

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, AUGUST 13, 2021

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APPLICATION OF

PIGEON RUN SOLAR, LLC

CASE NO. PUR-2021-00035

For a permit to construct and operate  
an energy storage facility

FINAL ORDER

On February 22, 2021, Pigeon Run Solar, LLC ("Pigeon Run" or "Company"), pursuant to 20 VAC 5-335-80 C of the Regulations Governing the Deployment of Energy Storage<sup>1</sup> and 5 VAC 5-20-80 A of the State Corporation Commission's ("Commission") Rules of Practice and Procedure,<sup>2</sup> filed with the Commission an application ("Application") for a permit ("Permit") to construct, own, and operate an approximately 20 megawatt ("MW") battery energy storage system ("BESS") to be located in Campbell County, Virginia.<sup>3</sup> According to the Application, Pigeon Run was formed as a special purpose entity for the purpose of developing, constructing, owning, and operating an approximately 60 MW alternating current photovoltaic solar electric generating project ("Solar Facility") and the associated BESS that is the subject of its Application (collectively, the "Project").<sup>4</sup> In its Application, Pigeon Run is requesting a Permit from the Commission for the BESS only.<sup>5</sup>

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<sup>1</sup> 20 VAC 5-335-10 *et seq.*

<sup>2</sup> 5 VAC 5-20-10 *et seq.*

<sup>3</sup> Application at 1.

<sup>4</sup> *Id.* at 1; Application Appendix 1 at 2.

<sup>5</sup> Application at 1. Pigeon Run represents that it will file a permit by rule ("PBR") application for the Solar Facility portion of the Project with the Virginia Department of Environmental Quality ("DEQ") pursuant to Code § 10.1-1197.5 *et seq.* *Id.* at 3-4.

On March 12, 2021, the Commission entered an Order for Notice and Comment ("Procedural Order") which, among other things, docketed the Application; required Pigeon Run to publish notice of its Application; invited comments, notices of participation, and requests for hearing from interested persons; directed the Commission Staff ("Staff") to investigate the Application and present its findings and recommendations in a report; and assigned a Hearing Examiner to rule on any discovery matters that may arise during the course of this proceeding.

On May 10, 2021, Virginia Electric and Power Company ("Dominion") filed a notice of participation. No written public comments or requests for hearing were filed.

As directed in the Procedural Order, Staff requested the DEQ to coordinate an environmental review of the proposed BESS by the appropriate agencies and to provide a report on the review. On April 27, 2021, DEQ filed a report ("DEQ Report") on the proposed BESS, which included a Wetlands Impact Consultation prepared by DEQ. The DEQ Report provides general recommendations for the Commission's consideration that are in addition to any requirements of federal, state, or local law. Specifically, the DEQ Report contains the following Summary of Recommendations regarding the proposed BESS. According to the DEQ Report, the Company should:

- Follow DEQ's general recommendations concerning potential surface water impacts;
- Coordinate with the Virginia Marine Resources Commission ("VMRC") as necessary should the proposed Project change and a new review by VMRC be required relative to its jurisdictional areas;
- Follow best practices to limit emissions of volatile organic compounds and oxides of nitrogen;
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, as applicable;

- Coordinate with the Department of Conservation and Recreation's ("DCR") Division of Natural Heritage to obtain an update on natural heritage information if the scope of the Project changes and/or six months have passed before it is utilized;
- Coordinate with the Department of Wildlife Resources ("DWR") regarding its recommendation to follow the *Solar Energy Facility Guidance*, as applicable;<sup>6</sup>
- Coordinate with the local Virginia Department of Transportation residency office to develop an appropriate work zone plan for the Project;
- Coordinate with the Department of Health regarding its recommendations to protect public drinking water sources and water utility infrastructure;
- Contact the Virginia Outdoors Foundation, as necessary, regarding its recommendation to coordinate further if the Project area changes or if the Project does not begin within 24 months;
- Follow the principles and practices of pollution prevention to the maximum extent practicable;
- Limit the use of pesticides and herbicides to the extent practicable.<sup>7</sup>

