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<b>Case Name (if known)</b>	Petition of Appalachian Power Company, For approval of its 2021RPS Plan under § 56-585.5 of the Code of Virginia and related requests
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April 6, 2022

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**VIA ELECTRONIC FILING**

Mr. Bernard Logan, Clerk  
c/o Document Control Center  
State Corporation Commission  
1300 E. Main Street  
Richmond, Virginia 23219

**Re: *Petition of Appalachian Power Company, For approval of its 2021 RPS Plan under § 56-585.5 of the Code of Virginia and related requests***  
**Case No. PUR-2021-00206**

Dear Mr. Logan:

Pursuant to Rule 170 of the Commission’s Rules of Practice and Procedure and Paragraph 7 of the Hearing Examiner’s Protective Ruling on February 11, 2022, in this matter, please accept the following Motion for Ruling on Confidentiality of Information on behalf of the Office of the Attorney General’s Division of Consumer Counsel.

Thank you for your assistance in this matter.

Sincerely,

/s/ C. Mitch Burton Jr.

C. Mitch Burton Jr.  
Assistant Attorney General

cc: Service List

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**PETITION OF**

**APPALACHIAN POWER COMPANY**

**CASE NO. PUR-2021-00206**

**Petition of Appalachian Power Company,  
For approval of its 2021 RPS Plan under § 56-585.5  
of the Code of Virginia and related requests**

**MOTION FOR RULING ON CONFIDENTIALITY OF INFORMATION OF  
OFFICE OF THE ATTORNEY GENERAL,  
DIVISION OF CONSUMER COUNSEL**

On December 30, 2021, Appalachian Power Company (“APCo” or “Company”) filed with the State Corporation Commission (“Commission”) its Petition for a prudency review for the Company’s 2021 renewable portfolio standard plan (“RPS Plan”). The Company simultaneously filed a Motion for Protecting Ruling and Additional Protective Treatment for Extraordinarily Sensitive Information (“Motion for Protective Ruling”). The Hearing Examiner’s Protective Ruling and Additional Protective Treatment for Extraordinarily Sensitive Contract & Prices Information and RFP Results was entered on February 11, 2022 (“Protective Ruling”).

Pursuant to Rule 170 of the Commission’s Rules of Practice and Procedure (“Rule 170”) and Paragraph 7 of the Protective Ruling (“Paragraph 7”), Consumer Counsel seeks a ruling by the Commission that certain information contained in the Petition be made public.

1. The Petition includes numerous schedules that APCo designated as Extraordinary Sensitive in their entirety. The schedules subject to Consumer Counsel’s challenge (“Challenged Schedules”) include:

- APCo EXTRAORDINARILY SENSITIVE Exhibit No. \_\_ (WKC) Schedule 1 Project LCOE Summary

- APCo EXTRAORDINARILY SENSITIVE Exhibit No. \_\_ (WKC) Schedule 6 Economic Impact Study Summary- Firefly
- APCo EXTRAORDINARILY SENSITIVE Exhibit No. \_\_ (AEJ) Schedule 15 - Owned Renewable Facilities Total Installed Capital Cost
- APCo EXTRAORDINARILY SENSITIVE Exhibit No. \_\_ (AEJ) Schedule 16 - Amherst Capital and O&M Forecast
- APCo EXTRAORDINARILY SENSITIVE Exhibit No. \_\_ (AEJ) Schedule 17 - Bedington Capital and O&M Forecast
- APCo EXTRAORDINARILY SENSITIVE Exhibit No. \_\_ (AEJ) Schedule 18 - Firefly Capital and O&M Forecast
- APCo EXTRAORDINARILY SENSITIVE Exhibit No. \_\_ (AEJ) Schedule 19 - Top Hat Capital and O&M Forecast
- APCo Exhibit No. \_\_ (MMS) Extraordinarily Sensitive Schedule 1 – Resource Recovery Percentage
- APCo Exhibit No. \_\_ (MMS) Extraordinarily Sensitive Schedule 2 – Amherst Cost of Service
- APCo Exhibit No. \_\_ (MMS) Extraordinarily Sensitive Schedule 3 – Top Hat Cost of Service
- APCo Exhibit No. \_\_ (MMS) Extraordinarily Sensitive Schedule 4 – Firefly Cost of Service
- APCo Exhibit No. \_\_ (MMS) Extraordinarily Sensitive Schedule 5 – Bedington Cost of Service

2. There exists a presumption in favor of public disclosure. Mirroring the language of Rule 170, Paragraph 7 provides that, “[u]pon challenge, the information shall be treated as confidential pursuant to the Rules only where the party requesting confidential treatment can demonstrate to the satisfaction of the Commission or Hearing Examiner that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure.” A “presumption . . . operates to shift to the opposing party the burden of producing evidence

tending to rebut the presumption.”<sup>1</sup> In other words, a legal presumption weighs toward a specific conclusion unless proven otherwise.<sup>2</sup>

3. Thus, once information has been challenged pursuant to Rule 170 or Paragraph 7, the party requesting secrecy has the burden to make an affirmative showing, “to the satisfaction of the Commission,” that such information must be shielded from the public based on a risk of harm that outweighs the presumption favoring disclosure.<sup>3</sup> Otherwise the information must be made public. If APCo does not file a response in opposition to this motion bearing its burden, the information shall become public by operation of Rule 170. Rule 170 does not require a movant to provide any justification as to why challenged information should be made public; the burden is on the party objecting to disclosure to demonstrate that the information may not be disclosed due to a specific and compelling risk of harm.

4. Beyond filing this challenge, Consumer Counsel is not obligated under the law or Commission Rules to demonstrate that the information contained in the Challenged Schedules should be made public. Nonetheless, Consumer Counsel is aware that information in the Challenged Schedules includes material that is typically treated as public in Commission proceedings. Pursuant to the terms of the protective ruling requested by APCo in this case, APCo is now under an obligation to respond, and the Company’s response *shall*

(1) describe each document and all information, such description to include the character and contents of each document and all information to the extent reasonably possible without disclosing the Confidential Information;

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<sup>1</sup> *Martin v. Phillips*, 235 Va. 523, 526, 369 S.E. 2d 397, 399 (1988).

<sup>2</sup> *Id.*

<sup>3</sup> Rule 170.

(2) explain in detail why the information requires confidential treatment; and

(3) describe and explain in detail the anticipated harms that might be suffered as a result of the failure of the document to be treated as confidential.<sup>4</sup>

5. In explaining the need for confidential and extraordinary protection of materials included in the Challenged Schedules, APCo is also under a duty to “separate to the fullest extent practicable non-confidential documents, materials and information from Confidential Information and to provide the non-confidential documents, materials and information without restriction.”<sup>5</sup> This requirement underlines why the Company must explain in detail the “character and contents of each document” to ensure that necessary redactions are done in a manner that avoids the over-redaction of non-confidential information that is mixed among potentially confidential information.

Respectfully submitted,

DIVISION OF CONSUMER COUNSEL  
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<sup>4</sup> Protective Ruling at P (7)(a).

<sup>5</sup> *Id.* at P 12.

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April 6, 2022

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### CERTIFICATE OF SERVICE

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