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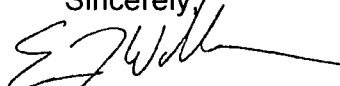
**RE: *Ex Parte*: In the Matter of Establishing Regulations for a Multi-Family
Shared Solar Program Pursuant to § 56-585.1:12 of the Code of
Virginia
Case No. PUR-2020-00124**

Dear Mr. Logan:

Enclosed for filing in the above-referenced proceeding is the Pre-Hearing Brief of the Coalition for Community Solar Access and the Chesapeake Solar & Storage Association.

Please feel free to contact me should you have any questions.

Sincerely,



Eric J. Wallace

Attachment
cc: Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Ex Parte: In the Matter of Establishing)
Regulations for a Multi-Family Shared Solar) PUR-2020-00124
Program Pursuant to § 56-585.1:12 of the Code of)
Virginia)

PRE-HEARING BRIEF
OF THE COALITION FOR COMMUNITY SOLAR ACCESS
AND THE CHESAPEAKE SOLAR & STORAGE ASSOCIATION

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March 24, 2022

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**PRE-HEARING BRIEF OF THE COALITION FOR COMMUNITY SOLAR ACCESS
AND THE CHESAPEAKE SOLAR & STORAGE ASSOCIATION**

Pursuant to Rule 200 of the Rules of Practice and Procedure of the State Corporation Commission (“Commission”), 5 VAC 5-20-200, and Paragraph (14) of the Hearing Examiner’s Ruling Scheduling Hearing issued on January 24, 2022 in this proceeding, the Coalition for Community Solar Access (“CCSA”) and the Chesapeake Solar & Storage Association (“CHESSA” and together, “CCSA-CHESSA”) submit this pre-hearing brief in opposition to the proposed administrative charge for the Multi-Family Shared Solar Program.

I. INTRODUCTION

In 2020, the General Assembly of Virginia adopted Virginia Code § 56-585.1:12 (the “Multi-Family Shared Solar Statute”) to enable more Virginians to access solar power and participate in Virginia’s clean energy transition. The purpose of the Multi-Family Shared Solar Program is to allow residents of multi-family buildings to contract with third party developers to subscribe to a share of the output of an on-site solar facility.¹ Pursuant to the Multi-Family Shared Solar Statute, the Commission adopted Rules Governing Multi-Family Shared Solar Program (“Multi-Family Shared Solar Program Rules”) on December 23, 2020.

On September 1, 2021, Virginia Electric and Power Company (“Dominion”) filed a Petition for approval of an administrative charge for the Multi-Family Shared Solar Program. On January 14, 2022, the Commission issued an Order directing a Hearing Examiner to conduct proceedings regarding Dominion’s proposed administrative charge to determine “the need for and amount of” Dominion’s proposed administrative charges pursuant to 20 VAC 5-342-80 (Multi-Family Shared Solar Program Rule 80). On January 24, 2022, the Hearing Examiner’s

¹ Virginia Code § 56-585.1:12(B) (“The Commission shall establish by regulation a program that affords eligible multi-family customers of investor-owned utilities the opportunity to participate in shared solar projects.”).

Ruling Scheduling Hearing established the schedule for pre-filed written testimony, pre-hearing briefing, and the evidentiary hearing regarding Dominion’s proposed administrative charge.

This proceeding is about implementing the Multi-Family Shared Solar Program consistent with the Multi-Family Shared Solar Statute and the Multi-Family Shared Solar Program Rules to arrive at a workable, successful Multi-Family Shared Solar Program as envisioned by the General Assembly. That vision will not be realized if Dominion’s proposed subscriber administrative charge is adopted.²

Dominion’s proposed administrative charge goes beyond recovery of incremental administrative program costs and instead would eliminate the majority of the bill credit benefits for multi-family shared solar subscribers. Dominion’s proposal would prevent a successful Multi-Family Shared Solar Program from the outset, rendering it uneconomic for potential participants and ensuring that the Program never accomplishes its primary goal – to encourage and facilitate shared access to the benefits of solar power. The General Assembly did not intend to adopt a program in name only. Dominion’s proposal must be rejected if Virginia is to have a Multi-Family Shared Solar Program.

