

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, JANUARY 23, 2023

REGULATORY OFFICE  
PUBLIC UTILITY FINANCIAL CENTER

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APPLICATION OF

ROANOKE GAS COMPANY

CASE NO. PUR-2022-00125

For approval of a certificate of public convenience and necessity to construct, own, and operate a digester gas conditioning system and for a rate adjustment clause designated Rider RNG and related tariff provisions pursuant to Chapters 10.1 and 30 of Title 56 of the Code of Virginia

FINAL ORDER

On August 3, 2022, Roanoke Gas Company ("Roanoke Gas" or "Company") filed with the State Corporation Commission ("Commission") an application ("Application"), pursuant to Chapters 10.1 and 30 of Title 56 of the Code of Virginia ("Code"), for approval of a biogas supply investment plan.<sup>1</sup> The Company seeks to buy anaerobic digester gas ("Digester Gas") from the Western Virginia Water Authority ("WVWA"), which will be processed through a digester gas conditioning system, gas carrying pipe, and other necessary equipment ("RNG Facility"), constructed, owned, operated, and maintained by the Company, to produce renewable natural gas ("RNG").<sup>2</sup> Specifically, the Company seeks approval of: (1) a certificate of public convenience and necessity to construct, own, operate, and maintain the RNG Facility pursuant to the Utility Facilities Act, Code § 56-265.1 *et seq.*; (2) a rate adjustment clause designated Rider RNG, for the recovery of projected costs associated with the RNG Facility as permitted under

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<sup>1</sup> Application at 1.

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

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Chapter 30 of Title 56 of the Code,<sup>3</sup> and (3) tariff provisions pursuant to Code §§ 56-248.1 and 56-234 related to the RNG Facility, the Company's procurement of "supplemental and substitute forms of gas" under the Code, and the interconnection of renewable gas facilities owned and operated by third parties with the Company's distribution system.<sup>4</sup> Pursuant to Code § 56-625 C, the Commission "shall approve or deny, within 180 days, a natural gas utility's initial application for a biogas supply investment plan."

On August 29, 2022, the Commission issued an Order for Notice and Hearing ("Procedural Order") that, among other things: directed Roanoke Gas to provide public notice of its Application; scheduled public witness and evidentiary hearings for the purpose of receiving testimony from public witnesses and evidence on the Application; provided interested persons an opportunity to file written comments on the Application or participate as respondents in this proceeding; directed the Commission Staff ("Staff") to investigate the Application and file testimony with the results of the investigation; and assigned this case to a Hearing Examiner to conduct all further proceedings in this matter and to file a report.

Appalachian Voices filed a notice of participation on September 23, 2022, and testimony on October 21, 2022.<sup>5</sup> Staff filed testimony on October 31, 2022.<sup>6</sup> Roanoke Gas filed rebuttal

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<sup>3</sup> Code § 56-625.

<sup>4</sup> Application at 1-2.

<sup>5</sup> *See, e.g.*, Ex. 1 (Clarens Direct).

<sup>6</sup> *See, e.g.*, Ex. 20/20C (Otwell Direct); Ex. 21 (Newton Direct); Ex. 22 (Connolly Direct); Ex. 23/23C (Kuleshova Direct).

testimony on November 14, 2022<sup>7</sup>. The Commission also received four public comments regarding the Application, all in support.

In the Procedural Order, the Commission noted that Staff had requested the Department of Environmental Quality ("DEQ") to coordinate an environmental review of the proposed RNG Facility. The DEQ filed the results of its coordinated review ("DEQ Report") on November 7, 2022.<sup>8</sup> The DEQ Report summarized the proposed RNG Facility's potential environmental impacts, made recommendations for minimizing those impacts, and outlined the Company's responsibilities for compliance with certain legal requirements governing environmental protection.<sup>9</sup>

On November 18, 2022, Commission Hearing Examiner D. Mathias Roussy, Jr., convened a hearing to receive the testimony of Appalachian Voices' witness. On November 21, 2022, the telephone testimony of one public witness was received. On November 22, 2022, the remaining evidence of the parties and Staff was received into the record. Roanoke Gas, Appalachian Voices, and Staff participated in the hearings.

The Hearing Examiner issued his Report ("Report") in this matter on December 19, 2022. On January 4, 2023, comments on the Report were filed by Roanoke Gas, Appalachian Voices, and Staff.

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<sup>7</sup> See, e.g., Ex. 24 (Schneider Rebuttal); Ex. 25/25C (Banka Rebuttal); Ex. 26 (Cox Rebuttal); Ex. 28 (Luna Rebuttal); Ex. 30 (Oliver Rebuttal).

