

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 5, 2020

SEC-CLERK'S OFFICE
REGISTRATION CONTROL CENTER

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PETITION OF

APPALACHIAN POWER COMPANY

CASE NO. PUR-2019-00145

For approval of a broadband capacity pilot program pursuant to § 56-585.1:9 of the Code of Virginia

FINAL ORDER

On September 6, 2019, Appalachian Power Company ("APCo" or "Company") filed a petition ("Petition") with the State Corporation Commission ("Commission") pursuant to § 56-585.1:9 of the Code of Virginia ("Code") (hereinafter, "Broadband Pilot Statute") for approval of a pilot program to provide broadband capacity to a nongovernmental Internet service provider ("ISP") in areas of Grayson County, Virginia, that are unserved by broadband ("Grayson Broadband Pilot" or "Pilot").¹ Specifically, APCo seeks approval of the Grayson Broadband Pilot, under which it will provide broadband capacity to GigaBeam Networks, LLC ("GigaBeam") in unserved areas of Grayson County, Virginia.² To provide the capacity, APCo states that it will install 96-strand fiber optic communications cable on its existing utility poles in Grayson County and will use a portion of the capacity to meet its own distribution system needs, including as the supporting communications backbone for intelligent grid technologies.³ The Company states that it will lease another portion to GigaBeam, which will use the fiber infrastructure to deliver high-speed Internet access to thousands of unserved residences and

¹ Ex. 2 (Petition) at 1.

² *Id.* at 5.

³ *Id.*

businesses in Grayson County.⁴ APCo states that it will use the lease revenues it receives from GigaBeam to offset the costs of the Pilot.⁵

APCo states that it intends to seek recovery of the costs of the Pilot in a rate adjustment clause ("RAC") filing pursuant to Code § 56-585.1 A 6 on or after July 1, 2020.⁶ APCo requests that the Commission issue an explicit ruling that: (i) the Company is authorized to defer the costs of the Pilot as they are incurred and to recover the associated revenue requirement in future RAC proceedings; and (ii) confirms that APCo will be entitled to earn a return on and of its investments over the expected thirty-year life of the fiber optic infrastructure.⁷ APCo also requests that the Commission approve the Pilot for an initial term of six years.⁸

On September 26, 2019, the Commission entered an Order for Notice and Hearing that, among other things: (i) docketed the Petition; (ii) directed APCo to publish notice of the Petition; (iii) provided any interested person an opportunity to file comments on the Petition or to participate in the case as a respondent by filing a notice of participation; (iv) directed the Staff of the Commission ("Staff") to investigate the Petition and file testimony and exhibits containing its findings and recommendations; (v) scheduled a public hearing for January 24, 2020, in Richmond, Virginia, to receive the testimony of public witnesses and the evidence of the Company, any respondents, and the Staff; and (vi) appointed a Hearing Examiner to conduct all

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 8-9.

⁷ *Id.* at 9-10.

⁸ *Id.* at 10.

further proceedings in this matter on behalf of the Commission, including filing a final report ("Report").

Notices of participation were timely filed by Virginia Electric and Power Company ("Dominion") and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel").

On December 18, 2019, Staff filed testimony documenting the results of its investigation of APCo's Petition and the Staff's recommendations in this proceeding. Neither Dominion nor Consumer Counsel filed testimony. In addition, the Commission received written comments supporting the Petition from 31 individuals, organizations, local governments, and members of the General Assembly. The Commission also received comments from Comcast regarding its concerns as an ISP in portions of Grayson County.

The Hearing Examiner convened a public hearing as scheduled on January 24, 2020. No public witnesses appeared.⁹ APCo, Consumer Counsel, and the Staff participated in the hearing, during which the Hearing Examiner received testimony from witnesses on behalf of the participants and admitted evidence on the Petition.¹⁰

On January 31, 2020, the Report of A. Ann Berkebile, Senior Hearing Examiner ("Report") was filed. In the Report, the Hearing Examiner thoroughly summarized the record, including the written comments received, the testimony and exhibits presented during the evidentiary hearing, and the applicable law. The Hearing Examiner found that based on the evidence received in this case: (1) The Pilot meets the requirements of the Broadband Pilot Statute and should be approved subject to the biannual reporting requirements recommended by

⁹ Tr. at 7.

¹⁰ Dominion did not participate in the hearing.

