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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF

CHICKAHOMINY PIPELINE, LLC

CASE NO. PUR-2021-00211

For a declaratory judgment

REPLY OF HANOVER, HENRICO, AND LOUISA COUNTIES

The counties of Hanover, Henrico, and Louisa ("Counties"), by counsel, pursuant to the Hearing Examiner's Ruling entered in this matter on October 6, 2021, file this Reply regarding their request for an evidentiary hearing and discovery schedule.

1. The Counties agree that discovery is permitted by rule.

The Counties agree with Virginia Natural Gas, Inc. ("VNG") and Chickahominy Pipeline, LLC ("Chickahominy") that 5 VAC 5-20-260 of the Commission's Rules of Practice and Procedure authorize discovery in this proceeding. Assuming the Hearing Examiner grants the Counties' request for an evidentiary hearing, and in light of Chickahominy's request to expedite consideration, the Counties request a schedule establishing a timeline by which the parties must complete any discovery (including the filing of testimony and exhibits by which the parties intend to establish their case and the modification of default deadlines to accommodate any expedited consideration), resolve objections, and bring any motions to address unresolved objections prior to the evidentiary hearing.

2. **Commission precedent establishes that the “practical realities” of a situation are relevant when there is evidence that the customer seeks to avoid the exclusive service territory of a certificated utility.**

In *In re: Petition of Prince George Electric Cooperative for declaratory judgment*, Case No. PUE-1996-00295, 1998 S.C.C. Ann. Rep. 344, 349, Final Order, June 25, 1998, the Commission refused to allow a customer to manipulate its delivery point to avoid the supplier for its area in favor of its preferred supplier because doing so would erode the “requirement of strong protection for the exclusive service territories of utilities in Virginia.” The facts of the case were straightforward. The customer purchased property wholly within the service territory of Prince George Electric Cooperative (“Prince George”) and almost a mile from the service territory of Virginia Power. *Id.* at 344. However, the customer desired to purchase electricity from Virginia Power instead of Prince George and purchased a 30-foot-wide strip of land running approximately 4,380 feet from its property to Virginia Power’s service territory. The customer began purchasing electricity from Virginia Power via a meter at the end of the strip of land in Virginia Power’s service territory. The electricity flowed from the meter over distribution facilities constructed by the customer to the customer’s plant on its property in Prince George’s service territory. *Id.*

The Commission found that Va. Code §§ 56-265.3 and 56-265.4 “provide for exclusive service territories that should be afforded significant protection.” *Id.* at 348. Ruling that Prince George had the right to provide service to the customer, the Commission expressed concern that finding otherwise would permit customers to manipulate the regulatory system and circumvent exclusive service territories. *Id.* The Commission concluded,

Although we appreciate [the customer’s] desire to be served by Virginia Power, we cannot countenance [the customer’s] achieving this goal by purchasing a strip of land approximately 30 feet wide and almost a mile long in order to reach into Virginia Power’s service territory to place the meter. We cannot allow the parties to use this device to do indirectly what clearly cannot be done directly.

Id. at 349. Even though the Commission declined to adopt a bright-line rule for determining which of two competing utilities has the right to serve a customer straddling the boundary between service territories, it concluded that it would “always consider the practical realities of each situation.” *Id.*

Although the present case involves a supposed non-utility entity seeking to deliver natural gas into the exclusive service territory of a certificated utility, the Counties contend that the Commission should “consider the practical realities of the situation” to determine that Chickahominy is simply a “device” to allow Chickahominy Power, LLC (“CPLLC”) “to do indirectly what clearly cannot be done directly” — operate a pipeline in the service territory of VNG for the transmission and distribution of natural gas from another natural gas supplier. *See* Va. Code § 56-265.1(b). *See also* Va. Code §§ 56-265.1(b)(4) & 56-265.4:5 (authorizing non-public utilities to make sales, transmission, or delivery of natural gas to certain customers, provided that the purchasing customers use such gas at facilities not located in a certificated territory).