<sup>8</sup> See Ex. 19 (DEQ Report).

<sup>9</sup> See e.g., *id.* at 3-6.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.<sup>10</sup>

### Hearing Examiner's Report

After analyzing the law and weighing the evidence – and providing a thorough and detailed analysis thereof – the Hearing Examiner made the following recommendations:<sup>11</sup>

Accordingly, I RECOMMEND the Commission enter an order that:

(1) *GRANTS* a certificate of public convenience and necessity for the RNG Facility, subject to the conditions that the Company: (a) adhere to the recommendations of the DEQ Report; (b) obtain all necessary environmental and applicable local government permits and approvals; and (c) adhere to Staff's safety recommendations, to the extent they apply to the RNG Facility;

(2) *APPROVES* Rider RNG, with an initial, nine-month revenue requirement credit of \$127,398, subject to the condition that the Company take all reasonable steps to lower the costs to construct and operate the RNG Facility, which includes maximizing RIN<sup>12</sup> proceeds and seeking any applicable tax credits that are currently available or become available in the future;

(3) *DIRECTS* the Company to file annual updates to Rider RNG that include a true-up mechanism;

(4) *DIRECTS* the Company to present Rider RNG charges or credits as a separate line item on customer bills;

(5) *APPROVES* the Company's proposed tariff provisions, with approval for Rate Schedule RNG Receipt conditioned on the Company's adherence to all of Staff's safety recommendations to the extent they apply to facilities other than the Company's proposed RNG Facility with Staff recommendation (11) modified as recommended herein; and

(6) *DISMISSES* this case from the Commission's docket of active cases.

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<sup>10</sup> The Commission has fully considered the evidence and arguments in the record. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

<sup>11</sup> Report at 86 (emphases in original).

<sup>12</sup> Renewable Identification Number.

Upon consideration of this matter, the Commission concludes that the Hearing Examiner's rulings, findings, and recommendations are supported by law and the evidence, have a rational basis, and are adopted herein.<sup>13</sup> In so concluding, the Commission approves the Application, including the requested certificate of public convenience and necessity; Rider RNG; and proposed tariff revisions, subject to the conditions and requirements recommended by the Hearing Examiner and further set forth herein. In addition, the Commission provides further discussion below on its findings for purposes of this proceeding.

2022 Legislation

The instant proceeding represents the first filing under the legislation ("2022 Legislation") enacted by the 2022 General Assembly and codified at Code § 56-625.<sup>14</sup> As acknowledged by the Hearing Examiner, there is overlap and duplication in the statutory standards applicable to this case.<sup>15</sup> At a high level, Code § 56-625 contains: (1) certain requirements or elements of a "biogas supply investment plan"; (2) standards for determining whether the RNG Facility is an "[e]ligible biogas supply infrastructure project[]" includable in such a "plan;" and (3) standards requiring that the Commission "shall approve" such a "plan."<sup>16</sup>

Emissions Reductions

A significant issue in this case was the extent to which Roanoke Gas's RNG Facility, and by extension its biogas supply investment plan, will result in a decrease of methane or carbon dioxide equivalent emissions and, in particular, whether emissions reductions from WVWA's

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<sup>13</sup> See Report.

<sup>14</sup> 2022 Va. Acts ch. 728, 759.

<sup>15</sup> Report at 61.

<sup>16</sup> *Id.*

digester rehabilitation project may be considered. In this regard, the Commission agrees with the analysis and conclusions set forth by the Hearing Examiner:

I read the statute to allow any reasonably anticipated reduction in relevant emissions from the RNG Facility to be combined with ("in combination with") any such reduction from the digester rehabilitation (an "other project[]") by the WVWA. The RNG Facility was developed with the WVWA (a "third party"), which will, among other things, provide the necessary digester gas and property. These are complementary, interconnected projects that were designed concurrently and are being overseen by the same engineering firms. Company witness Luna, for example, was hired by RK&K to help engineer and design the WVWA's project and Roanoke Gas's RNG Facility to optimally work together. As memorialized by several finalized and pending contracts, WVWA and Roanoke Gas have jointly developed strategies for the construction and operation of the RNG Facility, which include the sale of the environmental attributes of the biogas. These attributes cannot be sold without the RNG Facility. Accordingly, this is a type of strategic partnership that may be used to achieve the underlying policy if, among other things, the RNG Facility – "in combination with" the WVWA's project – will reduce emissions. This part of the statute can be satisfied either with such combination or by considering the RNG Facility alone.<sup>17</sup>

Based on the record developed in this proceeding, the Commission agrees with the Hearing Examiner that the record supports a finding that the RNG Facility, in combination with the WVWA's digester rehabilitation project, will result in a decrease of methane or carbon dioxide equivalent emissions and that such satisfies the statute.<sup>18</sup>

#### Public Interest

Appalachian Voices asserts that the Hearing Examiner "should have included the Projects' costs to customers in his public interest balancing."<sup>19</sup> "Without considering costs to

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<sup>17</sup> *Id.* at 67.