Staff and commencement of construction within three years of Commission approval; (2) The Commission should approve an initial Pilot term of three years; and (3) APCo should be authorized to defer the costs of the Pilot with the expectation that it will file for cost recovery on or after July 1, 2020.¹¹ The Hearing Examiner also found that regarding the annual cost cap in the Broadband Pilot Statute and the alternative methods of calculation suggested by Staff and APCo, that Staff's interpretation appears to be reasonable.¹²

On February 14, 2020, Consumer Counsel and Staff filed comments to the Report. On February 19, 2020, APCo filed a Motion for Leave to File Comments and Exceptions Out of Time ("Motion") stating it had attempted to file its comments electronically on February 14, 2020.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

This is the first case brought under Code § 56-585.1:9 that establishes the framework for broadband capacity pilot programs to unserved areas of the Commonwealth.¹³ No party to this proceeding asserted that APCo's proposed Grayson Broadband Pilot failed to meet the requirements of the Broadband Pilot Statute.¹⁴ For the reasons set forth in the Report, we agree with the Hearing Examiner that the Pilot does satisfy the statutory requirements.¹⁵

¹¹ Report at 29.

¹² *Id.* at 27.

¹³ Tr. at 7.

¹⁴ See Tr. at 11, Ex. 11 (Cizenski) at 17. Consumer Counsel took no position on whether the Petition should be approved but noted certain issues for the Commission's consideration. Tr. at 156-57.

¹⁵ Report at 25-26.

APCo developed two alternate plans for deploying fiber optic broadband infrastructure under the proposed Pilot: Scenario 1 involving installation of approximately 238 miles of fiber optic cable, which would support full deployment of advanced metering infrastructure ("AMI") meters and distribution automation and circuit reconfiguration technology; and Scenario 2 involving installation of approximately 146 miles of fiber optic cable, which would not support the full deployment of AMI meters.¹⁶ The Petition states that the estimated costs of Scenario 1 include approximately \$17.5 million in capital investment plus annual operation and maintenance expenses of \$481,000 and that the estimated costs of Scenario 2 include approximately \$11.2 million in capital investment plus annual operation and maintenance expenses of \$306,000.¹⁷ Subsequently, APCo lowered the capital requirements for Scenario 1 to \$16.7 million and for Scenario 2 to \$10.3 million.¹⁸ Neither scenario reaches the annual cost cap of \$60 million set forth in the Code, regardless of whether the limit is based upon an annual revenue requirement or annual spending.¹⁹

APCo asserts that Scenario 1 would result in higher quality Internet service to a greater number of customers, would accelerate the time needed to deploy broadband capacity throughout the unserved areas, and would increase the longevity of the network installed under the Pilot.²⁰ Staff did not take a position on which scenario should be selected.²¹ The Hearing Examiner

¹⁶ Ex. 2 (Petition) at 7.

¹⁷ *Id.* at 8.

¹⁸ Ex. 13 (Harris) at 3; Tr. at 14.

¹⁹ *Id.* at 6.

²⁰ Ex. 2 (Petition) at 7-8.

²¹ Ex. 11 (Cizenski) at 17.

concluded that the Commission had the discretion to approve either Scenario 1 or Scenario 2 or to allow APCo to choose between the two scenarios since both met the criteria from the statute.²²

We agree that both scenarios meet the statutory criteria. We also agree with the Hearing Examiner that Scenario 1 should be approved despite its higher cost as it will provide a higher level of service to customers.²³ It is also the scenario used by Grayson County and GigaBeam when applying for funds from the Virginia Telecommunications Initiative.²⁴ Given the facts of this case, we grant approval for APCo to proceed with Scenario 1.

Next, we turn to the length of the Pilot. The Broadband Pilot Statute requires that the Pilot:

shall continue for the three-year period ending three years following the date the Commission approves the first petition to provide broadband capacity pursuant to this section, unless the Commission extends the pilot program or makes the pilot program permanent.

APCo requests that the Pilot be approved for a period of six years.²⁵ Staff recommended that the Pilot be approved for three years.²⁶ APCo asserts that a three-year timeframe is "extremely aggressive and affords no time for data collection and assessment."²⁷ We grant approval of the Pilot for an initial term of three years, and we further extend that approval for an additional three years. As set forth in the Code, the approval period begins with the date of this Final Order and

²² Report at 25.

²³ *Id.*

²⁴ Tr. at 40-44.

²⁵ Ex. 2 (Petition) at 10.

²⁶ Ex. 13 (Harris) at 9.

