that the Commission promote the development of effective competition and economic development in the Commonwealth of Virginia when determining its enforcement of the Regulation Act, and making such a determination along the lines requested by Direct Energy in its Petition will further such goals. The Petitioner requests such further relief as is appropriate.

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Respectfully submitted,

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