

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2019-00094

For approval of a 100 percent renewable energy tariff,  
designated Rider TRG, pursuant to §§ 56-577 A 5  
and 56-234 of the Code of Virginia

ORDER APPROVING TARIFF

On May 31, 2019, pursuant to §§ 56-577 A 5 ("Section A 5") and 56-234 of the Code of Virginia ("Code") and Rule 80, 5 VAC 5-20-80, of the State Corporation Commission's ("Commission") Rules of Practice and Procedure,<sup>1</sup> Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion" or "Company") filed with the Commission an application ("Application") for approval of an optional 100 percent renewable energy tariff, designated Rider TRG, whereby participating customers can voluntarily elect to purchase 100 percent of their energy and capacity needs sourced from renewable energy resources.

The Application states that Rider TRG customers will receive 100 percent of their energy and capacity from a portfolio of resources ("TRG Portfolio") owned or contracted for by the Company that meet the definition of renewable energy in Code § 56-576.<sup>2</sup> As proposed, the TRG Portfolio would include the following resources: the Scott, Whitehouse, and Woodland solar facilities; the Essex, Williamston Speight, HXOap, Cork Oak, and Sunflower solar power purchase agreements; the Gaston and Roanoke Rapids hydro facilities; and the Altavista,

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<sup>1</sup> 5 VAC 5-20-10 *et seq.*

<sup>2</sup> Ex. 2 (Application) at 5.

Hopewell, Southampton, and Virginia City Hybrid Energy Center ("VCHEC") biomass units.<sup>3</sup> As proposed, the Company expects that the TRG Portfolio will be able to meet the capacity and energy requirements of approximately 50,000 residential customers or their commercial equivalent.<sup>4</sup> The Company proposes to compare, on a monthly basis, the subscribed customer load to the monthly generation by the TRG Portfolio and will ensure that the generation exceeds the load, with reasonable margins for deviations.<sup>5</sup> The Company also states that it will retire the renewable energy certificates ("RECs") associated with each megawatt-hour generated by the TRG Portfolio that the Company sells to participating customers.<sup>6</sup>

The Company proposes that participating customers in Rider TRG pay a premium over standard service that is based on the prevailing market value of retail renewable energy, using the market value of RECs as a proxy for this premium.<sup>7</sup> The Company proposes an initial rate for Rider TRG of \$4.21 per megawatt-hour, which is the weighted average value of the RECs produced by the current TRG Portfolio in 2018.<sup>8</sup> The Company states participating customers will also pay a balancing charge that credits the generation component of base rates, fuel, and generation riders in amounts to hold non-participants harmless, including any future generation riders that may be approved.<sup>9</sup> In addition, participating customers would be required to continue

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 7.

to pay their standard tariff for all wires-related charges for transmission and distribution service.<sup>10</sup>

Under the Company's proposal, all customers with a peak demand of less than five megawatts in the most recent 12-month billing period would be eligible to participate in Rider TRG.<sup>11</sup> According to the Application, for a typical residential customer using 1,000 kilowatt-hours per month, Rider TRG would increase a participating customer's monthly bill by \$4.21, or 3.6%.<sup>12</sup> The Company proposes that customers give 30-days' notice to initiate or terminate service under Rider TRG, with no separate contracts required to participate.<sup>13</sup>

On June 20, 2019, the Commission issued an Order for Notice and Hearing that, among other things, directed the Company to provide notice of its Application; established a procedural schedule, including scheduling a public evidentiary hearing; provided opportunities for interested persons to participate in this proceeding by filing either comments on the Application or notices of participation; directed the Commission's Staff ("Staff") to investigate the Application and file testimony and exhibits summarizing Staff's investigation; and appointed a Hearing Examiner to conduct all further proceedings in this case.

Notices of participation were filed by Wal-Mart, Inc. ("Walmart"); Advanced Energy Economy ("AEE"); Appalachian Voices; Calpine Energy Solutions, LLC ("Calpine"); Collegiate Clean Energy, LLC ("Collegiate");<sup>14</sup> Costco Wholesale Corporation; Direct Energy Business,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 8.

<sup>14</sup> Collegiate subsequently filed a notice of withdrawal of its notice of participation on October 18, 2019.

LLC and Direct Energy Services, LLC (collectively, "Direct Energy"); Renewable Energy Buyer's Alliance ("REBA"); and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). The Company, AEE, Appalachian Voices, Direct Energy, REBA, Walmart and Staff pre-filed testimony in this matter. The Commission also received written comments on the Application.