II. ARGUMENT

A. Dominion’s proposed subscriber administrative charge should be rejected because it is excessive, unreasonable, and contrary to both the Multi-Family Shared Solar Statute and the Commission’s Multi-Family Shared Solar Program Regulations.

Dominion’s proposed subscriber administrative charge is a non-starter for the Multi-Family Shared Solar Program. The plain language of the Multi-Family Shared Solar Statute states the General Assembly’s intent that the Commission establish a workable, successful Multi-

² Dominion also proposed “administrative charges” for subscriber organizations, including a \$700 “set-up Charge,” monthly metering charges of \$5.25 to \$96.88, and a monthly “program administration” charge of \$95.00. See *Petition of Virginia Electric and Power Company to Accept and Approve Tariff Sheets for Multi-Family Shared Solar Program* at 10-11 (Sept. 1, 2021) (the “Petition”).

Family Shared Solar Program that enables development of shared solar facilities to serve multi-family customers.³ The threshold provision of the Multi-Family Shared Solar Statute directs the Commission to “establish by regulation a program that affords eligible multi-family customers of investor-owned utilities the opportunity to participate in shared solar projects.”⁴ In defining the “applicable bill credit rate” for the program, the General Assembly stated that “[t]he applicable bill credit rate shall be set such that the shared solar program *results in robust project development and shared solar program access* for all customer classes.”⁵ This directive is repeated in the express provisions that control utility implementation filings, including Dominion’s proposed administrative charge filing:

E. The Commission shall establish by regulation a multi-family shared solar program ... and shall require each investor-owned utility to file any tariffs, agreements, or forms necessary for implementation of the program. Any rule or utility implementation filings approved by the Commission shall:

1. Reasonably allow for the creation and financing of shared solar facilities;
2. Allow all customer classes to participate in the program, and ensure participation opportunities for all customer classes;
- ...
7. Allow the investor-owned utilities to recover reasonable costs of administering the program...⁶

This language provides the General Assembly’s express directive that “any...utility implementation filings approved by the Commission shall ... reasonably allow for the creation and financing of shared solar facilities.” Dominion has presented no evidence to show that its

³ See Va. Code § 56-585.1:12.

⁴ Va. Code § 56-585.1:12(B) (Subsection B is preceded only by the definitions in subsection A).

⁵ Va. Code § 56-585.1:12(A) (emphasis added).

⁶ Va. Code § 56-585.1:12(E).

proposed administrative charge would “reasonably allow for the creation and financing of shared solar facilities.” CCSA-CHESSA agree with the evidentiary standard discussed by Appalachian Voices (the “Environmental Respondent”) Witness Rabago, requiring “a showing of actual costs that are (1) incremental, (2) directly related to the program administration, and (3) do not impinge upon the program development and growth goals in the Statute and Rules...”⁷ While Dominion is entitled to recover “reasonable costs of administering the program,” it cannot recover unreasonable costs that are not administrative, particularly when the charges to recover those costs will unreasonably prevent the creation and financing of shared solar facilities and prevent customers from participating in the Multi-Family Shared Solar Program. Dominion’s subscriber administrative charge proposal fails on all three of the statutory criteria and must be rejected.

1. Dominion’s excessive and unreasonable administrative charge proposal will prevent a workable Multi-Family Shared Solar Program.

Dominion’s proposed administrative charge is unreasonable, excessive, and would prevent creation of shared solar facilities. Dominion’s proposed “administrative charge” includes: (1) a “distribution service charge” component of 2.722 cents per kWh; (2) a “transmission service charge” component of 1.993 cents per kWh; and (3) a “generation balancing service charge” component of 2.713 cents per kWh; and (4) a monthly “Program Billing Charge” of \$13.40 per month.⁸ The total of Dominion’s distribution service charge, transmission service charge, and generation balancing service charge components is 7.428 cents per kWh, to which Dominion would add the \$13.40 monthly Program Billing Charge.