The Counties further contend that several factual questions are relevant to whether Chickahominy is a “device” for CPLLC to circumvent the exclusive service territory of VNG: (1) whether it is actually “impracticable and infeasible” for CPLLC to obtain an adequate supply of natural gas from VNG (as Chickahominy claims), and (2) whether the business model and operations of Chickahominy, its legal relationship with CPLLC, and CPLLC’s transactions with the third-party natural gas supplier demonstrate that Chickahominy is the alter ego of CPLLC doing indirectly what CPLLC cannot do directly.¹

¹ Notably, Chickahominy concedes that CPLLC’s conclusion that it is “impracticable and infeasible” to purchase an adequate supply of natural gas from VNG is relevant to the relief it requests. Response of Chickahominy Pipeline, LLC in Opposition to the Motions for Ruling of the Counties of Henrico and Hanover, ¶ 16(c), filed Oct. 15, 2021 (“Chickahominy’s Opposition”). For its part, VNG contends that it “remains willing, as it has been, to provide a proposal for service to Chickahominy Power that is feasible, properly recovers the actual costs to serve this customer,

A significant purpose of this stage of proceeding is to develop a sufficient record upon which the Commission can render a final decision. *See In re: Petition of T-Mobile Northeast, LLC for a declaratory judgment*, Case No. PST-2019-00010, Ruling of Hearing Examiner, June 25, 2020, at 13. As Henrico stated in its Motion for Ruling, the allegations in the Petition raise the question of whether CPLLC simply seeks to defeat VNG’s exclusive service territory, which raises the risk of eroding the protection afforded exclusive service territories, exposing residential customers to higher rates due to the departure of larger customers with the resources to establish companies to operate pipelines directly to their facilities, and creating duplication of facilities, contrary to the purposes of the Utility Facilities Act. *See N. Va. Elec. Coop. v. Virginia Elec. & Power Co.*, Case No. PUE-2001-00512, Final Order, May 1, 2002, at 22 (noting that “dual electric service lines” are “the type of economic waste and public inconvenience the Act was intended to avoid”); *Prince George*, 1998 S.C.C. Ann. Rep. at 348 (“Such circumstances make planning for and serving the remaining customers more difficult and can increase costs for both the utility and its remaining ratepayers.”). Accordingly, the answer to that question is integral to what Chickahominy concedes the Commission must decide: whether the Utility Facilities Act countenances the arrangement described in the Petition. Chickahominy’s Opposition ¶ 20. Moreover, answering that question requires discovery (which Henrico and Louisa have propounded) of the factual basis for the allegations in the Petition and an evidentiary hearing providing an opportunity for cross-examination. *See Campbell v. Campbell*, 49 Va. App. 498, 504 (2007) (“Virginia has recognized a fundamental right to cross-examination on a matter relevant to

and appropriately protects the utility and its other customers.” Response of Virginia Natural Gas, Inc., at 5, filed Oct. 8, 2021. Accordingly, this basis for Chickahominy’s Petition is in dispute.

the litigation, which applies in civil cases.”). For these reasons, the Counties contend an evidentiary hearing is appropriate.²

Conclusion

WHEREFORE, the Counties request that the Hearing Examiner enter a ruling to schedule discovery and an evidentiary hearing and grant such further relief as the Commission deems appropriate.

[signature pages follow]

² The Counties observe that, in requesting expedited consideration, Chickahominy concedes the need to secure permits, approvals, and other permissions, which will include local permits and approvals. Petition ¶ 19. The Counties respectfully state that nothing in this proceeding will affect their jurisdiction or authority to require Chickahominy to secure appropriate permits, approvals, or other permissions at the local level.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2021, the foregoing Reply of Hanover, Henrico, and Louisa Counties was filed electronically with the Clerk of the Commission using the electronic filing system of the State Corporation Commission, and that a true and exact copy was electronically served by email on the following:

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