The public evidentiary hearing was convened, as scheduled, on November 21, 2019. Counsel for the Company, AEE, Appalachian Voices, Calpine, Direct Energy, REBA, Walmart, Consumer Counsel, and Staff appeared. One public witness testified at the hearing.<sup>15</sup> The hearing concluded on November 22, 2019.

On April 20, 2020, the Hearing Examiner issued her report ("Report"). Comments on the Report were filed by the Company, AEE, Appalachian Voices, Calpine, Direct Energy, REBA, Walmart, and Consumer Counsel.<sup>16</sup>

On May 15, 2020, Direct Energy filed a Motion for Delay of Any Compliance Filing and for Expedited Consideration ("Motion"), requesting, in the event Rider TRG is approved, that (a) the Commission not issue such approval until the issues in Case No. PUR-2020-00044 have been resolved, or, in the alternative, (b) the Commission issue an instruction to Dominion that its compliance filing for Rider TRG shall be filed no sooner than 90 days following the issuance of

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<sup>15</sup> Tr. 11-14.

<sup>16</sup> Worthington Energy Consultants ("WEC"), a non-participant to this proceeding, also filed comments on the Hearing Examiner's Report. The Commission has previously found -- on multiple occasions -- that a non-party does not have a right to file comments on a Hearing Examiner's report. *See, e.g., Shenandoah Valley Electric Cooperative, For approval of a general increase in base rates and a plan to migrate transitioning customers to its modified legacy rates, and for approval of revisions to rate schedules for electric service*, Case No. PUE-2013-00132, 2015 S.C.C. Ann. Rept. 200, 202, Order on Application (Jan. 26, 2015). According, WEC's comments will not be considered.

any final order approving Rider TRG as a Section A 5 tariff.<sup>17</sup> Dominion, AEE, and Calpine filed responses to the Motion and Direct Energy filed a reply.<sup>18</sup>

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds that Rider TRG should be approved, subject to certain modifications and conditions, as discussed herein.

Code § 56-577 A 5 states in full:

5. Individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:

a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory in which such a customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy; and

b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the exclusive service territory in which the customer is located to offer electric energy provided 100 percent from renewable energy, for the duration of such agreement.

The Commission has considered several applications and other proceedings related to Section A 5 over the last several years and has previously approved a 100 percent renewable tariff, designated Rider WWS, for Appalachian Power Company ("APCo") under this section.<sup>19</sup>

<sup>17</sup> Motion at 7-8.

<sup>18</sup> Upon consideration of the Motion, and the responses and reply thereto, the Commission exercises its discretion and finds it not necessary or appropriate to grant the Motion.

<sup>19</sup> *Application of Appalachian Power Company, For approval of a 100% renewable energy rider pursuant to § 56-577 A 5 of the Code of Virginia*, Case No. PUR-2017-00179, Doc. Con. Cen. No. 190110100, Order Approving Tariff (Jan. 7, 2019) ("Rider WWS Order"). The instant proceeding is the fourth case initiated by Dominion seeking tariff approval under Code § 56-577 A 5. See *Application of Virginia Electric and Power Company, For approval of 100 percent renewable energy tariffs for residential and non-residential customers pursuant to §§ 56-577 A 5 and*

In approving Rider WWS, the Commission recognized that Section A 5 "does not include an express standard of review for the Commission's approval, nor does it include any express limitations on what the Commission may determine is relevant to such review."<sup>20</sup> The Commission also explained that "any tariff proposed under this statute must be evaluated on its own merits in determining whether it is just and reasonable and should be approved."<sup>21</sup> The Commission, however, provided guidance in its Riders WWS Order, "for purposes of instruction but not limitation," that "certain basic principles inform our analysis of a 100 percent renewable energy tariff proposed under this statute."<sup>22</sup> Those principles are as follows:<sup>23</sup>

- First, to be just and reasonable, the proposed tariff should include safeguards that hold non-participating customers substantially harmless.
- Second, the tariff must supply the customer's full load requirements with electric energy provided 100 percent from "renewable energy" as defined by statute.<sup>24</sup>

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*56-234 of the Code of Virginia*, Case No. PUR-2017-00157, Doc. Con. Cen. No. 190210198, Order Dismissing Case (Feb. 6, 2019); *Application of Virginia Electric and Power Company, For approval of 100 percent renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2017-00060, 2018 S.C.C. Ann. Rept. 219, Final Order (May 7, 2018); *Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power, For approval of its Renewable Energy Tariff*, Case No. PUE-2008-00044, 2008 S.C.C. Ann. Rept. 539, Order Approving Tariff (Dec. 3, 2008).