⁷ *Filed Direct Testimony of Karl R. Rabago on Behalf of the Environmental Respondent* at 27:10-14 (Mar. 1, 2022).

⁸ Petition at 5-10 and Proposed Schedule Multi-Family Shared Solar.

For a customer using 1,000 kWh and receiving a bill credit for 1,000 kWh of subscribed output during a billing period, the customer would receive a bill credit of \$117.65, but then be charged Dominion's proposed "administrative charge" of \$87.68.⁹ Dominion's administrative charge would eliminate nearly 75% of the customer's bill credit! Shared solar developers cannot develop, finance, construct, and operate shared solar facilities if Dominion's proposed administrative charge is adopted. An \$87.68 per month charge for residential customers that eliminates 75% of their shared solar bill credit is unreasonable and will prevent the creation of shared solar facilities, contrary to the General Assembly's clear statutory directives.

2. Dominion's proposed administrative charge includes extensive costs that are not administrative and should not be included in an "administrative" charge.

The Multi-Family Shared Solar Statute permits participating investor-owned utilities to recover "reasonable costs of administering the program."¹⁰ Likewise, the Commission's Multi-Family Shared Solar Program Rules define the "Administrative charge" as "the reasonable incremental cost to the investor-owned utility to administer the program as determined by the commission."¹¹ Under the plain language of the Multi-Family Shared Solar Statute and the Multi-Family Shared Solar Program Rules, the administrative charge is limited to costs to "administer" the Multi-Family Shared Solar Program.¹² The dictionary definition of "administer" is "to manage or supervise the execution, use or conduct of."¹³ The Commission has previously required Dominion to demonstrate that it would incur specific incremental costs to administer a

⁹ See Rabago Direct Testimony at 12:4-9.

¹⁰ § 56-585.1:12:(E)(7).

¹¹ 20 VAC 5-342-20.

¹² *Jackson v. Jackson*, 298 Va. 132, 139, 835 S.E.2d 68, 71 (2019) ("When we interpret a statute, our primary objective is to ascertain and give effect to legislative intent, as expressed by the language used in the statute. When the language of a statute is unambiguous, we are bound by the plain meaning of that language. And if the language of the statute is subject to more than one interpretation, we must apply the interpretation that will carry out the legislative intent behind the statute.").

¹³ "administer." *Merriam-Webster.com*. 2022. <https://www.merriam-webster.com/dictionary/administer> (Mar. 21, 2022).

tariff, costs for which Dominion is not already compensated, to recover such costs through administrative fees.¹⁴ However, Dominion’s proposal includes unreasonable costs that go far beyond costs of “administering the program.” Indeed, Dominion’s proposed “administrative charge” includes costs for distribution service, transmission service, and generation balancing service.¹⁵ None of these “administrative charge” components are administrative in nature, so they should not be included in an administrative charge for the Multi-Family Shared Solar Program.

3. Dominion’s proposed administrative charge includes costs that are not incremental to the Multi-Family Shared Solar Program, conflicting with Commission’s regulations.

Dominion’s proposal to include non-program delivery, transmission, and generation balancing costs in the administrative charge is contrary to the Commission’s regulations. The Commission’s Multi-Family Shared Solar Program Rules limit the “Administrative Charge” to the *incremental* administrative costs of the Program.¹⁶

Dominion’s proposed administrative charge is not designed to recover incremental costs to administer the program, but to prevent Multi-Family Shared Solar Program bill credits from offsetting Dominion’s charges for delivery, transmission, and generation infrastructure.¹⁷

Dominion has not identified any actual incremental administrative costs for transmission, distribution costs, standby generation and balancing costs, non-bypassable charges, or other administrative costs associated with banking, balancing, and storing excess bill credits.¹⁸ The

¹⁴ Case No. PUR-2017-00060, Final Order at 7-8 (May 7, 2018), Order on Reconsideration at 1 (June 20, 2018).]
¹⁵ Petition at 5-9 and Proposed Schedule Multi-Family Shared Solar (calculated as the difference between the proposed generation service charge of 7.050 cents per kWh and avoided cost credit of 4.337 cents per kWh.
¹⁶ 20 VAC 5-342-20.
¹⁷ Petition at 3-4.
¹⁸ 20 VAC 5-342-80.

