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July 8, 2020

Via Electronic Filing

Mr. Joel H. Peck, Clerk
Document Control Center
State Corporation Commission
1300 East Main Street - 1st Floor
Richmond, VA 23219

**Re: Application of Virginia Electric and Power Company
For approval of a 100 percent renewable energy tariff, designated Rider
TRG, pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia
Case No. PUR-2019-00094**

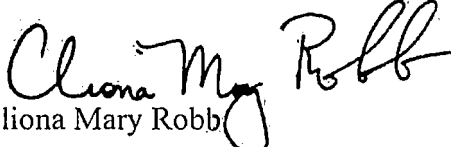
Dear Mr. Peck:

On behalf of Direct Energy Services, LLC, and Direct Energy Business, LLC, enclosed for filing is *Direct Energy's Motion for Order Clarifying Status of Proposed Tariff and Petition for Reconsideration*, in the above referenced matter.

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

Thank you for your attention to this matter.

Sincerely,


Cliona Mary Robb

Enclosures

cc: Certificate of Service (via email)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2019-00094

For approval of a 100 percent renewable energy tariff,
designated Rider TRG, pursuant to Virginia Code §§
56-577 A 5 and 56-234 of the Code of Virginia.

**DIRECT ENERGY'S
MOTION FOR ORDER CLARIFYING STATUS OF PROPOSED TARIFF
AND
PETITION FOR RECONSIDERATION**

Pursuant to Rules 110 and 220 of the Rules of Practice and Procedure of the State Corporation Commission of Virginia (“Commission”), 5 VAC 5-20-110, 5 VAC 5-20-220, Direct Energy Business, LLC, and Direct Energy Services, LLC (collectively, “Direct Energy”), by counsel, respectfully (a) moves the Commission to issue an order clarifying that any Rider TRG tariff language submitted by Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Dominion”) is not immediately effective because such tariff remains subject to review by the Commission Staff and to consideration by the Commission of petitions for reconsideration, and (b) petitions the Commission to suspend its Final Order issued on July 2, 2020 in this case approving Rider TRG for the limited purpose of reconsidering the impact of the approval of Rider TRG on a large commercial customer with multiple accounts in which each account’s individual load is under 5 MW but for which the customer’s total load exceeds 5 MW. In support of its motion and petition (“Motion and Petition”), Direct Energy states as follows:

MOTION FOR ORDER CLARIFYING STATUS OF PROPOSED TARIFF

On July 2, 2020, the Commission issued its Order Approving Tariff (“Rider TRG Order”) concerning the application (“Application”) filed by Dominion for approval of a 100 percent

renewable energy tariff, designated Rider TRG, whereby participating customers can voluntarily elect to purchase 100 percent of their energy and capacity needs sourced from renewable energy resources.¹

On July 2, 2020, Dominion filed its Rider TRG—100 Percent Total Renewable Generation tariff sheet (“Rider TRG Tariff Sheet”) which contained a footer stating that “This Filing Effective for Bills Rendered On or After 08-01-20.” As discussed in more detail below, Dominion assumes the Rider TRG Tariff Sheet will become immediately effective and preclude enrollments of competitive service provider (“CSP”) accounts on and after July 4, 2020. Consequently, Direct Energy hereby moves the Commission to issue an order clarifying that the Rider TRG Tariff Sheet did not become immediately effective because this filing remains subject to review by the Commission Staff and because the Rider TRG proceeding remains subject to consideration by the Commission of petitions for reconsideration of the Rider TRG Order.

Such an order would be consistent with the Commission’s actions concerning approval of Rider WWS as a Section A 5 tariff approved for Appalachian Power Company (“APCo”). In the Rider WWS proceeding, APCo initially submitted to the Commission Clerk on *January 31, 2019* a Rider WWS tariff in compliance with the applicable ordering paragraph of the Rider WWS Order, which APCo considered “final” and which APCo stated had an “effective date” of February 6, 2019. However, revised versions of Rider WWS apparently become effective on March 1, 2019 and then on April 1, 2019, establishing that the initial January 31, 2019 compliance filing did not establish the final version of Rider WWS, which apparently was not

¹ Order at 1, 13.

effective until *April 1, 2019*.² The following illustrates a timeline of the filings following the Commission's order approving Rider WWS:

January 7, 2019: Commission issues Order Approving Tariff ("Rider WWS Order")

January 31, 2019: APCo submits to the Commission Clerk a redline and clean (final) version of Rider WWS and supporting workpapers for Standard Tariff Sheet Numbers 40-1 through 40-2, noting that the Rider WWS balancing charge is anticipated to change effective March 1, 2019, with a footer stating "Issued: January 31, 2019" and "Effective *February 6, 2019*."