<sup>20</sup> Rider WWS Order at 4. See *Application of Virginia Electric and Power Company, For approval of 100 percent renewable energy tariffs pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2017-00060, 2018 S.C.C. Ann. Rept. 219, 220, Final Order (May 7, 2018); *Petition of Appalachian Power Company, For approval of a 100% renewable energy rider*, Case No. PUE-2016-00051, 2017 S.C.C. Ann. Rept. 339, 341, Final Order (Sept. 13, 2017).

<sup>21</sup> Rider WWS Order at 4.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 5.

<sup>24</sup> Code § 56-576 states as follows:

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power.

- Third, the rates under such tariff should be reasonable for purposes of the renewable energy product that is being supplied.

With regard to the first principle, we agree with the Hearing Examiner that "should Rider TRG be approved, non-participating customers will be receiving the exact same product - undifferentiated energy - as they were getting before Rider TRG, and they will be paying the exact same price for that product, thus they will be held substantially harmless."<sup>25</sup>

We also agree with the Hearing Examiner that Rider TRG is designed to supply the customer's full load requirements with electric energy provided 100 percent from "renewable energy" as defined by statute, consistent with the Commission's second principle.<sup>26</sup> No party contested that the proposed TRG Portfolio includes resources that come within the definition of "renewable energy" under Code § 56-576.<sup>27</sup> We further find that Rider TRG is not simply a REC purchase program. In addition to retiring the applicable RECs on behalf of the TRG participants, Rider TRG offers to sell the renewable output of the TRG Portfolio.<sup>28</sup> We continue to find it is reasonable, for purposes of supplying 100 percent renewable energy under Section A 5, to match renewable generation with a participating customer's load on a monthly basis, as proposed by the Company.<sup>29</sup>

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Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

<sup>25</sup> Report at 42. *See, e.g.*, Tr. 352; Ex. 19 (Carr) at 3-6.

<sup>26</sup> Report at 39.

<sup>27</sup> Certain parties contested whether VCHEC was capable of providing "electric energy provided 100 percent from renewable energy" under Section A 5. *See, e.g.*, Appalachian Voices comments at 7-9. As discussed further below, we exercise our discretion to exclude VCHEC from the TRG Portfolio and do not reach the legal issue.

<sup>28</sup> Report at 50.

<sup>29</sup> *See, e.g.*, Rider WWS Order at 5-6; *Petition of Virginia Electric and Power Company, For Declaratory Judgment*, Case Nos. PUR-2019-00117 and PUR-2019-00118, Doc. Con. Cen. No. 190940009, Final Order (Sept. 18, 2020).

With respect to last principle, we agree with the Hearing Examiner that the rates and rate design under Rider TRG are reasonable for purposes of the renewable energy product being supplied, for the reasons set forth in the Report.<sup>30</sup> For example, the design is consistent with the structure previously approved for APCo's Rider WWS and uses the cost of a REC as a proxy for the premium cost of renewable energy. We are unpersuaded by respondents in this proceeding that argued that Rider TRG was both too high and too low.<sup>31</sup>

Several respondents urge the Commission to consider additional principles beyond those enumerated above. For the most part, the respondents ask us to consider that approval of Rider TRG as a tariff that provides electric energy 100 percent from renewable energy will eliminate competitive supply of renewable energy for certain customers within Dominion's service territory. For example, Calpine asserts "it is simply not in the public interest to approve a tariff that, by operation of law, precludes customers from realizing potential savings on their electricity supply bill as compared to the rates that Dominion is offering."<sup>32</sup> AEE posits that "[b]efore offering a tariff that rescinds customer rights to purchase renewable energy – leaving such tariff as a customer's *only* renewable energy option – the utility should at a minimum demonstrate that the proposal is reasonably designed to meet the needs and desires of its customers . . . ."<sup>33</sup>

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<sup>30</sup> Report at 43-45.

