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August 24, 2020

**Via Electronic Filing**

Mr. Bernard Logan  
Interim Clerk  
Document Control Center  
State Corporation Commission  
1300 East Main Street - 1<sup>st</sup> Floor  
Richmond, VA 23219

**Re: Petition of Direct Energy Business, LLC  
For a Declaratory Judgement Against Virginia Electric and Power Company  
d/b/a Dominion Energy Virginia  
Case No. PUR-2020- 00162**

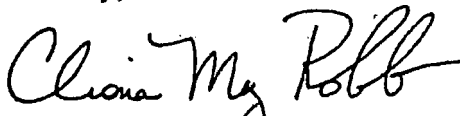
Dear Mr. Logan:

On behalf of Direct Energy Business, LLC, enclosed for filing is *Petition of Direct Energy Business, LLC, for a Declaratory Judgement Against Virginia Electric and Power Company d/b/a Dominion Energy Virginia*, in the above referenced matter.

The Commission's acknowledgment of this filing should be e-mailed to me at [crobb@t-mlaw.com](mailto:crobb@t-mlaw.com).

Thank you for your attention to this matter.

Sincerely,

  
Cliona Mary Robb

Enclosures

cc:

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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

PETITION OF

DIRECT ENERGY BUSINESS LLC

CASE NO. PUR-2020-00162

For a declaratory judgment against  
Virginia Electric and Power Co.  
d/b/a Dominion Energy Virginia

**PETITION OF DIRECT ENERGY BUSINESS, LLC  
FOR A DECLARATORY JUDGEMENT AGAINST VIRGINIA ELECTRIC AND  
POWER COMPANY D/B/A DOMINION ENERGY VIRGINIA**

Pursuant to Rule 100 of the Rules of Practice and Procedure of the State Corporation Commission (“Commission”), 5 VAC 5-20-100, Petitioner Direct Energy Business, LLC (“Direct Energy”), by counsel, respectfully submit this petition for a declaratory judgment (“Petition”).

**IDENTITY OF THE PARTIES**

1. Petitioner Direct Energy is a competitive service provider (“CSP”) licensed to provide electric supply service to commercial, industrial, and governmental customers in Virginia, including customers located in Dominion’s service territory.

2. Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Dominion”) is a for-profit public service corporation organized under the laws of the Commonwealth of Virginia. It provides electric service to the public within its Virginia service territory.

## STATEMENT OF THE ACTION SOUGHT

3. Petitioner seeks a declaratory judgment finding that a customer under the same taxpayer identification number with an aggregate demand at or over 5 MW due to individual accounts at different sites with loads less than 5 MW, will be eligible to continue to purchase renewable supply from CSPs pursuant to Va. Code § 56-577 A 5 (“Section A 5”).

### LEGAL BASIS FOR THE COMMISSION’S JURISDICTION

4. The Commission has jurisdiction over the controversies described in this Petition. The Commission has the power and is charged with the duty of regulating the rates, charges, services, and facilities of electric utility companies operating within the Commonwealth. Va. Const. Art. IX, § 2. The Constitution of Virginia and statutes enacted by the General Assembly give the Commission broad authority over the control and regulation of public service companies. *Piedmont Envtl. Council v. Virginia Elec. and Power Co.*, 278 Va. 553, 562, 684 S.E.2d 805, 810 (2009).

5. The Code provides that “any person aggrieved by anything done or omitted in violation of any of the provisions of [Title 56], by any public service corporation chartered or doing business in the Commonwealth, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the [Commission], sitting as a court of record.” When such a grievance is established, the Commission has jurisdiction, by injunction, to restrain the public service corporation from continuing the violation and to require compliance with the requirements of the law. Va. Code § 56-6.

6. The Code also provides that “[t]he Commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all public service companies doing business in this Commonwealth, in all matters relating to the performance of their public

duties and their charges therefor, and of correcting abuses therein by such companies.” Va. Code § 56-35.

7. The Commission is empowered, upon finding the practices or acts of a public utility are “unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of law or if it be found that any service is inadequate or that any reasonable service cannot be obtained,” to substitute therefore and make orders respecting and changes in such practices and acts as shall be just and reasonable. Va. Code § 56-247.