February 19, 2019: Commission Staff sends letter to APCo dated February 19, 2020 (with a Document Control Center stamp of March 18, 2020) acknowledging receipt of APCo's updated Rider WWS, noting that ***the tariff sheets are accepted for filing***, and enclosing a stamped copy for APCo's records with a footer stating "Issued: January 31, 2019" and "Effective *March 1, 2019*."

April 12, 2019: APCo submits to Commission Clerk a letter dated April 12, 2019 (with a Document Control Center stamp of April 15, 2019) containing a redline and clean (final) version of Rider WWS and supporting workpapers for Standard Tariff Sheet Numbers 40-1 through 40-2, noting that the Rider WWS balancing charge is anticipated to change effective April 1, 2019, with a footer stating "Issued: January 31, 2019" and "Effective *April 1, 2019*."

Similarly, concerning the establishment of a Commission-approved Schedule MBR, the *initial* compliance filing submitted by Dominion to the Commission Clerk on *January 29, 2020* did not establish the *final* version of Schedule MBR, which was not submitted to the Commission Clerk by Dominion until *March 31, 2020*. The two month gap between the initial compliance filing and the ultimately accepted compliance filing was caused by the Commission's consideration of a petition for reconsideration and the Commission's consideration of a motion requesting an order directing clarification of the proposed tariff

² The difference between the initial compliance filing and the final compliance filing appear related to Staff review of an updated balancing charge.

language, as illustrated by a sample of the Commission activity in this docket following the order approving the tariff:

- January 14, 2020: Commission issues Final Order approving Schedule MBR (“Schedule MBR Order”)
- January 29, 2020: Dominion submits to Commission Clerk Schedule MBR—Market Based Rate (Experimental) for Usage On and After March 1, 2020
- February 3, 2020: Dominion files Limited Petition for Reconsideration and Motion for Interim Authority to Implement Approved Rate Schedule MBR
- February 4, 2020: Commission issues Order Granting Reconsideration and Establishing Further Proceedings
- February 26, 2020: Microsoft Corporation files Motion for Order Directing Clarification of Tariff Language
- March 6, 2020: Commission issues Order Setting Procedural Schedule
- March 11, 2020: Commission issues Order on Reconsideration
- March 26, 2020: Commission issues Order Granting Motion regarding clarification of tariff language
- March 31, 2020: Dominion submits to Commission Clerk clean and redlined version of Schedule MBR—Market Based Rate (Experimental) for Usage On and After March 1, 2020

Based on this Commission precedent, it is not appropriate for Dominion to assume that the Rider TRG Tariff Sheet will become immediately effective. The Rider TRG Tariff Sheet has not been accepted for filing by the Commission Staff, nor has the August 1, 2020 deadline for petitions for reconsideration on the Rider TRG Order occurred. The Rider TRG Order in Ordering Paragraph (2) calls for Dominion, within 30 days of July 2, 2020, to “file Rider TRG, as approved by this Order Approving Tariff, with the Clerk of the Commission and the Commission’s Divisions of Public Utility Regulation and Utility Accounting and Finance.” The Rider TRG Order does not specify that Dominion’s filing in compliance with the Rider TRG

Order would become immediately effective with no review by the Commission Staff and with no opportunity for the Commission to consider petitions for reconsideration. Yet Dominion submitted its compliance filing at 4:43 pm on July 3, 2020 and then within one business day at 4:27pm on July 6, 2020 sent a notice to CSPs as set forth on **Exhibit A** to this Motion and Petition, indicating that “any and all accounts that were not scheduled to be enrolled on or before July 3, 2020” would not be enrolled.³ Consequently, Direct Energy asks the Commission to issue an order clarifying that the Rider TRG Tariff Sheet does not automatically preclude all CSP enrollments effective on July 4, 2020 because the Rider TRG Tariff Sheet remains subject to review by the Commission Staff and because the Rider TRG proceeding remains subject to consideration by the Commission of petitions for reconsideration of the Rider TRG Order.

PETITION FOR RECONSIDERATION

In this petition for reconsideration, Direct Energy asks the Commission to clarify that a customer at or over 5 MW will not be eligible to participate in Rider TRG even if the customer has individual accounts at different sites with loads less than 5 MW.