<sup>31</sup> For example, Calpine argued that Rider TRG was "much higher than prevailing renewable retail market pricing." Calpine comments at 5 (citing public comments filed by Telco Pros. Inc.). Appalachian Voices, on the other hand, argued that the TRG rate should be higher than proposed because "participating customers do not pay the full cost of the Rider TRG resources" and "should bear 100 percent of the costs." Appalachian Voices comments at 4.

<sup>32</sup> Calpine comments at 6. As noted herein, we have fully considered the impacts of Rider TRG. Calpine's argument is also a public policy argument against the public policy embodied in Section A 5. Obviously, Calpine's proper recourse, along with other respondents who do not like the policy, is to the General Assembly.

<sup>33</sup> AEE comments at 10-11.

The Commission has fully considered the evidence and arguments raised by all participants, including those urging rejection of the Application.<sup>34</sup> We also recognize the General Assembly's policy decision, which removes competition under Section A 5 if the utility has an approved tariff thereunder.<sup>35</sup> In the exercise of the Commission's discretion, we have found – after fully considering the respondents’ opposition – that Rider TRG as approved herein is just and reasonable and in the public interest and, moreover, that neither the facts nor the law attendant to this case mandate rejection thereof.

VCHEC

A significant issue in this case was the inclusion of the biomass portion of the output of VCHEC in the TRG Portfolio. The Hearing Examiner explained that "[n]o participant disputed that VCHEC may produce 'renewable energy' as defined by § 56-576 of the Code; however, every respondent and Staff raised concerns regarding the inclusion of VCHEC in the TRG Portfolio."<sup>36</sup> VCHEC only partially relies on renewable energy and is not designed to burn biomass absent co-firing with coal, a fossil fuel.<sup>37</sup> Reasons advanced to remove VCHEC from the TRG Portfolio include the potential customer confusion around a predominately coal-fired generation facility being included in a 100 percent renewable energy tariff<sup>38</sup> and concern that

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<sup>34</sup> 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>35</sup> Although not part of our analysis herein, the Commission also notes that the 2020 General Assembly passed legislation, House Bill 868, that would permit all customers to purchase 100 percent renewable energy from a competitive supplier regardless of whether the incumbent utility has an approved tariff under Section A 5, subject to the requirement that the legislation be reenacted by the 2021 General Assembly. See 2020 Va. Acts ch. 1107.

<sup>36</sup> Report at 35.

<sup>37</sup> See, e.g., Ex. 16 (Pratt) at 8-9.

<sup>38</sup> Report at 35-36.

including VCHEC in the TRG Portfolio could be viewed as a requirement that Rider TRG participants indirectly support coal generation.<sup>39</sup>

Dominion did not oppose removing VCHEC from the TRG Portfolio and we agree with respondents and Staff that VCHEC should be excluded from the TRG Portfolio. There is no requirement in Section A 5 that Dominion include all of its resources that qualify as "renewable energy" under Code § 56-576 in the TRG Portfolio. We agree with Consumer Counsel "that customers . . . could reasonably be confused" by a 100 percent renewable energy tariff offering that includes a generating facility whose primary fuel source is coal.<sup>40</sup> Such exclusion will lower the renewable premium applicable to the Rider TRG from \$4.21 to \$3.98, reducing the cost of Rider TRG to participating customers.<sup>41</sup> Based on the record established in this proceeding, the Commission will exercise its discretion to remove VCHEC from the TRG Portfolio.<sup>42</sup>

Further in this regard, Walmart argues that the Commission cannot exclude VCHEC because "Dominion's relief is limited to the relief requested in its Application."<sup>43</sup> The Commission's discretion in this proceeding is not limited to either approving or disapproving the Application in total. The Commission is required to implement Section A 5. "When a statute delegates such authority to the Commission, we presume that any limitation on the Commission's discretionary authority by the General Assembly will be clearly expressed in the language of the

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<sup>39</sup> Report at 36.

<sup>40</sup> Report at 35-36.

<sup>41</sup> Report at 37.

<sup>42</sup> Having removed VCHEC from the TRG Portfolio, the Commission need not reach the legal issue of whether the inclusion of VCHEC would meet the requirements of Section A 5 to provide electric energy 100 percent for renewable energy.

<sup>43</sup> Walmart comments at 4-5. *See also* Direct Energy comments at 13-14.

statute. Only the presence of such 'clearly expressed' statutory language ... can limit a general statutory grant of authority."<sup>44</sup> In support of its argument, Walmart cites a case in which the Commission, in the exercise of its discretion, declined to grant a petition for reconsideration that requested different relief than requested in the original application.<sup>45</sup> The Commission's determination herein to exclude VCHEC from the TRG Portfolio is not inconsistent with the decision cited by Walmart. These decisions rather represent the reasonable exercise of the Commission's discretion in two different cases involving different evidentiary records.