²⁷ Ex. 18 (Sebastian Rebuttal) at 6.

shall run for a total of six years. Further, as required by the statute, construction shall commence within three years of such approval.²⁸

For the cost of the Pilot, APCo requested that the Commission provide "reasonable assurance" that the Company will be able to recover the costs of the Pilot through future RAC rates.²⁹ The Broadband Pilot Statute states in part:

B. The incremental costs of providing broadband capacity pursuant to any such pilot program, net of revenue generated therefrom, shall be eligible for recovery from customers as an electric grid transformation project pursuant to clause (vi) of subdivision A 6 of § 56-585.1 filed on or after July 1, 2020.

Much of the discussion on the record surrounds "incremental costs" of the Pilot and what should be approved in this proceeding. We agree with the Hearing Examiner that no finding on the Pilot costs is warranted at this time.³⁰ Specifically, we make no finding on the reasonableness or prudence of any AMI-related costs, as the Company is not seeking recovery of these costs through the Petition.

The Commission notes that, by statute and given the Commission's approval of the Pilot, the Company is allowed to recover the incremental costs of providing broadband capacity pursuant to the Pilot, net of revenue generated therefrom, through a RAC. The Commission does not object to the Company deferring such incremental Pilot costs until this Commission addresses a separate petition for a RAC.

The Commission recognizes that the provision of broadband capacity to nongovernmental ISPs in areas of the Commonwealth unserved by broadband has been

²⁸ Code § 56-585.1:9 D.

²⁹ Ex. 2 (Petition) at 10.

³⁰ Report at 26-27.

statutorily declared to be in the public interest, and but for the fiber-based communications platform proposed in this case, the Company would be unable to provide the broadband availability authorized by statute.

Accordingly, while it is premature to opine on the prudence and/or cost recovery of AMI-related costs included in the Pilot Petition, any potential denial of recovery of costs for fiber-based AMI service would not negatively affect an application for recovery of the incremental costs for the Pilot. In any petition for recovery of incremental Pilot costs in the future, the Company shall include testimony on the baseline costs to which the Pilot costs are considered incremental.

Staff recommended that the Company file biannual reports summarizing the progress of the Pilot.³¹ The Company agreed to make the reports.³² We agree with the Hearing Examiner that these reporting requirements are reasonable.³³ APCo is directed to make biannual reports on the progress of the Pilot, including the information outlined by Staff.³⁴

Subsection A of the Broadband Pilot Statute states that petitions for pilot programs shall not exceed \$60 million in costs annually. APCo and Staff each asked the Commission for clarification on whether this statutory cost cap is to be calculated according to an annual revenue requirement, as proposed by APCo, or according to actual annual spending - including

³¹ Ex. 11 (Cizenski) at 16-17.

³² Ex. 17 (Perdew Rebuttal) at 5.

³³ Report at 26.

³⁴ The witness from GigaBeam agreed to confirm customers are unserved before enrolling them to receive service under the Pilot. Tr. at 130-131. The Commission agrees with the Hearing Examiner that given GigaBeam's representations at the hearing, it is unnecessary for the Commission's approval of the Pilot to be conditioned upon GigaBeam's verification of customer broadband access. Report at 25.

capitalized, expensed, and deferred costs, as proposed by Staff.³⁵ We agree with the Hearing Examiner and find that Staff's approach to the cost cap under the Broadband Pilot Statute should be used going forward.³⁶

Finally, APCo's Motion is granted, and its comments are accepted as filed on February 20, 2020.

Accordingly, IT IS ORDERED THAT:

(1) APCo's Grayson Broadband Pilot is approved as described herein for an initial period of three years. Further, the Grayson Broadband Pilot approval is extended for an additional three years.

(2) The approval is conditioned upon APCo beginning construction within three years of the date of this Final Order.

(3) APCo shall submit biannual reports as described herein.

(4) The statutory \$60 million cap in annual costs of APCo pilots under Broadband Pilot Statute shall be based upon actual annual spending - including capitalized, expensed, and deferred costs.

(5) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

James G. Ritter, Esquire, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; Noelle J. Coates, Esquire, American Electric Power Service Corporation, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219; James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus,

³⁵ Ex. 5 (Sebastian) at 5; Ex. 18 (Sebastian Rebuttal) at 4; Ex. 13 (Harris) at 6.

³⁶ See Report at 27.

Ohio 43215; Audrey T. Bauhan, Senior Counsel, Dominion Energy Services, Inc., Riverside 2, 120 Tredegar Street, Richmond, Virginia 23219; and C. Meade Browder, Jr., Senior Assistant Attorney General, and Katherine C. Creef, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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