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Commission
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Purchase Agreements Pilot Program

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200620082

June 4, 2020

VIA ELECTRONIC FILING

Joel Peck
Clerk, Virginia State Corporation Commission
Document Control Center
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Tyler Building - 1st Floor
Richmond, VA 23219

RE: *Commonwealth of Virginia, ex rel., State Corporation Commission*
Ex Parte: Order Regarding Third Party Power Purchase Agreements Pilot Program
Case No.: PUR-2020-00081

Dear Mr. Peck:

Please find enclosed and accept for filing the *Response of Kentucky Utilities Company* in the above-referenced matter.

Should you have any questions or need any additional information, please contact me at your convenience.

Yours very truly,

A handwritten signature in black ink that reads "Kendrick R. Riggs".

Kendrick R. Riggs

KRR:ec
Attachment

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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, *ex rel.*)
)
STATE CORPORATION COMMISSION) CASE NO. PUR-2020-00081
)
Ex Parte: Order Regarding Third Party Power)
Purchase Agreements Pilot Program)

RESPONSE OF KENTUCKY UTILITIES COMPANY

Pursuant to the Virginia State Corporation Commission’s (“Commission”) Order dated May 29, 2020, Kentucky Utilities Company d/b/a Old Dominion Power Company (“KU-ODP” or “Company”) hereby submits this timely response to the Motion of Sigora Solar LLC (“Sigora”) for Order Authorizing Pilot Program Pre-Registrations in the Service Territory of Kentucky Utilities Company and Request for Expedited Consideration (“Motion”). KU-ODP responds to Sigora’s Motion to (1) clarify the net metering cap applicable to pilot programs, and (2) argue that the plain language of the Clean Economy Act allows pilot programs only for KU-ODP’s jurisdictional customers.

1. In the 2020 Session, the Virginia General Assembly passed the Clean Economy Act. The Clean Economy Act, approved by Governor Ralph Northam on April 11, 2020, becomes effective July 1, 2020. With limited exceptions, the Clean Economy Act does not affect KU-ODP’s exemption in Va. Code 56-580(G) from the Virginia Electric Utility Regulation Act (“VEURA”). But as the Commission has recognized,¹ and Sigora’s Motion notes, the Clean

¹ *Concerning the establishment of a renewable energy pilot program for third party power purchase agreements*, Case No. PUE-2013-00045, Order Updating Guidelines (Va. SCC May 29, 2020).

Economy Act expands the renewable energy pilot program for third party power purchase agreements to the service territories of all investor-owned electric utilities, including KU-ODP.²

Net Metering Cap Applicable to Pilot Programs

2. KU-ODP does not contest that certain customers may now participate in a pilot program within its service territory, but does dispute Sigora's characterization of the law in its Motion. Sigora asserts: "[B]eginning on July 1, 2020, the capacity available under the Pilot Program in the KU/ODP service territory will be 40 megawatts."³ Sigora's assertion that the Clean Economy Act provides a cap of "40 megawatts for an investor-owned utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002" is misleading because Sigora ignores the further statutory limitation on KU-ODP's cap.

3. After setting forth the 40 megawatt cap, the Clean Economy Act states: "Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of six percent of each Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to Subsection E of § 56-594 of the Code of Virginia."⁴ Five percent of the cap is available to all customers and one percent is

² In 2013, the Virginia General Assembly enacted Chapter 382 of the 2013 Virginia Acts of Assembly, which required the Commission to conduct a renewable energy pilot program for third party power purchase agreements within the service territory of Virginia Electric and Power Company. In 2017, the Virginia General Assembly approved Chapter 803 of the 2017 Virginia Acts of Assembly, which, among other things, re-enacted the 2013 legislation with amendments requiring the pilot program be conducted within the service territory of each investor-owned electric utility in Virginia, excepting any utility described in Va. Code 56-580(G). In 2020, the Virginia General Assembly enacted Chapter 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly which amended the pilot program and removed the exception for KU-ODP. The Virginia General Assembly also enacted Chapter 1188 (HB572), known as the "Solar Freedom Act," which makes the same changes to the pilot program as the Clean Economy Act.