8. Accordingly, the Commission has jurisdiction to provide the relief requested by Direct Energy.

#### **Legal Basis for the Action**

9. Rider TRG, as proposed by Dominion and as approved by the Commission in Case No. PUR-2019-00094 (“Rider TRG Proceeding”), is only available to customers with peak demand of less than 5 MW in the most recent billing period. In its Motion for Order Clarifying Status of Proposed Tariff and Petition for Reconsideration (“Motion for Clarification”) filed on July 8, 2020 in the Rider TRG proceeding, Direct Energy noted that the Commission had established in its Order Approving Tariff issued on July 2, 2020, that customers who are not eligible to participate in Rider TRG are still able to purchase 100 percent renewable energy from a CSP pursuant to Section A 5, and Direct Energy asked the Commission to clarify that customers who are not eligible includes customers with peak demands at or above 5 MW even if they have individual accounts of less than 5 MW; in other words that the “noncontiguous site” provisions of Virginia Code § 56-577 A 3 (“Section A 3”) do not apply to Section A 5.<sup>1</sup>

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<sup>1</sup> Motion for Clarification at 5-6.

10. Direct Energy noted in its Motion for Clarification that clarification on the second point is required, for example, to address the situation of a large commercial customer which has operations under the same taxpayer identification number in five different locations with each location having an account whose maximum demand is slightly above 1 MW.<sup>2</sup> Under Dominion's interpretation, this large commercial customer is eligible to participate in Rider TRG and, consequently, the Rider TRG Order prohibits the customer from purchasing from a CSP pursuant to Section A 5.<sup>3</sup> Under Direct Energy's interpretation, this large commercial customer is *not* eligible to participate in Rider TRG and, consequently, the Rider TRG Order *does not* prohibit the customer from purchasing from a CSP pursuant to Section A 5.<sup>4</sup>

11. In its Order on Additional Requests issued on July 23, 2020 in the Rider TRG proceeding ("Rider TRG Additional Requests Order"), the Commission determined that it did not need to "answer this specific question of law regarding statutory interpretation in exercising its legislative discretion for purposes of ruling on the [Rider TRG] Application."<sup>5</sup>

12. However, the Commission also noted in its Rider TRG Additional Requests Order "that Direct Energy, or any interested person, may initiate an appropriate proceeding under the Commission's Rules of Practice and Procedure to bring an actual case or controversy before the Commission regarding specific questions of statutory interpretation under Code § 56-577."<sup>6</sup> Accordingly, based on the Commission's guidance in its Rider TRG Additional Requests Order, and based on Direct Energy and Dominion having different interpretations of what customers are prohibited from purchasing under Section A 5 following approval of Rider TRG, Direct Energy

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<sup>2</sup> Motion for Clarification at 6.

<sup>3</sup> See, e.g. Virginia Electric and Power Company's Response in Opposition to Direct Energy's Motion for Order Clarifying Status of Proposed Tariff ("Dominion Rider TRG Response") at 8.

<sup>4</sup> Motion for Clarification at 6.

<sup>5</sup> Rider TRG Order on Additional Requests at 4.

<sup>6</sup> Rider TRG Order on Additional Requests at 4 (citations omitted).

has brought this Petition before the Commission regarding specific questions of statutory interpretation under Va. Code § 56-577.

13. Dominion's interpretation assumes that the large commercial customer whose total load is more than 5 MW will be eligible to take service under Rider TRG if that total load is served at noncontiguous locations at which the separate demand for each location is less than 5 MW.<sup>7</sup> On this point Dominion is clearly mistaken. The provision of Va. Code § 56-577 which would require a large commercial customer (over 5 MW total) to obtain permission under Section A 4 to aggregate its separate locations where it takes service at 5 MW or less is found at Section A 3, and is presented specifically as a condition to taking service under Section A 3. Beyond this provision in Section A 3, however, a customer's noncontiguous sites do not constitute separate customers for purposes of Va. Code § 56-577.

14. The following applicable definitions, found at Va. Code § 56-576, are very clear:

*"Retail customer"* means any *person* that purchases retail electric energy for its own consumption *at one or more metering points or nonmetered points of delivery* located in the Commonwealth.<sup>8</sup>

*"Person"* means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.<sup>9</sup>

Under these definitions, a corporation, for example, is a "person" and, if it purchases retail electric energy for its own consumption, it is a "retail customer" even if it takes service at more

<sup>7</sup> Dominion Rider TRG Response at 6-8.

