

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, MARCH 12, 2021

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APPLICATION OF

PIGEON RUN SOLAR, LLC

CASE NO. PUR-2021-00035

For a permit to construct and operate
an energy storage facility

ORDER FOR NOTICE AND COMMENT

On February 22, 2021, Pigeon Run Solar, LLC ("Pigeon Run" or "Company"), pursuant to 20 VAC 5-335-80 C of the Regulations Governing the Deployment of Energy Storage¹ and Rule 80 A of the Commission's Rules of Practice and Procedure,² filed with the State Corporation Commission ("Commission") an application ("Application") for a permit ("Permit") to construct, own, and operate an approximately 20 megawatt ("MW") battery energy storage system ("BESS").³ Pigeon Run was formed as a special purpose entity for the sole purpose of developing, constructing, owning, and operating an approximately 60 MW alternating current photovoltaic solar electric generating project ("Solar Facility") and the associated BESS that is the subject of its Application (collectively, the "Project").⁴ In its Application, Pigeon Run is requesting a Permit from the Commission for the BESS only.⁵ Pigeon Run also filed a Motion

¹ 20 VAC 5-335-10 *et seq.*

² 5 VAC 5-20-10 *et seq.* ("Rules of Practice").

³ Application at 1.

⁴ *Id.* at 1 and Appendix 1 page 2.

⁵ *Id.* Pigeon Run will file a permit by rule application for the Solar Facility portion of the Project with the Virginia Department of Environmental Quality ("DEQ") pursuant to Code § 10.1-1197.5 *et seq.* *Id.* at 3.

for Protective Order and Additional Protective Treatment ("Motion for Protective Order") with its Application.

The Company states that it is progressing through the PJM Interconnection, L.L.C. ("PJM") interconnection process.⁶ According to the Application, and based on the results of the PJM studies, the BESS will interconnect to the Virginia Electric and Power Company ("Dominion") system.⁷ The Application states that Pigeon Run is presently consulting with numerous regulatory agencies and in coordination with the DEQ will obtain all necessary environmental permits for the BESS.⁸

As proposed, Pigeon Run would construct, own, and operate the Solar Facility and BESS in Campbell County, Virginia.⁹ Through its Application, Pigeon Run indicates that on August 4, 2020, the Campbell County Board of Supervisors approved a special use permit for the Company's Solar Facility and BESS.¹⁰ The Company represents that the BESS will be located on approximately 1.1 acres within the Project site and that the site is currently used to support agricultural row crops.¹¹ The Application explains that the Company holds an option to purchase the site from a private entity and will exercise the option and purchase the land prior to the

⁶ Application at 8.

⁷ *Id.*

⁸ *Id.* at 5.

⁹ *Id.* at 1.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 5.

commencement of construction activities.¹² As such, Pigeon Run maintains operating control over all real estate required for the BESS.¹³

The Company's target in-service date for the BESS is the third quarter of 2023, which requires construction to begin before the fourth quarter of 2022.¹⁴

Pigeon Run asserts that the BESS is not contrary to the public interest and will not have an adverse effect on the reliability of electric service provided by any regulated public utility.¹⁵ The Company states that the construction and operation of the BESS will promote the public interest by providing economic benefits to the Commonwealth of Virginia ("Commonwealth") and Campbell County.¹⁶ Pigeon Run further states that the Project, including the BESS, will increase renewable energy generation and availability, which has been a key driver in attracting business growth and economic development in the Commonwealth.¹⁷ Pigeon Run represents that it intends to file and certify as an exempt wholesale generator with the Federal Energy Regulatory Commission ("FERC"), and the Company anticipates that FERC will authorize it to sell energy, capacity, and ancillary services at market-based rates.¹⁸ Pigeon Run maintains that the BESS will not make direct retail sales of electricity or provide retail electric service to end users in the Commonwealth.¹⁹ Based on studies conducted by PJM, Pigeon Run indicates that

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.* at Appendix 1 pp. 5-6.

¹⁵ *Id.* at 7, 12, 13, Appendix 1 page 19.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at Appendix 1 page 20.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 8.

the BESS should assure greater reliability of electric service in the local region and would connect to Dominion's transmission system.²⁰

According to the Application, Pigeon Run will obtain all necessary environmental permits and approvals to build and operate the BESS.²¹ The Company indicates that it will continue to engage regulatory agencies with oversight responsibilities for all environmental aspects of the BESS, and those agencies will exercise oversight and apply permitting or regulatory requirements on the construction and operation of the BESS as required.²²

As provided by Code § 62.1-44.15:21 D 2, the Commission and the State Water Control Board must consult on wetland impacts prior to the siting of electric utility facilities that require a Permit. As required by Section 3 of the Department of Environmental Quality – State Corporation Commission Memorandum of Agreement Regarding Wetland Impacts Consultation, the Commission's Staff ("Staff") has advised the DEQ, acting on behalf of the State Water Control Board, that Pigeon Run filed its Application.²³

In addition to consultation on wetlands, Code §§ 10.1-1186.2:1 C; 56-46.1 G, and 56-580 D direct the Commission and DEQ to coordinate the environmental review of proposed generating plants and associated facilities. Moreover, Code § 56-46.1 A provides for the Commission to receive and to consider reports on the proposed facilities from state environmental agencies. Accordingly, the Staff has requested DEQ to coordinate an

²⁰ *Id.* at 7, 8.

²¹ *Id.* at 5.