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<sup>6</sup> This particular recommendation reads: "Coordinate with the [DWR] regarding its recommendation to follow the *Solar Energy Facility Guidance*, as applicable, as the boarder solar facility site (Environmental Impacts and Mitigation, Item 7(c), page 15)." DEQ Report at 5. The reference to "boarder solar facility site" is unclear, as that term is not used elsewhere in the DEQ Report. The full comment from DWR to DEQ concerning the Project reads as follows:

We have reviewed the SCC application for the subject [P]roject that proposes to develop a site in Campbell County into a battery storage facility located within a proposed solar farm. We currently do not document any listed wildlife or designated resources under our jurisdiction from the [P]roject area. Therefore, we do not anticipate adverse impacts upon such species or resources to result from the proposed work.

Based on the [P]roject description, we assume development of a battery storage does not include placement of solar panels or require a PBR. However, we offer the following [P]roject design and operational guidance that, when implemented, serve to minimize adverse impacts of solar energy facilities, of which this [P]roject is a part, upon wildlife and other natural resources and recommend that any applicable to this [P]roject be fully considered:

<https://www.dwr.virginia.gov/wp-content/uploads/media/Solar-Energy-Facility-Guidance.pdf>.

DEQ Report at Email Attachment from Amy Ewing to Janine Howard, entitled "ESSLog# 41184\_21-034S\_Pigeon Run Solar\_DWR\_AME20210422."

<sup>7</sup> DEQ Report at 4-5.

On June 7, 2021, Staff filed its Staff Report summarizing the results of its investigation of Pigeon Run's Application. Staff concludes that the Company has met the requirements for issuance of the requested Permit. Specifically, Staff states that the Company has reasonably demonstrated that the BESS will have no materially adverse effect on the reliability of electric service provided by any regulated public utility; does not adversely impact any goal established by the Virginia Environmental Justice Act ("EJ Act");<sup>8</sup> and is not otherwise contrary to the public interest. Therefore, Staff does not oppose the issuance of the Permit necessary for the construction, ownership, and operation of the proposed BESS.<sup>9</sup>

On June 18, 2021, Pigeon Run filed Reply Comments. Among other things, Pigeon Run states that it does not object to the Summary of Recommendations presented in the DEQ Report with the exception of the recommendation to coordinate with the DCR's Division of Natural Heritage to obtain an update on natural heritage information under certain circumstances. With respect to that recommendation, Pigeon Run proposes certain modifications. In its Reply Comments, Pigeon Run further states that it concurs with the conclusions in the Staff Report.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Pigeon Run should be granted the requested Permit to construct and operate the proposed BESS, subject to certain findings and conditions contained herein.

Commission Regulations Governing the Deployment of Energy Storage

20 VAC 5-335-80 A provides:

Other than a Phase I or Phase II Utility, each person seeking to construct and operate an energy storage facility in the Commonwealth with an energy storage power rating of one megawatt or greater, either on a stand-alone basis or on an

<sup>8</sup> Code § 2.2-234 *et seq.*

<sup>9</sup> Staff Report at 11.

aggregated basis facilitated by an energy storage aggregator, shall either (i) obtain a permit from the [C]ommission pursuant to this section, or (ii) apply for and receive a certificate of public convenience and necessity from the [C]ommission pursuant to § 56-580 of the Code of Virginia for the energy storage facility, prior to commencing construction or operation. If such person applies for and receives a certificate of public convenience and necessity from the [C]ommission, a permit under this section shall not be required.

20 VAC 5-335-80 B provides:

In evaluating a permit application, the [C]ommission shall make a determination for approval based upon a finding that the energy storage facility (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; (ii) does not adversely impact any goal established by the Virginia Environmental Justice Act (§ 2.2-234 et seq. of the Code of Virginia); and (iii) is not otherwise contrary to the public interest.

#### Code of Virginia

Section 2.2-234 provides:

"Environmental justice" means the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.

