

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 13, 2022

ECC - CLERK'S OFFICE
DOCUMENT CONTROL CENTER

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

2022 OCT 13 A 9:11
CASE NO. PUR-2020-00124

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

FINAL ORDER

In 2020, the Virginia General Assembly enacted legislation, later codified as Code § 56-585.1:12, which among other things required the State Corporation Commission ("Commission"), by regulation, to establish the Multi-Family Shared Solar Program ("MFSS Program" or "Program").¹ Through this Program, eligible customers of investor-owned utilities, whose customers live in multi-family dwellings (*e.g.*, an apartment complex), have the opportunity to participate in shared solar projects.²

Generally speaking, a multi-family customer would purchase one or more subscriptions to a solar facility that qualifies as a "shared solar facility." In return, participating customers would receive credit on their utility bill by "multiplying the subscriber's portion of the kilowatt-hour [("kWh")] electricity production from the shared solar facility by ... the effective retail rate of the customer's rate class, which shall be inclusive of all supply charges, delivery charges, demand charges, fixed charges, and any applicable riders or other charges to the customer."³

¹ 2020 Va. Acts chs. 1187, 1188, 1189, 1237.

² Code §§ 56-585.1:12 A, C.

³ Code §§ 56-585.1:12 C, D.

221020173

The Commission established the Program by adopting the Rules Governing Multi-Family Shared Solar Program ("MFSS Rules") on December 23, 2020.⁴

One utility participating in the Program is Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion" or "Company"). On June 29, 2021, the Commission issued an Order in this docket that, in part, set the initial bill credit rate for the Program at 11.765¢/kWh for Dominion and required Dominion to file "one (1) original document containing any revised tariff provisions necessary to implement" the MFSS Rules.⁵ Dominion filed multiple documents and workpapers, including revised tariff provisions labeled as Schedule Multi-Family Shared Solar and Schedule Subscriber Organization – Multi-Family Shared Solar on June 30, 2021, in an effort to comply with the Commission's December 23, 2020 Order and incorporate the bill credit rate set by the Commission's June 29, 2021 Order.

By letter filed on July 15, 2021, the Commission's Division of Public Utility Regulation ("Division") rejected Dominion's proposed tariff sheets as submitted because they contained administrative charges. According to the Division, the Commission itself must "determine the need for and amount of any appropriate administrative charge" in accordance with MFSS Rule 80 A.⁶ The Division stated that because the Commission has not determined the need for and amount of any administrative charge applicable to the Program, it was "improper on Dominion's

⁴ *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, 2020 S.C.C. Ann. Rept. 571, Order Adopting Rules (Dec. 23, 2020) ("December 23, 2020 Order"). See also Code § 56-585.1:12 B.

⁵ *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, Order at 5 (June 29, 2021) ("June 29, 2021 Order").

⁶ Letter from David R. Eichenlaub, Deputy Director, Division of Public Utility Regulation, State Corporation Commission, dated July 15, 2021, to Timothy D. Patterson, Esquire, McGuireWoods LLP, filed in Case No. PUR-2020-00124 at 1.

part to include such charges without any prior petition for Commission acceptance and approval."⁷ The Division rejected Dominion's tariff sheets.⁸

On September 1, 2021, Dominion filed a petition ("Petition") with the Commission requesting that the Commission: (1) specifically approve, as a component of its tariff sheets, the Company's proposed administrative charge; and (2) collectively accept and approve the Company's tariff sheets.⁹

On September 29, 2021, the Commission issued an Order for Notice and Comment that, among other things, required Dominion to provide public notice of its proposed administrative charges; provided interested persons an opportunity to file comments on the proposed administrative charges, file a notice of participation as a respondent, and request that a hearing be convened; directed the Commission's Staff ("Staff") to investigate the proposed administrative charges and present its findings and recommendations in a report; and assigned a Hearing Examiner to rule on any discovery matters that arise during the course of this proceeding. On October 14, 2021, the Commission issued a Correcting Order in response to an Errata Filing by Dominion, correcting certain figures included in the Order for Notice and Comment.

Notices of Participation, Comments and Requests for Hearing were filed by: the Coalition for Community Solar Access and the Chesapeake Solar and Storage Association ("CCSA-CHESSA"); Appalachian Voices; and Direct Energy Business, LLC and Direct Energy Services, LLC ("Direct Energy"). On December 15, 2021, Staff filed its report. On December 29, 2021, Dominion filed Response Comments.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ Ex. 3 (Petition) at 3.