³ Sigora Motion at 2.

⁴ Virginia Clean Economy Act, Enactment Clause 2, Section 1(b). *See also* Virginia Clean Economy Act, Va. Code § 56-594(E) ("The net metering standard contract or tariff shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rate generating capacity owned and operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators in the Commonwealth reach six percent, in the aggregate, five

available only to low-income utility customers.⁵ The Commission recently recognized this statutory limitation in explicit terms, stating that changes to the pilot program “increase the overall caps of this program in the investor-owned utilities’ service territories, *based upon the utilities’ peak load forecasts.*”⁶ Thus, the size of the pilot program in KU-ODP’s territory is limited not only by the 40 megawatt cap as Sigora states, but also limited further by the net metering limitation of six percent of KU-ODP’s adjusted Virginia peak-load forecast for the previous year.

4. For 2019, KU-ODP’s adjusted Virginia peak-load forecast was 212.706 megawatts. Six percent of the peak-load forecast is 12.762 megawatts. Thus, KU-ODP’s net metering cap, including the pilot program, is 12.762 megawatts. After removing from the cap KU-ODP’s current net metering customers, which total 216 kilowatts, KU-ODP’s remaining cap available to net metering customers, including pilot program participants, is 12.546 megawatts. The low-income limitation may further limit the amount of the cap available to pilot program participants that do not meet the definition for “low-income utility customer.”

Application of Pilot Programs to KU-ODP’s Non-Jurisdictional Customers

5. Sigora’s Motion does not differentiate between jurisdictional and non-jurisdictional customers. KU-ODP disagrees and interprets the Clean Economy Act as allowing pilot programs only for KU-ODP’s jurisdictional customers. It is a well-established rule of statutory construction that “[w]hen one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and where they

percent of which is available to all customers and one percent of which is available only to low-income utility customers of each electric distribution company’s adjusted Virginia peak-load forecast for the previous year.”).

⁵ Virginia Clean Economy Act, Va. Code § 56-594(E). A “low-income utility customer” is defined in the Virginia Clean Economy Act in Va. Code § 56-576 as “any person or household whose income is no more than 80 percent of the median income of the locality in which the customer resides. The median income of the locality is determined by the U.S. Department of Housing and Urban Development.”

⁶ *Concerning the establishment of a renewable energy pilot program for third party power purchase agreements*, Case No. PUE-2013-00045, Order Updating Guidelines (Va. SCC May 29, 2020) (emphasis added).

conflict the latter prevails.”⁷ While Virginia law generally directs the Commission “to conduct pilot programs . . . within the certificated service territory of each investor-owned public utility,”⁸ the Virginia Code specifically creates a class of non-jurisdictional customers by exempting contracts for service by any public utility to any municipal corporation or to the state or federal government from the duty to provide adequate service at reasonable and uniform rates.⁹ KU-ODP’s statutory duty to furnish adequate service at reasonable and uniform rates does not apply to “contracts for service rendered . . . to any municipal corporation or to the state or federal government.”¹⁰ This apparent conflict in legislative directives can only be harmonized, absent more specific legislation, such that the Commission can conduct pilot programs in the certified service territory of each investor-owned public utility involving customers whose rates and service are subject to the Commission’s jurisdiction.