Multi-Family Shared Solar Program Rules allow *incremental administrative costs* in those categories to be included in the administrative charge, but only if “demonstrated by the utility.”¹⁹ Dominion carries the burden of demonstrating that any of its proposed costs in the listed potential cost categories: (1) are incremental to the program; and (2) should be included in the administrative charge.²⁰ Dominion has not met that burden.

The Multi-Family Shared Solar Program Rules do not proscribe the costs that *must* be included in the administrative charge; rather, they provide several categories of costs that “may”²¹ be included if they are “reasonable incremental cost[s] to the utility to administer the program”²² that have been “demonstrated by the utility”²³ and the Commission determines that it is necessary²⁴ to recover such costs through the administrative charge. Indeed, the Multi-Family Shared Solar Program Rules contemplate that there may not be a need for any administrative charge: “the commission shall determine the *need for* and amount of any appropriate administrative charge.”²⁵ Dominion has not demonstrated that any transmission, distribution, generation balancing, or non-bypassable charge costs are incremental to the program or necessary to include in the administrative charge. Rather, Dominion is attempting to use the administrative charge as a counterweight to reduce the bill credit value and prevent subscribers from receiving the statutory bill credit as mandated by the Multi-Family Shared Solar Statute.

¹⁹ 20 VAC 5-342-20; 20 VAC 5-342-80(A)(1).

²⁰ 20 VAC 5-342-80(A)(1).

²¹ 20 VAC 5-342-80 (A)(1) (“Any administrative charge deemed necessary by the commission *may* include items such as the following categories of costs, to be demonstrated by the utility...” (emphasis added).

²² 20 VAC 5-342-20 (“Administrative Charge” is defined as “the *reasonable incremental* cost to the investor-owned utility *to administer the program* as determined by the commission.”) (emphasis added).

²³ 20 VAC 5-342-80 (A)(1) (“Any administrative charge deemed necessary by the commission may include items such as the following categories of costs, *to be demonstrated by the utility*...” (emphasis added).

²⁴ 20 VAC 5-342-80(A)(1) (“Any administrative charge *deemed necessary* by the commission may include...”) (emphasis added).

²⁵ 20 VAC 5-342-80(A) (emphasis added).

Dominion argues that its massive administrative charge is necessary to prevent cost shifts and ensure that a customer's bill credits do not offset more of their bill than Dominion would like.²⁶ Dominion Witness Trexler describes the administrative charge as necessary to prevent generation, transmission, and distribution costs from being "passed on to other customers who are not participating in the Program."²⁷ He claims that the administrative charge is "the only safeguard to minimize cost-shifting to non-participating customers."²⁸ However, potential cost shifting due to bill credits does not transform non-administrative transmission, delivery, or generation-related costs into incremental administrative costs of the Multi-Family Shared Solar Program.²⁹ Moreover, Dominion failed to present any evidence of the level of potential cost shifts or any evidence that avoiding potential cost shifts through an excessive administrative charge will result in a workable Multi-Family Shared Solar Program.³⁰ Absent such evidence, and absent any statutory mandate or directive in the Commission's rules to prevent cost shifts,³¹ Dominion's proposal must be rejected.

The General Assembly established the bill credit rate and Dominion should not be permitted to rewrite the statute and the Commission's rules to upend the bill credit rate and prevent a workable Multi-Family Shared Solar Program. The administrative charge may not be needed at all, but if there is an administrative charge, it must be appropriate. Dominion's proposed administrative charge is neither needed nor appropriate and should be rejected.

²⁶ Petition at 5-10.

²⁷ *Prefiled Direct Testimony of Robert J. Trexler on Behalf of Virginia Electric and Power Company* at 3:7-12 (Feb. 8, 2022).

²⁸ Trexler Direct Testimony at 3:15-16.

²⁹ Petition at 5-9.

