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STATE CORPORATION COMMISSION

January 13, 2022

Hon. Bernard Logan, Clerk
State Corporation Commission
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Richmond, Virginia 23219

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RE: *State Corporation Commission, Ex Parte: In the matter of establishing regulations for a shared solar program pursuant to § 56-594.3 of the Code of Virginia, Case No. PUR-2020-00125*

Dear Sir:

Enclosed for filing is the "Post-Hearing Brief of the Commission Staff.

Thank you for your prompt assistance.

Sincerely,

/s/ Frederick D. Ochsenhirt
Frederick D. Ochsenhirt

FDO:abh
Enclosure

cc: Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00125

Ex Parte: In the matter of establishing regulations
for a shared solar program pursuant to
§ 56-594.3 of the Code of Virginia

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POST-HEARING BRIEF OF THE COMMISSION STAFF

I. INTRODUCTION

Section 56-594.3 of the Code of Virginia ("Code") requires that by January 1, 2021, the State Corporation Commission ("Commission") establish by regulation a program affording customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") the opportunity to participate in a shared solar program ("Shared Solar Program" or "Program").¹ Pursuant to Code § 56-594.3 E, the Commission must approve a Shared Solar Program of 150 megawatts with a minimum requirement of 30 percent low-income customers as defined in Code § 56-594.3 A. Also under the Program, each subscriber will pay a minimum bill ("Minimum Bill") to Dominion and receive a bill credit based on the subscriber's customer class.² The Commission must establish the minimum bill, which may be modified over time, and must set the bill credit rate annually.³ Dominion must file any tariffs, agreements, or forms necessary to implement the Program within 60 days of its full implementation of a new customer information platform or by July 1, 2023, whichever occurs first.⁴

On December 23, 2020, the Commission issued its Order Adopting Rules in this docket, in which the Commission adopted the Rules Governing Shared Solar Program,

¹ Under this Program, Dominion will provide a bill credit for the proportional output of a shared solar facility attributable to a utility customer that is a subscriber to a shared solar facility. *See* Code § 56-594.3 B.

² Code § 56-594.3 C.

³ Code § 56-594.3 C and D.

⁴ Code § 56-594.3 F.

20 VAC 5-340-10 *et seq.* ("Rules").⁵ The Order Adopting Rules required Dominion to file a minimum bill proposal ("Proposal") in this docket.⁶ Further, the Order Adopting Rules noted that, pursuant to 20 VAC 5-340-80, the Commission would convene a proceeding to consider any monthly administrative charge and the components of the minimum bill to be applied by Dominion pursuant to the Rules.⁷

Dominion filed its Proposal on March 1, 2021. Comments on the Proposal were filed by, among others, the Coalition for Community Solar Access ("CCSA") together with the Chesapeake Solar & Storage Association ("CHESSA"). In addition to their comments, CCSA and CHESSA requested an evidentiary hearing. The Staff filed a reply to the Proposal on May 14, 2021, and on May 21, 2021, Dominion filed a reply in which it supported the requests for an evidentiary hearing on the Proposal. On July 23, 2021, the Commission set this matter for hearing, which was convened on November 18, 2021. Pursuant to the Hearing Examiner's direction at the hearing, the Commission Staff submits this Post-Hearing Brief.⁸

II. BILL CREDIT RATE

Code § 56-594.3 C states, in part, "[e]ach class's applicable credit rate shall be calculated by the Commission annually by dividing revenues to the class by sales, measured in kilowatt-hours, to that class to yield a bill credit rate for the class (\$/kWh)." The Code does not specify how revenues or sales are to be determined for purposes of calculating this credit. The Commission, in assessing a similar issue for the multi-family shared solar program, determined

⁵ On December 30, 2020, the Commission issued a Correcting Order to correct a scribal error on page 13 of Attachment A to the Order Adopting Rules.

⁶ *Id.* at 12, Ordering Paragraph (7).

⁷ *See id.* at 3, n.2.

