

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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PETITION OF

VIRGINIA DISTRIBUTED SOLAR ALLIANCE

CASE NO. PUR-2023-00097

For injunctive relief against
Virginia Electric and Power Company

FINAL ORDER

On June 1, 2023, Virginia Distributed Solar Alliance ("VA-DSA"), filed a Complaint and Petition for Injunctive Relief and Request for Expedited Action ("Petition") with the State Corporation Commission ("Commission") pursuant to Rule 100 C of the Commission's Rules of Practice and Procedure ("Rules of Practice")¹ and Rule 100 D of the Commission's Regulations Governing Interconnection of Small Electrical Generators and Storage ("Interconnection Regulations").² VA-DSA's Petition requests injunctive relief and expedited action against Virginia Electric and Power Company ("Dominion" or "Company").

Specifically, in its Petition VA-DSA requests that the Commission issue an injunction that immediately suspends imposition of Dominion's Interconnection Parameters for Net Metering Distributed Energy Resources ("Parameters") on midsized nonresidential net energy metering ("NEM") projects ("Midsized NEM Projects") until the Commission resolves the interconnection-related issues raised in Case Nos. PUR-2022-00073 and PUR-2023-00069.³

¹ 5 VAC 5-20-10 *et seq.*

² 20 VAC 5-314-10 *et seq.*

³ See Petition at 2, 25. See also *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of revising the Commission's Regulations Governing Interconnection of Small Electrical Generators and Storage*, Case No. PUR-2023-00069, Doc. Con. Cen. No. 230510089, Order Initiating Rulemaking Proceeding (May 2, 2023); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter considering utility distributed energy resource interconnection-related issues and questions*, Case No. PUR-2022-00073, Doc. Con. Cen. No. 230310110, Order (Mar. 3, 2023).

VA-DSA also seeks in its Petition to have the Commission issue an injunction to prohibit Dominion from requiring eligible nonresidential customer-generators to sign a Small Generator Interconnection Agreement ("SGIA") for Midsized NEM Projects.⁴

On June 7, 2023, the Commission issued a Procedural Order which, among other things, established an expedited procedural schedule to consider VA-DSA's Petition; directed Dominion to file an answer or other responsive pleading to the Petition ("Response"); provided VA-DSA an opportunity to file a reply to Dominion's Response ("Reply"); and assigned a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission. On June 21, 2023, Dominion filed its Response. On June 28, 2023, VA-DSA filed a Reply.

On July 31, 2023, the Report of Mary Beth Adams, Hearing Examiner ("Report") was filed. The Hearing Examiner made the following findings and recommendations in the Report:

- (i) Dominion's implementation of the Parameters without prior Commission approval is contrary to Code § 56-578 and the Commission's Regulations Governing Net Energy Metering ("NEM Regulations");
- (ii) The Parameters should be suspended until the Commission has completed its investigations in Case Nos. PUR-2022-00073 and PUR-2023-00069, as appropriate;
- (iii) The appropriateness of Dominion's "Light Load to Cumulative Generation Capacity" screen should be investigated in the Direct Transfer Trip working group established in the March 3, 2023 Order in Case No. PUR-2022-00073;
- (iv) Because implementation of the Parameters without prior Commission approval is contrary to the applicable law, it is not necessary at this time to determine whether

⁴ *Id.* at 3, 25.

the Parameters are consistent with Good Utility Practice, as defined by the Interconnection Regulations;

- (v) Whether the Parameters are consistent with Good Utility Practice should be explored in Case Nos. PUR-2022-00073 and PUR-2023-00069, as appropriate;
- (vi) Because implementation of the Parameters without prior Commission approval is beyond what is permitted under Code § 56-578 and the NEM Regulations and because continued implementation of the Parameters will create barriers to interconnection that Code § 56-578 aims to prevent, sufficient harm has been established for an injunction to be issued;
- (vii) Neither the Company's tariffs nor the NEM Regulations support the Company's practice of requiring NEM customers to sign an SGIA;
- (viii) Dominion lacks authority to require NEM customers to execute the SGIA;
- (ix) The Commission should direct Dominion to suspend its practice of requiring customer generators operating pursuant to the NEM Regulations to execute an SGIA;
- (x) Whether NEM customers should be required to execute an SGIA should be addressed in Case Nos. PUR-2022-00073 or PUR-2023-00069, as appropriate;
- (xi) Dominion's concerns that allowing an entity other than the customer to sign the SGIA would violate its exclusive franchise right should be addressed in Case Nos. PUR-2022-00073 or PUR-2023-00069, as appropriate; and

- (xii) Application of the SGIA to NEM customers should be suspended until the Commission resolves the issues being addressed in Case Nos. PUR-2022-00073 and PUR-2023-00069.⁵

On August 7, 2023, Dominion and VA-DSA each filed comments on the Report. On August 14, 2023, Dominion filed a motion for leave to file a reply to VA-DSA's comments on the Hearing Examiner's Report ("Motion for Leave"). On August 16, 2023, VA-DSA filed a response in opposition to the Motion for Leave.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.⁶

Based on the findings and recommendations in the Report, the Commission hereby issues an injunction, as plead for in the Petition, "that suspends the imposition of the Parameters on Midsized NEM Projects and suspends the requirement of SGIA's for Midsized NEM Projects at least until the Commission has completed its investigations and rulemaking in Case Nos. PUR-2022-00073 and PUR-2023-00069 and has ruled definitely on such issues."⁷

The Commission, however, declines to expand its findings – as part of the instant proceeding – to address the myriad of additional relief that VA-DSA now seeks.⁸ As requested in the Petition, the Commission afforded expedited treatment thereof, and the Commission's Hearing Examiner issued a timely and thorough Report in response to the specific relief prayed

⁵ Report at 22-23.

⁶ The Commission has not considered any pleadings filed subsequent to the due date for comments on the Report and, thus, denies any requests contained therein.

⁷ Petition at 25.

⁸ For example, VA-DSA now addresses claimed null and void contracts, illustrative remedies that VA-DSA demands are necessary to "restore the status quo ante," potential refunding of certain costs, and the possible retroactive effect of findings or rulemakings that have yet to occur. *See, e.g.*, VA-DSA Comments at 17-20, 25-26.

for by VA-DSA in its Petition. Any potential further requests for relief may be raised, if proper and ripe, in one or more subsequent proceedings.

Finally, the Commission has neither disregarded, nor taken lightly, Dominion's claims regarding safety and reliability. This Final Order, however, is limited to the Petition filed herein; *i.e.*, the Commission has identified the Company's current authority under existing law.

Dominion should continue to take the actions necessary to maintain the immediate safety and reliability of its system; this may include, but need not be limited to, seeking specific authority from this Commission in one or more formal proceedings.

Accordingly, IT IS SO ORDERED, and this case is DISMISSED.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.