Section 2.2-235 provides:

It is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities.

Finally, Section 56-46.1 of the Code directs the Commission to consider several factors when reviewing the Company's Application. Subsection A of the statute provides that:

Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse

environmental impact. . . . In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted . . . . Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, . . . and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

Reliability

We find that construction and operation of the BESS will have no material adverse effect upon the reliability of service provided by any regulated public utility. The Project, including the BESS, is being analyzed under PJM Interconnection, L.L.C.'s ("PJM") interconnection process, and is planned to interconnect to the Dominion transmission system.<sup>10</sup> As part of the interconnection process, certain studies are performed to analyze the impact on the PJM system and identify any upgrades required to mitigate any adverse impact. The results of the PJM studies presented in the Application confirm that the BESS can be interconnected safely and reliably with the Dominion transmission system.<sup>11</sup>

Environmental Justice

The Company retained a third party to perform a review of the proposed BESS' compliance with the EJ Act. Based on this review, the Company asserts that the proposed BESS is not located in a census block that would be considered a low-income community; however, since adjacent census blocks would qualify as a low-income community, the Company

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<sup>10</sup> Application at 8; Staff Report at 4-6.

<sup>11</sup> Staff Report at 5-6.

considered low-income communities to be present.<sup>12</sup> The Company asserts that the census block in which the proposed BESS will be located, as well as adjacent census blocks, are considered to be communities of color.<sup>13</sup> The Company asserts that it does not consider fenceline communities to be present within the vicinity since the proposed BESS is not a major source of pollution and since no major sources of pollution are within approximately one mile of the Project site.<sup>14</sup>

The Company states that it has worked to inform the community about the proposed BESS and has solicited feedback. The Company also reports that a public information meeting was held, and all adjacent and nearby property owners were mailed invitations. Further, the Company states that it has had meetings with the Campbell County Board of Supervisors, Planning Commission, and fire department.<sup>15</sup>

Further, Pigeon Run states that the BESS will have minimal impact on the environment, will not emit harmful air pollutants or greenhouse gases, and will reduce dependence on traditional energy generating facilities such as coal, natural gas, and oil-fired power plants.<sup>16</sup>

We find, based on the record in this proceeding, that the proposed BESS does not adversely impact any goal established by the EJ Act.

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<sup>12</sup> Application at 9; Application Appendix 1 at 10-11; Staff Report at 7.

<sup>13</sup> Application at 10; Application Appendix 1 at 10-11; Staff Report at 8.

<sup>14</sup> Application at 10; Application Appendix 1 at 11; Staff Report at 8.

<sup>15</sup> Application at 10-11; Application Appendix 1 at 13; Staff Report at 8-9.

<sup>16</sup> Application at 11; Staff Report at 9.

Public Interest

The Company states that the proposed BESS is not contrary to the public interest as it will provide economic benefits to Campbell County.<sup>17</sup> Additionally, the Company states that the BESS will have no material adverse effect on the reliability of electric service provided by any regulated public utility and that Pigeon Run will be responsible for any costs associated with upgrades to the electrical system that may be needed as a result of its interconnection.<sup>18</sup> Moreover, Pigeon Run avers that the Project including the BESS will increase renewable energy generation and availability in the Commonwealth.<sup>19</sup> Further, Pigeon Run has agreed to comply with all necessary federal, state, and local environmental permits as required to construct and operate the proposed BESS.<sup>20</sup>

We find that the construction and operation of the proposed BESS is not contrary to the public interest.

Environmental Impact

Pursuant to § 56-46.1 A of the Code, the Commission is required to consider the BESS's impact on the environment and to establish such conditions as may be desirable or necessary to minimize adverse environmental impacts. The statute further provides that the Commission shall receive and give consideration to all reports that relate to the BESS by state agencies concerned with environmental protection.

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<sup>17</sup> Application at 7.

<sup>18</sup> Application at 8, 12; Application Appendix 1 at 14-15; Staff Report at 9-10.