⁸ Tr. 303.

that the bill credit should be calculated using information from the Company's submission of Federal Energy Regulatory Commission ("FERC") Form 1 in the calculation of applicable bill credits.⁹ The Commission determined the bill credit rate to be \$0.11765/kWh.¹⁰

As discussed by Staff witness David Dalton, Staff supports using the same methodology for the shared solar bill credit rate under Code § 56-594.3 as is used for the multi-family shared solar program under Code § 56-585.1:12.¹¹ Staff also supports the resulting bill credit rate of \$0.11765/kWh.

III. MINIMUM BILL

Code § 56-594.3 D provides that:

The Commission shall establish a minimum bill, which shall include the costs of all utility infrastructure and services used to provide electric service and administrative costs of the shared solar program. The Commission may modify the minimum bill over time. In establishing the minimum bill, the Commission shall (i) consider further costs the Commission deems relevant to ensure subscribing customers pay a fair share of the costs of providing electric services and (ii) minimize the costs shifted to customers not in a shared solar program. Low-income customers shall be exempt from the minimum bill.

The Commission's regulations implementing this Code provision largely track the statutory language. 20 VAC 5-340-80 A 2 states, in part:

The minimum bill components established as set forth in subdivision 1 of this subsection and updated as deemed necessary by the commission shall be limited to such costs as determined by the commission to be just and reasonable based on evidence provided by the parties to the evidentiary hearing process. Such costs must reflect incremental costs of the shared solar program and not otherwise be recovered by the utility from participating subscribers.

⁹ *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex. Parte: In the matter of establishing regulations for a multi-family shared solar program pursuant to § 56-585.1:12 of the Code of Virginia*, Case No. PUR-2020-00124, Doc. Con. Cen. No. 210650050, Order (Jun. 29, 2021) ("Multi-Family Shared Solar Program Order") at 3-4.

¹⁰ *Id.* at 4.

¹¹ Ex. 7 (Dalton) at 8.

20 VAC 5-340-80 A 2 1 also provides a list of factors for consideration by the Commission in determining whether proposed costs are incremental to the Shared Solar Program and are thus eligible for inclusion in the minimum bill. These are:

- a. The extent to which the costs are utility infrastructure and services used to provide electric service for the shared solar program;
- b. The extent to which the costs are administrative costs of the shared solar program;
- c. Whether including the cost in the minimum bill is necessary to ensure subscribing customers pay a fair share of the costs of providing electric services to the subscribers;
- d. Whether including the cost in the minimum bill will minimize costs shifted to customers not in a shared solar program; and
- e. Whether including the cost in the minimum bill is otherwise consistent with the requirements of § 56-594.3 of the Code of Virginia.

Applying these statutory and regulatory criteria, Staff identified six potential areas of costs that could be included in the Minimum Bill, including (1) the Basic Customer Charge; (2) Non-bypassable charges required for compliance with various sections of the Virginia Clean Economy Act; (3) Transmission charges; (4) Distribution charges; (5) Administrative charges and (6) Generation charges related to balancing services.¹² The Code does not specify whether the Minimum Bill is to include transmission and distribution charges. Consequently, Staff proposed two alternative Minimum Bill calculations. Staff's Alternative Option A includes only the Basic Customer Charge, Non-Bypassable Charges and a fixed \$1.00 Administrative charge.¹³ Staff's Alternative Option B includes all the costs included in Option A and adds Transmission and Distribution Charges calculated by multiplying a customer's usage by the applicable Base

¹² *Id.* at 11.

¹³ *Id.* at 15-16.

and Rate Adjustment Clause ("RAC") rates, as approved in the Company's tariff.¹⁴ For a residential customer using 1,000 kilowatt-hours per month and subscribed to 1,000 kWh of shared solar per month, the resulting Minimum Bill is \$10.95 for Option A and \$55.10 for Option B.¹⁵

Staff believes its two alternative proposals balance the statutory requirement that the program include the costs of all utility infrastructure and services used to provide electric service and administrative costs of the shared solar program while minimizing cost shifts to non-participants. The Company's Minimum Bill proposal includes the cost of generation in excess of the Non-bypassable Charges, while the CCSA-CHESSA proposal fails to include the Non-bypassable Charges set in the VCEA.