Here we simply use our discretion to acknowledge an obvious fact: Those customers who choose to purchase "100% renewable energy" in no universe would believe they are purchasing power from a generating unit in which the primary fuel is coal. Such would be a bizarre outcome for a statute intended to give those customers a 100% renewable option.

#### Biomass Units

The Commission declines to exclude the Company's three biomass units from the TRG Portfolio as requested by certain parties.<sup>46</sup> Unlike VCHEC, these units do not co-fire with a fossil fuel and the same concerns regarding customer confusion do not exist. Biomass meets the statutory definition of "renewable energy" under Code § 56-576. Moreover, exclusion of these units would significantly impact the number of customers that could take service under Rider

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<sup>44</sup> *City of Alexandria v. State Corp. Comm'n*, 296 Va. 79, 818 S.E.2d 33, 43 (2018) (internal citations omitted).

<sup>45</sup> Walmart comments at 4-5. *Petition of Wal-mart Stores East, LP and Sam's East, Inc., for permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia*, Case No. PUR-2017-00173 and PUR-2017-00174, Doc. Con. Cen. No. 190560141, Order on Reconsideration, at 2-3 (May 30, 2019).

<sup>46</sup> *See, e.g.*, REBA comments at 3.

TRG.<sup>47</sup> Based on the facts and circumstances on this case, the Commission declines to exercise its discretion to remove these units from the TRG Portfolio.

Modifications to the TRG Portfolio

We agree with the Hearing Examiner that the Company should be permitted to add resources to the TRG Portfolio on a short-term need basis but should not be permitted to add resources that do not address a "short-term need" without first obtaining Commission approval.<sup>48</sup> Such short-term additions should be consistent with the Company's proposed protocols.<sup>49</sup>

Tariff Language

We agree with the Hearing Examiner's recommended modification to the language of Rider TRG proposed by Consumer Counsel to remove the word "dedicated" and substitute the word "defined."<sup>50</sup> We find this clarification is reasonable and should be adopted.

Sunset Provision

We will not adopt a sunset provision such as that proposed by Direct Energy and Calpine.<sup>51</sup> We agree with Dominion that "the Commission retains authority to modify or amend Rider TRG at any time in the future and will have ample authority to address any concerns regarding participant levels during the annual update proceedings."<sup>52</sup>

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<sup>47</sup> See, e.g., Ex. 16 (Pratt) at 14.

<sup>48</sup> Report at 48.

<sup>49</sup> Ex. 18.

<sup>50</sup> Report at 48-49.

<sup>51</sup> See, e.g., Direct Energy comments at 62-66; Calpine comments at 7-11.

<sup>52</sup> Dominion comments at 3.

### Retail Choice

We further find that approval of Rider TRG does not preclude customers ineligible to participate (*i.e.*, those with peak demands at or above 5 megawatts) from purchasing electric energy provided 100 percent from renewable energy from a competitive supplier pursuant to Section A 5.<sup>53</sup> As we found with respect to Rider WWS, the Commission further finds that Rider TRG may be "offered" under the terms of Section A 5 until it becomes fully subscribed, or until the Company fails to accomplish the monthly matching of load and supply as approved herein.<sup>54</sup>

### Reporting and Disclosure Requirements

Finally, the Company shall comply with the disclosure and reporting requirements recommended by Staff and agreed to by the Company.<sup>55</sup>

Accordingly, IT IS ORDERED THAT:

- (1) Rider TRG is approved as set forth herein.
- (2) Within thirty (30) days hereof, Dominion shall file Rider TRG, as approved by this Order Approving Tariff, with the Clerk of the Commission and the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance. The Clerk of the Commission shall retain such filings for public inspection.
- (3) Dominion shall file an annual update proceeding for Rider TRG on or before July 1, 2021.

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<sup>53</sup> Report at 45-46.

<sup>54</sup> Rider WWS Order at 8.

<sup>55</sup> *See, e.g.*, Report at 46-47.

(4) Dominion shall file annual reports on Rider TRG commencing May 1, 2021, and continuing until further order of the Commission.

(5) Direct Energy's Motion is hereby denied.

(6) This case 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.