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April 13, 2022

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Hon. Bernard J. Logan, Clerk
State Corporation Commission
Document Control Center
Tyler Building, First Floor
1300 East 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:

Enclosed for filing in the above-referenced proceeding please find Appalachian Power Company's Response to the Office of the Attorney General's Division of Consumer Counsel's Motion for Ruling on Confidentiality of Information. Please feel free to contact me if there are any questions on this matter.

Sincerely,



C. Dixon Wallace III

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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF

APPALACHIAN POWER COMPANY

CASE NO. PUR-2021-00206

For approval of its 2021 RPS Plan
under § 56-585.5 of the Code of Virginia and related
requests

**RESPONSE OF APPALACHIAN POWER COMPANY
TO MOTION FOR RULING ON CONFIDENTIALITY OF INFORMATION**

Appalachian Power Company (“Appalachian”) submits this Response to the Motion for Ruling on Confidentiality of Information (“Motion”) filed by the Office of the Attorney General’s Division of Consumer Counsel (“Consumer Counsel”). The Motion marks Consumer Counsel’s third attempt in recent months at publicizing extraordinarily sensitive schedules (“Schedules”) Appalachian has filed with the Commission in conjunction with several renewable energy projects in accordance with the Virginia Clean Economy Act. In Appalachian’s recently-granted petition for a prudency determination with respect to a solar facility in Amherst County, the Senior Hearing Examiner denied a similar motion lodged by Consumer Counsel just weeks before the Commission was set to lose jurisdiction over the petition.¹ After the Commission agreed to hear Consumer Counsel’s subsequent request for reconsideration, attempting once again to publicize competitively sensitive information, Consumer Counsel withdrew its request.²

¹ Hearing Examiner’s Ruling, *Application of Appalachian Power Company, For a prudency review, pursuant to § 56-585.1:4 H of the Code of Virginia, with respect to the purchase of the Amherst Solar Facility*, Case No. PUR-2021-00066 (Feb. 14, 2022).

² Office of Attorney General, Division of Consumer Counsel Motion for Leave to Withdraw Motion for Ruling and Response to Appalachian Power Company’s Motion for Clarification, *Application of Appalachian Power Company, For a prudency review, pursuant to § 56-585.1:4 H of the Code of Virginia, with respect to the purchase of the Amherst Solar Facility*, Case No. PUR-2021-00066 (Apr. 1, 2022).

In its third attempt, Consumer Counsel seeks to reveal twelve Schedules containing proprietary contractual and pricing information and other extraordinarily sensitive market data. As with its previous efforts, Consumer Counsel's request would cause irreparable harm not only to Appalachian and its customers, and to the developers, but also to the competitive solicitation process in Virginia as a whole. The Commission should deny the Motion.

Appalachian also respectfully requests that the Commission schedule a separate hearing on the Motion with evidence and witness testimony before issuing a decision. Given that the evidentiary hearing on the merits in this case is scheduled for April 21, 2022—only eight days from the date of this Response's filing—Appalachian requests that the Commission either initiate a rulemaking proceeding or schedule a separate hearing on the Motion after the substantive evidentiary hearing concludes. Preparation for the substantive evidentiary hearing has and will continue to require substantial time and resources, and Appalachian anticipates that other parties will request to be heard on Consumer Counsel's Motion. The Commission should thus refrain from adjudicating the Motion until after the April 21, 2022, evidentiary hearing has concluded and either a rulemaking proceeding (Appalachian's preference) or a separate hearing on the specific issues raised in Consumer Counsel's Motion can be scheduled.

I. The Schedules are Extraordinarily Sensitive and Protected Under Rule 170.

Rule 170 allows information submitted to the Commission to be "withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information."³ Upon a challenge to the information's confidentiality, Rule 170 mandates that the Commission consider whether the "risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure." Here, the risk of harm

³ 5 VAC 5-20-170.

overwhelmingly outweighs the presumption of public disclosure. Publication of the Schedules will cause irreparable harm to not only Appalachian, but also developers and consumers across the Commonwealth.

Consumer Counsel seeks publication of the following:

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

WKC Schedule 1 includes the extraordinarily sensitive Levelized Cost of Energy (“LCOE”) metrics for the Firefly, Top Hat, Bedington, and Amherst facilities, and the Horsepen, Dogwood,

Leatherwood, Wytheville, and Depot Solar power purchase agreements (“PPAs”). The LCOE is a metric that analyzes each resource’s average net present cost of electricity generation over their respective lifetimes. WKC Schedule 6 includes extraordinarily sensitive economic data and projections (such as capital expenditures) for the Firefly facility.