6. The Acts of the Virginia General Assembly demonstrate the legislature is aware of this conflict. For instance, the pilot program is expressly available to both jurisdictional and non-jurisdictional customers of Virginia Power by the creation of a 500 MW cap for jurisdictional customers and a 500 MW cap for non-jurisdictional customers.¹¹ The same distinction between jurisdictional and non-jurisdictional customers is expressly made in Virginia Code Section 56-589.1 for similar purposes.¹² If the legislature intended for the pilot program to apply to non-

⁷ *Thomas v. Commonwealth*, 419 S.E.2d 606, 618 (Va. 1992); see also *Hollingsworth v. Norfolk S. Ry.*, 689 S.E.2d 651, 655 (Va. 2010) (“In a situation where one statute speaks to a subject generally and another deal with that subject specifically, the more specific statute prevails . . . Thus, we conclude that the specific definition of the ‘[p]ractice of podiatry’ prevails over the general language of the ‘[h]ealing arts.’”); *Virginia Nat’l Bank v. Harris*, 257 S.E.2d 867, 870 (Va. 1979) (“Such a conclusion comports with the established rule of statutory construction that when one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and where they conflict, the latter prevails.”).

⁸ 2017 Va. Uncodified Acts, Chapter 803, Enactment Clause 2, Section 1(a).

⁹ Va. Code § 56-234(B)(iii).

¹⁰ Va. Code § 56-234(B).

¹¹ Virginia Clean Economy Act, Enactment Clause 2, Section 1(b); Virginia Solar Freedom Act, Enactment Clause 2, Section 1(b).

¹² See also Va. Code § 56-585.1:7. Pilot program for electric generation by public schools.

jurisdictional customers in KU-ODP's territory, it would have explicitly provided that the pilot program is available for jurisdictional and non-jurisdictional customers. It chose not to do so. The assertion that the General Assembly has directed the Commission to conduct pilot programs for customers which the Commission lacks jurisdiction over their contracts for rates and services is a non sequitur. The Clean Economy Act allows pilot programs only for KU-ODP's jurisdictional customers.

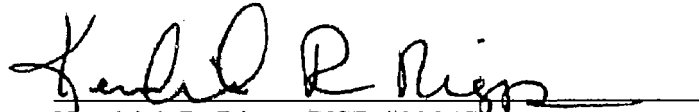
7. As a final matter, the Commission's consideration of this issue is especially important given the COVID-19 outbreak and the economic hardship it has caused residents and businesses in Virginia. If the Commission were to interpret the law as allowing pilot programs in KU-ODP's service territory for non-jurisdictional customers, it ultimately may result in higher rates for KU-ODP's remaining customers. Sigora itself recognizes that solar causes a utility's remaining customers to pay higher rates.¹³

WHEREFORE, Kentucky Utilities doing business as Old Dominion Power Company respectfully requests the Commission clarify the net metering cap applicable to pilot programs and deny Sigora's Motion to the extent it requests the participation of non-jurisdictional customers in KU-ODP's pilot program.

¹³ Sigora Solar Facebook Page, Interview of Tad Luttrell, Vice President of Sigora Solar, LLC, <https://www.facebook.com/SigoraSolar/videos/552452008797069/>. ("The more people go away from the utility company and start having solar, what's going to happen to those rates? They're going to actually continue to increase at a much higher rate because the utility company has to make up their money....Those people who aren't investing in solar are essentially guaranteeing themselves much higher utility rates than they've ever had and they're going to grow exponentially faster. This gives you an opportunity to lock in a utility bill and also pay it off any time you want. You don't have the ability to do that [with any utility]. Whereas if you have solar you own the electricity, you own the ability to produce it.").

Dated: June 4, 2020

Respectfully submitted,



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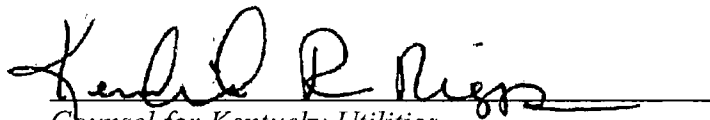
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*Counsel for Kentucky Utilities Company
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2020620082

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above and foregoing Comments of Kentucky Utilities Company d/b/a Old Dominion Power Company have been electronically filed and served upon the persons listed on the Commission's May 29, 2020 Order Attachment by electronic mail, on June 4, 2020.



*Counsel for Kentucky Utilities
d/b/a Old Dominion Power Company*