IV. LEGAL ISSUES RAISED BY THE HEARING EXAMINER

During the hearing, the Hearing Examiner requested that, in addition to any substantive issues raised by the competing Minimum Bill proposals, the parties address in their post-hearing briefs two legal issues:

1. What is the legal effect of Code § 56-594.3 F 15, which allows a "utility to recover as the cost of purchased power pursuant to § 56-249.6 any difference between the bill credit provided to the subscriber and the cost of energy injected into the grid by the subscriber organization"?

¹⁴ *Id.* at 17-18.

¹⁵ See Late-Filed Ex. 10 for calculation of the Minimum Bill at various levels of usage and shared solar participation.

2. If the Company's proposal minimizes cost-shifting but also produces an "unworkable" program, how does the Commission reconcile this tension under the law?¹⁶

A. Interpretation of Code § 56-594.3 F 15

Section 56-594.3 F of the Code requires the Commission to establish by regulation a shared solar program, and further requires the Commission to direct "each utility to file any tariffs, agreements, or forms necessary for implementation of the program within 60 days of the utility's full implementation of a new customer information platform or by July 1, 2023, whichever occurs first. Any rule or utility implementation filings approved by the Commission shall . . . [a]llow the utility to recover as the cost of purchased power pursuant to § 56-249.6 any difference between the bill credit provided to the subscriber and the cost of energy injected into the grid by the subscriber organization."

The Code does not specify how "the cost of energy injected into the grid" is to be calculated, and thus it is an open question as to whether this cost represents the utility's avoided cost, a market price, or a price established by bilateral contract, among other possibilities. During the hearing, the Company posited that for low-income customers not subject to the Minimum Bill, the amount passed through the fuel factor would be "the difference between the bill credit rate and the avoided cost rate."¹⁷ For customers who are subject to the Minimum Bill, the Minimum Bill would account for the difference between the bill credit and the Company's avoided cost, and thus there would be nothing to pass through the fuel factor.¹⁸

¹⁶ Tr. 289-291.

¹⁷ *Id.* at 151.

¹⁸ *Id.* at 151-153.

Although the Code is silent regarding the definition of the cost of energy injected into the grid, the mechanism proposed by Company witness Trexler does not appear to be inappropriate to Staff.

B. Cost-shifting and Program Workability

As a preliminary matter, Staff would note that there is nothing in the record to support the assertion that the Minimum Bill proposals of the Company or Staff would result in an "unworkable" shared solar program. It is simply unknown and unknowable what effect the Minimum Bill will have on program enrollment or the economics of the various subscriber organizations who may choose to participate.

However, even assuming it to be true that an excessive Minimum Bill could limit program participation, it is clear that the General Assembly has established a statutory framework that requires the Minimum Bill be set at a level sufficient to (i) ensure subscribing customers pay a fair share of the costs of providing electric services and (ii) minimize the costs shifted to customers not in a shared solar program.¹⁹ The legislature could have, but did not, include direction to the Commission to consider program participation in establishing the Minimum Bill. Therefore, it appears to Staff that the Commission must minimize cost-shifting as much as possible. Should this calculation limit participation in the program, the solution would appear to be a legislative one, not a policy choice left to the discretion of the Commission. Again, it is not at all clear from the instant record that any of the Minimum Bill proposals would result in an "unworkable program" in any event.

¹⁹ Code § 56-594.3 D.

V. CONCLUSION

For the reasons stated herein, Staff respectfully submits Staff Option A and Staff Option B for the Hearing Examiner's consideration in determining the Minimum Bill's calculation. Staff also requests that the Hearing Examiner recommend that the Commission use the same methodology for calculating the shared solar bill credit rate as it approved for calculating the multi-family shared solar bill credit rate.

Respectfully submitted,

THE STAFF OF THE STATE
CORPORATION COMMISSION

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Dated: January 13, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2022, a true copy of the foregoing "Post-Hearing Brief of the Commission Staff " was electronically mailed to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

By: /s/ Frederick D. Ochsenhirt
Frederick D. Ochsenhirt