Rider TRG, as proposed by Dominion and as now approved by the Commission, is only available to customers with peak demand of less than 5 MW in the most recent billing period. In its Comments on the Hearing Examiner’s Report, Direct Energy asked the Commission to clarify both (1) that customers who are not eligible to participate in Rider TRG are still able to purchase 100 percent renewable energy from CSP pursuant to Section A 5 and (2) that customers who are

³ In addition, Dominion’s notice to CSPs fails to recognize that not all sales of renewable energy by CSPs under Section A 5 will be precluded by its offering of Rider TRG, such as sales to customers with peak demand at or over 5 MW, including customers with separate accounts which might individually be under 5MW as discussed below in the petition for reconsideration section of this Motion and Petition. Instead, Dominion erroneously instructs CSPs to drop all pending enrollments for “any and all accounts submitted for enrollment pursuant to Virginia Code Section 56-577 A 5”

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” provision of Section A 3 does not apply to Section A 5.⁴ The Commission did provide clarification on the first point,⁵ but did not expressly address the second.

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. 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 Va. Code § 56-577 A 5. 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 Va. Code § 56-577 A 5.

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.⁶ 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

⁴ Direct Energy Comments at 56-60.

⁵ Order Approving Tariff at 13.

⁶ See, Tr. at 134 (Dominion witness Trexler believes Wal-Mart would be eligible for service under Rider TRG).

in Section A 3, however, a customer's noncontiguous sites do not constitute separate customers for purposes of Va. Code § 56-577.

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.⁷

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.⁸

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

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,

⁷ 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>

⁸ 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>

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).⁹

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], each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.”*¹⁰ 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 (A)(3) into (A)(5). Accordingly, the noncontiguous site provision in Section (A)(3) does not apply to purchases made under Section (A)(5).

Although Dominion assumes that the noncontiguous site provision of Section A 3 applies to sales of 100% renewable energy under Section A 5, the definitions found at Va. Code § 56-576 and the Virginia Supreme Court tell us otherwise. In light of Dominion’s apparent misunderstanding as to the applicability of its proposed Rider TRG to certain customers with loads exceeding 5 MW, made obvious during the evidentiary hearing in this matter, Direct Energy requests that the Commission clarify that an individual retail customer at or over 5 MW (such as a

⁹ *Virginia Electric and Power Company v. State Corporation Commission, et al.*, 295 Va. 256, 265 (2018) (emphasis added).

¹⁰ Va. Code § 56-577 A 3 (b) (emphasis added).

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 Va. Code § 56-577 A 5.

WHEREFORE, Direct Energy respectfully requests that the Commission (1) suspend its Rider TRG Order, (2) grant this Motion and Petition, and (3) grant such other relief as deemed appropriate and necessary.

July 8, 2020

Respectfully submitted,


DIRECT ENERGY BUSINESS, LLC and
DIRECT ENERGY SERVICES, 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 8th day of July 2020, to each person listed below.


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Exhibit A

Dominion July 6, 2020 Notice to Competitive Service Providers

From: ElectricSupplierRelations@dominionenergy.com
 <ElectricSupplierRelations@dominionenergy.com>
Sent: Monday, July 6, 2020 4:27 PM
To: Candace Cox <Candace.Cox@directenergy.com>; _DEB Utility Operations
 <DEBUtilityOperations@directenergy.com>
Cc: ElectricSupplierRelations@dominionenergy.com
Subject: EXT Dominion Energy Virginia - 100% Renewable Energy

To Competitive Service Providers Registered with Dominion Energy Virginia:

On Thursday, July 2, 2020, the State Corporation Commission of Virginia (“Commission”) issued orders in two cases relative to account enrollment by Competitive Service Providers (“CSPs”) pursuant to Section 56-577 A 5 of the Code of Virginia (“Code”).

Code Section 56-577 states the following:

5. Individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:
 - a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory in which such a customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy; and
 - b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the exclusive service territory in which the customer is located to offer electric energy provided 100 percent from renewable energy, for the duration of such agreement.

On July 2, 2020, in Case No. PUR-2019-00094, the Commission approved, and consistent therewith Dominion now offers, an approved tariff for electric energy provided 100% from renewable energy. In addition, on the same day, the Commission ruled in combined Case Nos. PUR-2020-00013 and PUR-2020-00044 that the plain language of the Code mandates that a customer must have already enrolled in (that is, switched to) the CSP's electric supply service and began taking such service by the time Dominion files an approved 100% renewable energy tariff with the Commission in order to continue to take such service from the CSP after Dominion's tariff becomes effective. On July 2, 2020, Dominion filed an approved 100% renewable energy tariff with the Commission.

Based on the foregoing, Dominion requests that CSPs submit 814 Drops for any and all accounts submitted for enrollment pursuant to Virginia Code Section 56-577 A 5 that had a pending enrollment status as of July 3, 2020 (that is, any and all accounts that were not scheduled to enroll on or before July 3, 2020). If the drop does not result in a Never Active status response, please notify me through the Electric Supplier Relations mailbox and the account(s) will be manually dropped.

Thank you,

Michele Grant
Customer Rates/Electric Supplier Relations
804-819-2723 (office)
804-513-8623 (mobile)