<sup>18</sup> *Id.* at 67-74.

<sup>19</sup> Appalachian Voices Comments at 4.

customers in the public interest prong, [] the public interest analysis becomes a mere formality, and the result a foregone conclusion."<sup>20</sup> We disagree and find the Hearing Examiner's balancing of the various public interest factors to be rigorous. We further clarify, however, that additional consideration of the costs to customers of the RNG Facility (beyond any considerations encompassed by the Hearing Examiner) would not change our conclusion that the RNG Facility and the associated biogas supply investment plan is in the public interest. As stated by the Hearing Examiner, "Roanoke Gas's project has the potential to achieve a rare combination of increasing local fuel supply, reducing greenhouse gas emissions, and increasing a utility's profit while also lowering customer rates."<sup>21</sup>

#### Sharing of RIN Proceeds and Performance Guarantee

Roanoke Gas proposes for shareholders to receive a portion of the RIN proceeds as an incentive to maximize RIN sales.<sup>22</sup> Such incentive would be in addition to dollar-for-dollar cost recovery and a 100 basis-point return on equity adder under Code § 56-625. We agree with the Hearing Examiner that Rider RNG rates will be just and reasonable if the Company's proposal for shareholders to receive a share of RIN proceeds is removed.<sup>23</sup> Further in this regard, the Company is directed to take all reasonable steps to lower the costs to construct and operate the RNG Facility, which includes maximizing RIN proceeds and seeking any applicable tax credits

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<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> Report at 2. Appalachian Voices also urges the Commission to consider the cost to customers per metric ton of carbon dioxide as part of its consideration of the public interest. Appalachian Voices Comments at 5. We decline to adopt such as a mandatory criterion for consideration of whether approval is in the public interest.

<sup>22</sup> Report at 77.

<sup>23</sup> *Id.* at 85.

that are currently available or become available in the future. We will not, however, require a performance guarantee associated with the RNG Facility at this time.

Pipeline Safety

The injection of RNG, derived from wastewater, into a local distribution company's distribution system is a new practice in Virginia and the record established in this proceeding shows "possible deleterious effect to a natural gas distribution system from certain constituents potentially found in such RNG."<sup>24</sup> The Commission finds the Hearing Examiner's recommended modification to recommendation number (11) of Staff witness Connolly is reasonable and appropriate at this time.<sup>25</sup> As the Commission gains experience with RNG and its impact on the local distribution system, this condition may be revisited, revised, or superseded to ensure pipeline safety.

Accordingly, IT IS ORDERED THAT:

- (1) The Commission adopts the Hearing Examiner's findings and recommendations and makes findings as set forth herein.
- (2) The Hearing Examiner's recommendations, set forth herein, are hereby ordered.
- (3) Subject to the findings and requirements set forth in this Final Order, the Company is granted Generation Certificate No. EG-RNG-ROX-2023-A to construct and operate the RNG Facility.
- (4) The Company shall forthwith work with Staff to file electronic maps of the RNG Facility for certification. The electronic maps shall include the boundaries of the RNG Facility; the utility point of interconnection; county designations; geographic identifiers (road names,

<sup>24</sup> See, e.g., Staff Comments at 2 (citing Ex. 22 (Connolly Direct)) at 3-10.

<sup>25</sup> Report at 83-84.



waterways, etc.); and the Global Positioning System coordinates of the RNG Facility. The electronic maps shall be submitted to Michael Cizenski, Deputy Director, Division of Public Utility Regulation, by email at [mike.cizenski@scc.virginia.gov](mailto:mike.cizenski@scc.virginia.gov).

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

(6) The Company may implement Rider RNG upon acceptance of its revised tariffs and terms and conditions of service by Commission Staff.

(7) Roanoke Gas shall file an application to update Rider RNG by May 30, 2023, and include the annual reports required by Code § 56-625 E and Enactment Clause 3 of the 2022 Legislation regarding reductions in methane and carbon dioxide equivalent emissions.

(8) This matter 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.