<sup>8</sup> Similarly, Dominion's Terms and Conditions defines "Customer" as "Any person, group of persons, association, partnership, firm, or corporation purchasing Electric Service from the Company."  
<https://www.dominionenergy.com/library/domcom/media/home-and-small-business/rates-and-regulation/residential-business-rates-shared/virginia/entire-filed-tariff.pdf?la=en&modified=20200601130017>

<sup>9</sup> Similarly, Dominion's Terms and Conditions defines "Person" as "Any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority, or other political subdivision of the Commonwealth."  
<https://www.dominionenergy.com/library/domcom/media/home-and-small-business/rates-and-regulation/residential-business-rates-shared/virginia/entire-filed-tariff.pdf?la=en&modified=20200601130017>

than one metering point. Section A 5 gives statutory rights to “individual retail customers,” not individual metering points at noncontiguous sites.

15. The fact that the conditions found at Section A 3, including the noncontiguous site provision, do not apply to sales under Section A 5 was established beyond question by the Supreme Court of Virginia in *Virginia Electric and Power Company v. State Corporation Commission, et al.* That case involved Dominion’s appeal of the Commission’s ruling in favor of Direct Energy that the size and notice provisions of Section A 3 do not apply to sales of renewable energy under Section A 5. The Supreme Court’s ruling applies with equal force here.

VEPCO also argues that large customers must comply with the notice requirement in Section (A)(3), even if they purchase electricity from a CSP under Section (A)(5). That argument, however, is not supported by a plain reading of the statute. Section (A)(3) states that large customers can purchase electricity from any licensed supplier of energy “subject to the following conditions.” The notice requirement, contained in subsection (c), is one of four enumerated conditions. *The phrase “subject to” and the fact that the notice requirement is a subsection of Section (A)(3) demonstrate that the notice requirement applies only to purchases made under Section (A)(3).* There is no notice requirement for purchases under Section (A)(5), and no language that incorporates the notice provision from (A)(3) into (A)(5). Accordingly, the notice requirement in Section (A)(3) does not apply to purchases made under Section (A)(5).<sup>10</sup>

16. The noncontiguous site provision is also one of the *four enumerated conditions of Section A 3* to which the Supreme Court refers. It is contained in subsection (b) and provides as follows: “*For the purposes of this section* [Section A 3],<sup>11</sup> each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be

<sup>10</sup> *Virginia Electric and Power Company v. State Corporation Commission, et al.*, 295 Va. 256, 265 (2018) (emphasis added).

<sup>11</sup> Dominion contends that this reference is to § 56-577 in its entirety, including Section A 5. Dominion Rider TRG Response at 6-8. A plain reading of the statute tells us otherwise, but even if that were true it does not change the fact that the noncontiguous site provision is expressly set out only as a condition to Section A 3.



under common ownership of a single person.”<sup>12</sup> However, as per the Supreme Court’s analysis, there is no noncontiguous site provision for purchases under Section A 5, and no language that incorporates the noncontiguous site provision from Section A 3 into Section A 5. Accordingly, the noncontiguous site provision in Section A 3 does not apply to purchases made under Section A 5.

17. Although Dominion contends that the noncontiguous site provision of Section A 3 applies to sales of 100% renewable energy under Section A 5,<sup>13</sup> the definitions found at Va. Code § 56-576 and the Virginia Supreme Court tell us otherwise. In light of Dominion’s misunderstanding as to the applicability of its proposed Rider TRG to certain customers with loads exceeding 5 MW, Direct Energy requests that the Commission determine that an individual retail customer at or over 5 MW (such as a large commercial customer which has operations under the same taxpayer identification number in five different locations with each location having an account whose maximum demand is slightly above 1 MW) is not eligible to participate in Rider TRG even though the large commercial customer has separate accounts at noncontiguous sites with the load on each site being less than 5 MW, and that such a customer may therefor continue to make purchases of 100 percent renewable energy from CSPs under Section A 5.

**CONCLUSION**

For the foregoing reasons, Direct Energy requests that the Commission issue a declaratory judgment finding that a Dominion customer at or over 5 MW will not be eligible to participate in Dominion’s Rider TRG even if the customer has individual accounts at different sites with loads less than 5 MW, and accordingly such customer may continue to purchase from a CSP pursuant to Section A 5.

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<sup>12</sup> Va. Code § 56-577 A 3 (b)(emphasis added).  
<sup>13</sup>Dominion Rider TRG Response at 8.

August 24, 2020

Respectfully submitted,

DIRECT ENERGY BUSINESS, LLC

By: Cliona Mary Robb  
Counsel

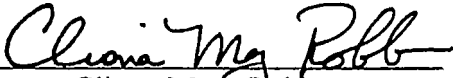
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was emailed this 24<sup>th</sup> day of August 2020, to each person listed below.

  
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