³⁰ See Rabago Direct Testimony at 12:10 – 15:11.

³¹ See Rabago Direct Testimony at 9:16-17.

B. Staff Alternative Options A and B are contrary to the Multi-Family Shared Solar Statute and the Commission’s Multi-Family Shared Solar Program Regulations.

Staff Alternative Options A and B should be rejected because they include costs that are not incremental administrative costs of the Multi-Family Shared Solar Program. Staff Alternative Option A includes both (1) Dominion’s proposed monthly program billing charge of \$13.40 and (2) volumetric non-bypassable charges totaling \$3.38 for a customer using 1,000 kWh per month.³² However, the non-bypassable charges are neither incremental to the Multi-Family Shared Solar Program, nor “administrative,” and should not be included in an administrative charge. While Multi-Family Shared Solar Program Rule 80 provides that the administrative charge “may include” non-bypassable charges, such charges would only be appropriate to include in the administrative charge if they were demonstrated by Dominion to be incremental administrative costs of the program. Dominion has not demonstrated that any portion of any of the non-bypassable charges in Staff Alternative Option A are incremental to the Multi-Family Shared Solar Program.

Staff Alternative Option B goes even further out of bounds than Staff Alternative Option A, adding base distribution charges, distribution rate adjustment clause charges, base transmission charges, and transmission rate adjustment clause charges to the Multi-Family Shared Solar Program administrative charge.³³ As with Staff Alternative Option A, these charges are not incremental administrative costs of the Multi-Family Shared Solar Program and therefore should not be included in the administrative charge.

Moreover, the high level of costs in Staff Alternative Option B result in an excessive administrative charge that would prevent a workable Multi-Family Shared Solar Program. For a

³² Staff Report at 6-7 (Dec. 15, 2021).

³³ Staff Report at 7-8.

subscriber using 1,000 kWh, the administrative charge under Staff Alternative Option B would total \$57.26, which is nearly half of the subscriber's \$117.65 bill credit for 1,000 kWh of subscribed shared solar facility output. By comparison, Staff Alternative Option A results in a total administrative charge of \$16.78 for a 1,000 kWh usage subscriber.³⁴ While this charge is significant, it could result in a workable program for subscribers and shared solar developers. However, Staff Alternative Option B must be rejected because it: (1) includes extensive charges that are not incremental and not administrative; and (2) will prevent "robust project development and shared solar program access for all customer classes" and eligible multi-family customers will not receive their statutorily mandated "opportunity to participate in shared solar projects."³⁵

C. The Commission should adopt the Environmental Respondent's proposed 1% interim administrative charge to enable a workable Multi-Family Shared Solar Program

The Environmental Respondent suggested an "interim administrative charge of 1% of bill credit value per customer per month until [Dominion] demonstrates a reasonable administrative charge."³⁶ CCSA-CHESSA support this interim approach but remain wary that Dominion will attempt to foist a massive administrative charge on Multi-Family Shared Solar Program subscribers down the road, a risk that would undermine private investment in shared solar facility development in Virginia. It is critical that the Commission send a clear message in this proceeding that Dominion will not be allowed to use the administrative charge as a vehicle to block customer access to the benefits of solar or prevent investment in Virginia's clean energy transition by non-utility shared solar developers.

³⁴ Staff Report at 7.

³⁵ Virginia Code § 56-585.1:12(A), (B), and (E)(1)-(2).

³⁶ Rabago Direct Testimony at 27:20-21.

III. CONCLUSION

For the reasons explained above, CCSA-CHESSA request that the Commission issue an order:

- (i) rejecting Dominion’s proposed subscriber administrative charge;
- (ii) rejecting Staff Alternative Options A and B; and
- (iii) adopting the Environmental Respondent’s proposal of an interim administrative charge set at 1% of the bill credit value per customer per month.

Respectfully submitted,

THE COALITION FOR COMMUNITY SOLAR ACCESS

and

THE CHESAPEAKE SOLAR & STORAGE ASSOCIATION

By Counsel

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Dated: March 24, 2022

CERTIFICATE OF SERVICE

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