<sup>19</sup> Application Appendix 1 at 20. *See also* Code § 67-101.1 (stating that the policy of the Commonwealth is, among other things, to "[d]evelop energy resources necessary to produce 30 percent of Virginia's electricity from renewable energy sources by 2030 and 100 percent of Virginia's electricity from carbon-free sources by 2040").

<sup>20</sup> Application at 5, 12.



The Commission finds that there are no adverse environmental impacts that would prevent the construction or operation of the proposed BESS. This finding is supported by the DEQ Report, as nothing therein suggests that the BESS should not be constructed.

There are, however, recommendations included in the DEQ Report for the Commission's consideration.<sup>21</sup> In its Reply Comments, the Company states that it does not object to the summary of recommendations in the DEQ Report with one exception: the Company proposes to modify the recommendation from the DCR's Division of Natural Heritage, which requires that Pigeon Run "[c]oordinate with the [DCR's] Division of Natural Heritage to obtain an update on natural heritage information if the scope of the [P]roject changes and/or six months has passed before it is utilized . . ." <sup>22</sup> The Company requests that it be required to resubmit Project information only if there are material changes to the scope of the BESS, or if twelve months from the date of the Commission's Final Order in this proceeding pass before construction commences on the BESS.<sup>23</sup> We find this proposed modification to be reasonable.<sup>24</sup>

We therefore find that as a condition of the Permit granted herein, Pigeon Run should be required to comply with the recommendations in the DEQ Report and to coordinate with DEQ to implement DEQ's recommendations, subject to the requested modification discussed herein.

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<sup>21</sup> DEQ Report at 4-5.

<sup>22</sup> *Id.* at 5, 14.

<sup>23</sup> Reply Comments at 2.

<sup>24</sup> The Commission has granted similar relief in the past, requiring a utility rebuilding a transmission line to consult with DCR for updates to the Biotics Data System only if the scope of the rebuild project materially changed or 12 months from the date of the Commission's final order were to pass before the rebuild project commenced construction. *See, e.g., Application of Virginia Electric and Power Company, For approval and certification of electric facilities: Landstown-Thrasher Line #231 230 kV Transmission Line Rebuild*, Case No. PUR-2018-00096, 2018 S.C.C. Ann. Rept. 461, 464, Final Order (Dec. 3, 2018); *Application of Virginia Electric and Power Company, For approval and certification of electric transmission facilities under Va. Code § 56-46.1 and the Utility Facilities Act, Va. Code § 56-265.1 et seq.*, Case No. PUR-2018-00075, 2018 S.C.C. Ann. Rept. 431, 434, Final Order (Nov. 1, 2018).

Finally, as a further condition of the Permit granted herein, the Company shall obtain all environmental permits and approvals that are necessary to construct and operate the proposed BESS.

### Economic Development

As required by Code § 56-46.1 A, the Commission has "consider[ed] the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Clean Energy Policy set forth in § 67-101.1." The Commission finds that the evidence in this case demonstrates that the proposed BESS will have a positive impact on economic development in the Commonwealth.<sup>25</sup>

Accordingly, IT IS ORDERED THAT:

(1) Subject to the conditions and requirements set forth in this Final Order, Pigeon Run is granted approval and Permit No. ESP-PGRS-CAM-2021-A to construct and operate the proposed BESS.

(2) Pigeon Run shall submit forthwith to the Commission's Division of Public Utility Regulation, to the attention of Mr. Mike Cizenski, one (1) map copy that shows the location of the BESS that is the subject of the above granted Permit.

(3) Within six (6) months from the date of this Final Order, the Company shall submit to the Director of the Division of Public Utility Regulation information regarding the estimated total cost of the BESS.

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<sup>25</sup> See Application Appendix 1 at 7-8 (stating that the BESS contributes to the efficiency of the Project and helps the Project's economic benefits be realized, including the creation of approximately 135 full-time equivalent jobs during construction and approximately four full-time equivalent local jobs during the 35 years the Project is expected to operate, as well as providing significant property tax revenue).

(4) This case is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

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