On January 14, 2022, the Commission issued an Order assigning this matter to a Hearing Examiner to conduct further proceedings on Dominion's request for approval of its proposed administrative charge.

The Hearing Examiner conducted an evidentiary hearing on this matter on March 25 and 28, 2022, including the receipt of the testimony of 17 public witnesses and the receipt of evidence from the Company, Staff, and respondents.¹⁰

On May 9, 2022, the Report of A. Ann Berkebile, Senior Hearing Examiner ("Report"), was issued. The Report provided an extensive review of the law, facts, and positions of all participants, and included the Hearing Examiner's findings and recommendations. Comments on the Report were subsequently filed by Dominion, CCSA-CHESSA, Appalachian Voices, and Direct Energy.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.

Code of Virginia

Code § 56-585.1:12 E provides in part as follows (emphases added):

E. The Commission shall establish by regulation a multi-family shared solar program by January 1, 2021, 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:

7. Allow the investor-owned utilities to recover reasonable costs of *administering the program*;

As recognized by the Hearing Examiner, Dominion and the respondents disagree as to the types of costs that properly fall within "administering the program" as referenced immediately above. In general, Dominion asserts that such costs include costs of providing electric services

¹⁰ Numerous public comments were also received by the Commission in this matter.

that would normally be incurred to serve such customers (such as transmission and distribution delivery charges), whereas respondents assert that such costs are limited to additional costs that arise as a result of, or are directly related to, the Multi-Family Program.¹¹

Code § 56-585.1:12 does not define, or list costs falling within, "administering the program." Thus, turning to the dictionary, "administer" is defined as: "1 a (1) : to manage the affairs of ... (2) : to direct or superintend the execution, use, or conduct of..."¹² Because, like the Hearing Examiner, we find that the dictionary definition does not appear to definitively answer this question, we next turn to another tenet of statutory construction.

Specifically, there are two statutes devoted to the subject matter of shared solar programs in Title 56: the instant Code § 56-585.1:12; and Code § 56-594.3. Code § 56-585.1:12 allows customers living in multi-family dwellings to subscribe to a portion of a shared solar facility that is located on the premises of, or adjacent to, the multi-family customer.¹³ Code § 56-594.3 allows any customer to subscribe to a portion of a shared solar facility located anywhere within the utility's service territory.¹⁴ These two statutes are similarly structured and include many similar-type provisions.

For purposes of this analysis, *both* statutes expressly allow the utility "to recover reasonable costs of administering the program."¹⁵ Yet, notwithstanding the similarities between the two statutes, there is at least one glaring difference. Code § 56-594.3 separately addresses

¹¹ See, e.g., Report at 40-42.

¹² Webster's Third New International Dictionary 27 (2002).

¹³ Code § 56-585.1:12 A.

¹⁴ Code § 56-594.3 A.

¹⁵ Code §§ 56-585.1:12 E 7 and 56-594.3 F 9.

the additional recovery of costs of providing electric service (*e.g.*, transmission and distribution delivery costs) that, in the instant case, Dominion seeks to characterize as costs of "administering the program." Specifically, in addition to "costs of administering the program," Code § 56-594.3 also allows the Commission to require subscribing customers to pay "a fair share of the costs of providing electric services" and to "minimize the costs shifted to customers not in a shared solar program."¹⁶ Code § 56-585.1:12 simply does not contain an analogous provision.

The Commission must presume that this difference was intentional.¹⁷ Indeed, in implementing Code § 56-594.3, the Commission required subscribing customers to pay a fair share of the system infrastructure costs of providing electric service.¹⁸ The Commission, however, did *not* include these costs of providing electric service as "costs of administering the program." Rather, the Commission required subscribing customers thereunder to pay for these costs based on the express – and separately delineated – authority in that statute "to ensure subscribing customers pay a fair share of the costs of providing electric services."¹⁹ Again, Code § 56-585.1:12 does not include any such similar authority.²⁰

¹⁶ Code § 56-594.3 D.

¹⁷ *Zinone v. Lee's Crossing Homeowners Ass'n*, 282 Va. 330, 337 (2011) ("Moreover, when the General Assembly has used specific language in one instance, but omits that language or uses different language when addressing a similar subject elsewhere in the Code, we must presume that the difference in the choice of language was intentional.") (citations omitted).