AEJ Schedule 15 covers the total installed capacity costs for the Amherst, Bedington, Top Hat, and Firefly facilities, and includes extraordinarily sensitive data such as Appalachian’s costs and overheads, the accrual of allowance for funds used during construction (“AFUDC”), and contingency costs. AEJ Schedules 16 through 19 in turn provide confidential O&M and capital forecasts for the Amherst, Bedington, Firefly, and Top Hat facilities, respectively, and contain confidential contract pricing and capital expenditure information. Although some of these discrete items may appear innocuous on their own, collectively they would enable a savvy party to discern the price paid for the facility, which is competitively sensitive.

MMS Schedules 1-5 include the underlying data in support of Appalachian’s calculation of the net present value of the Top Hat, Firefly, and Bedington Facilities, and the Dogwood, Horsepen, and Sun Ridge PPAs. As with the other Schedules for which the Motion seeks publication, MMS Schedules 1-5 are extraordinarily sensitive and must remain out of the public eye. Specifically, MMS Schedule 1 shows for each resource included in Appalachian’s Application the energy, capacity, and renewable energy certificate (“REC”) value percentage used to allocate costs to be accumulated in the corresponding rate adjustment clauses (“RACs”) proposed. MMS Schedules 2-5 put forth various extraordinarily sensitive cost of service metrics for the Amherst, Top Hat, Firefly, and Bedington facilities, respectively.

The extraordinarily sensitive Schedules thus contain “commercial or financial information” unambiguously protected by Rule 170. If the Schedules were disclosed to the

public, third-party market participants—including potential counterparties of Appalachian—would have access to information they could use to calculate the contract price, and every future bidder would know the price Appalachian is willing to pay for similar facilities. Competitors and other parties could also use Appalachian’s production curves to gain intelligence into Appalachian’s highly confidential Levelized Cost of Energy. The risk of these harms overwhelmingly outweighs any presumption in favor of public disclosure.

But even more troubling, the resulting injuries would ultimately be passed on to electric customers across the Commonwealth. Bidders would know the specific prices that Appalachian and developers are willing to pay and could use this information to formulate bidding strategies that are not in customers’ interests. Moreover, fewer developers would bid into requests for proposals (“RFPs”) in the first place due to well-founded concerns that their commercially sensitive purchase prices could be made public and harm their own future competitive bidding processes for engineering, procurement, and construction services for new facilities. With a less competitive bidding process, consumers would bear the ultimate cost and pay more for electricity. The General Assembly already recognized this risk when it mandated that Appalachian and Dominion Energy Virginia “at least once every year, conduct a request for proposals for new solar and wind resources.”⁴ Simply put, if Appalachian cannot protect its cost information and net cost of compliance at which it contracts for resources, customers will pay higher rates.

In sum, the foreseeable injuries to Appalachian, developers, and electric customers across the Commonwealth are immense. The risk of these harms greatly outweighs the presumption in favor of public disclosure, and the Commission should accordingly deny the Motion.

⁴ Va. Code § 56-585.5.

II. The Commission Should Refrain from Adjudicating the Motion Until After the Evidentiary Hearing Has Concluded.

As articulated above, the Commission should either initiate a rulemaking proceeding or schedule a separate hearing with evidence and witness testimony before issuing a decision on the Motion. And because this case's substantive evidentiary hearing will occur only eight days after this Response's filing, such a hearing on the Motion should take place after the substantive evidentiary hearing concludes. Again, preparation for this case's substantive evidentiary hearing necessarily requires substantial time, resources, and focus. Absent guidance from the Commission that the Motion will not be heard until after the evidentiary hearing is finished, Consumer Counsel's request will only serve as a major distraction to this case's substantive issues.

Moreover, given the Motion's potentially far-reaching impacts, other parties will likely also wish to be heard. Those other parties—which could include other electric utilities, electric cooperatives, and renewable energy project developers—will likely have their own perspectives about whether the Commission should require the public disclosure of proprietary, competitively sensitive information. Appalachian accordingly notes its preference that the Commission address the issues raised in the Motion via a rulemaking proceeding that allows input from all interested parties. But in either event, the Commission should refrain from adjudicating the Motion until after the April 21, 2022, hearing has concluded and a separate rulemaking proceeding or hearing on the specific issues raised in the Motion has subsequently taken place, and all interested parties have had the opportunity to participate fully.

WHEREFORE, the State Corporation Commission should deny the Motion for Ruling on Confidentiality of Information.

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Respectfully submitted,

APPALACHIAN POWER COMPANY

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Counsel for Appalachian Power Company

Dated: April 13, 2022

CERTIFICATE OF SERVICE

I certify that on April 13, 2022 a copy of this document was served by electronic mail on:

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