¹⁸ *Commonwealth of Virginia, ex rel. 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, Final Order (July 7, 2022).

¹⁹ *Id.* at 5-6.

²⁰ In addition, we conclude that the statutory construction herein does not conflict with the Commission's adoption of the MFSS Rules. Moreover, to the extent any particular rule is deemed otherwise, we note that a Commission rule obviously cannot re-write or supersede a statute.

Accordingly, the Commission finds that the "reasonable costs of administering the program" under Code § 56-585.1:12 E 7 do not include the electric system infrastructure charges sought by Dominion for inclusion therein.

Reasonable Costs of Administering the Program

Schedule MFSS

Dominion will incur program billing costs that arise as a result of the Program. For example, the Company will need to interface with subscriber organizations for purposes of coordinating subscribing customers, data transfer, and bill credit determination, as well as preparing separate customer bills specifically for subscribing customers.²¹ Dominion currently will have to perform these administrative tasks on a manual basis, and in consultation with its billing department estimates that these monthly administrative tasks will take fifteen (15) minutes for each subscribing customer.²² In addition, because Dominion does not expect the time required for these tasks to be dependent upon subscription size, the Company proposes a flat fee for this purpose.²³ As a result, based on the Company's hourly rate for business performance analysts – *i.e.*, the employees currently performing billing functions and that would perform this administrative function, as well – the monthly Program Billing Charge would be \$13.40.

The Commission finds that a \$13.40 Program Billing Charge for Schedule MFSS is reasonable based on the evidence provided by the Company. We likewise find that it is reasonable for Dominion *not* to have an automated billing system in place for the Program at this

²¹ See, e.g., Ex. 4 (Trexler Direct) at 10-11.

²² See, e.g., *id.* at 11, Schedule 4; Tr. 171-173.

²³ See, e.g., *id.* at 11.

time. Because this statutory Program is new and yet to be implemented, the specific data configuration and computer information platform necessary has yet to be developed. Moreover, Dominion is currently developing a new company-wide customer information platform ("CIP"), which is expected to be in-service by mid-2023, and will investigate including the Program as part thereof.²⁴ Accordingly, Dominion shall report on the status of this process in its next MFSS Program-related update and propose any changes (or establish why no changes should be made) to the Program Billing Charge.²⁵

In addition, MFSS Program customers cannot bypass statutorily non-bypassable charges without a concomitant statutory exemption. Thus, as recommended by the Hearing Examiner, the Commission also finds that the Company must bill subscribing customers for Non-Bypassable Charges (calculated by multiplying the subscribing customer's monthly usage by appropriate Non-Bypassable Charges) as set forth in Staff Alternative A.²⁶

Schedule SO-MSS

Dominion also proposes a subscriber organization Administrative Charge to be included in Schedule SO-MSS, which is a companion schedule established under any non-residential, non-lighting rate schedule (e.g., Schedule GS-1, Schedule GS-2, Schedule GS-3, Schedule GS-4). This Administrative Charge includes a one-time set-up charge and monthly charges related to meter reading and processing and program administration. The Commission adopts

²⁴ See, e.g., *id.*; Tr. 197.

²⁵ In addition, because it was raised in Appalachian Voices' comments on the Report, the Commission confirms it has found that Dominion met its burden to establish that the Program Billing Charge approved herein is reasonable, and that such burden has not been shifted to the respondents for this purpose. See, e.g., Appalachian Voices' Comments at 7.

²⁶ See, e.g., Report at 58. As also recommended by the Hearing Examiner, the Commission finds that low-income customers should retain any applicable exemptions from non-bypassable charges and directs Dominion to make necessary adjustments to reflect that exemption. See, e.g., *id.*; Tr. 192.

the reasoning, findings, and recommendations set forth in the Report and approves the subscriber organization Administrative Charge as recommended by the Hearing Examiner.²⁷

Compliance Filing

The Company forthwith shall file revised tariffs, terms and conditions of service and supporting workpapers with the Clerk of the Commission and submit the same to the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance, as is necessary to comply with the directives set forth in this Final Order. The Clerk of the Commission shall retain such filings for public inspection in person and on the Commission's website: scc.virginia.gov/pages/Case-Information.

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

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.

²⁷ See, e.g., Report at 56-57.