²² *Id.*

²³ Letter from William H. Harrison, IV, Esquire, State Corporation Commission, March 8, 2021, to David L. Davis, CPWD, PWS, Director, Office of Wetlands & Stream Protection, Department of Environmental Quality, filed in Case No. PUR-2021-00035.

environmental review of the Application by the appropriate agencies and to provide a report on the review.²⁴

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; that the Company should provide public notice of the Application and should serve this Order for Notice and Comment upon appropriate persons; that interested persons should have the opportunity to file comments or request a hearing on the Application; that the Commission's Staff should investigate the Application and file a report; and that the Company should have the opportunity to reply to any such comments or report.

The Commission takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.²⁵ The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding.²⁶

Consistent with these actions, in regard to the terms of the procedural framework established

²⁴ Letter from William H. Harrison, IV, Esquire, State Corporation Commission, March 8, 2021, to Bettina Rayfield, Department of Environmental Quality, filed in Case No. PUR-2021-00035.

²⁵ See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Governor Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

²⁶ See, e.g., *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency Extension of Prior Orders*, Case Nos. CLK-2020-00004 and CLK-2020-00005, Doc. Con. Cen. No. 200520101, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020).

below, the Commission will, among other things, direct the electronic filing of pleadings, unless they contain confidential information, and require electronic service on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUR-2021-00035.

(2) All pleadings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.²⁷

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

²⁷ As noted in the Commission's March 19, 2020 Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency in Case No. CLK-2020-00005, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

(4) As provided by Code § 12.1-31 and Rule 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to rule on any discovery matters that may arise during the course of this proceeding, including the Company's Motion for Protective Order.

(5) An electronic copy of the Application and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Company, Robert F. Riley, Esquire, Williams Mullen, 1666 K Street NW, Suite 1200, Washington, DC 20006, or rriley@williamsmullen.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) On or before April 9, 2021, Pigeon Run shall cause the following notice and sketch map showing the location of the proposed facilities, as shown in Appendix 1, Attachment 6 b to the Application to be published as display advertising (not classified) on one occasion in newspapers of general circulation in Campbell County:

NOTICE TO THE PUBLIC OF
AN APPLICATION BY PIGEON RUN SOLAR, LLC, FOR A
PERMIT TO CONSTRUCT AND OPERATE
AN ENERGY STORAGE FACILITY
CASE NO. PUR-2021-00035

On February 22, 2021, Pigeon Run Solar, LLC ("Pigeon Run" or "Company"), pursuant to 20 VAC 5-335-80 C of the Regulations Governing the Deployment of Energy Storage and Rule 80 A of the Commission's Rules of Practice and Procedure ("Rules of Practice"), filed with the State Corporation Commission ("Commission") an application ("Application") for a permit ("Permit") to construct, own, and operate an approximately 20 megawatt ("MW") battery energy storage system ("BESS"). Pigeon Run was formed as a special purpose entity for the sole purpose of developing, constructing, owning, and operating an approximately 60 MW alternating current photovoltaic solar electric generating project ("Solar Facility") and the associated BESS that is the subject of its Application (collectively, the "Project"). In its Application, Pigeon Run is requesting a Permit from the Commission for the BESS only.

The Company states that it is progressing through the PJM Interconnection, L.L.C. ("PJM") interconnection process. According to the Application, and based on the results of the PJM studies, the BESS will interconnect to the Virginia Electric and Power Company ("Dominion") system. The Application states that Pigeon Run is presently consulting with numerous regulatory agencies and in coordination with the Department of Environmental Quality will obtain all necessary environmental permits for the BESS.

As proposed, Pigeon Run would construct, own, and operate the Solar Facility and BESS in Campbell County, Virginia. Through its Application, Pigeon Run indicates that on August 4, 2020, the Campbell County Board of Supervisors approved a special use permit for the Company's Solar Facility and BESS. The Company represents that the BESS will be located on approximately 1.1 acres within the Project site, and that the site is currently used to support agricultural row crops. The Application explains that the Company holds an option to purchase the site from a private entity and will exercise the option and purchase the land prior to the commencement of construction activities. As such, Pigeon Run maintains operating control over all real estate required for the BESS.

The Company's target in-service date for the BESS is the third quarter of 2023, which requires construction to begin before the fourth quarter of 2022.

Pigeon Run asserts that the BESS is not contrary to the public interest and will not have an adverse effect on the reliability of electric service provided by any regulated public utility. The Company states that the construction and operation of the BESS will promote the public interest by providing economic benefits to the Commonwealth of Virginia ("Commonwealth") and Campbell County. Pigeon Run further states that the Project, including the BESS, will increase renewable energy generation and availability, which has been a key driver in attracting business growth and economic development in the Commonwealth. Pigeon Run represents that it intends to file and certify as an exempt wholesale generator with the Federal Energy Regulatory Commission ("FERC"), and the Company anticipates that FERC will authorize it to sell energy, capacity, and ancillary services at market-based rates. Pigeon Run maintains that the BESS will not make direct retail sales of electricity or provide retail electric service to end users in the Commonwealth. Based on studies conducted by PJM, Pigeon Run indicates that the BESS should assure greater

reliability of electric service in the local region and would connect to Dominion's transmission system.

According to the Application, Pigeon Run will obtain all necessary environmental permits and approvals to build and operate the BESS. The Company indicates that it will continue to engage regulatory agencies with oversight responsibilities for all environmental aspects of the BESS, and those agencies will exercise oversight and apply permitting or regulatory requirements on the construction and operation of the BESS as required.

Description of the Proposed Project

The BESS will be located on approximately 1.1 acres in Campbell County, Virginia, within Pigeon Run's Project site. The BESS facility will be located off Brookneal Highway (State Route 501) in Campbell County - Tax map 0010034955. The site is located at 37.158474 Latitude, -79.055644 Longitude.

The Commission entered an Order for Notice and Comment that, among other things, ordered the Company to provide notice of the Application and provided interested persons the opportunity to comment or request a hearing on the Application.

The Commission has taken judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels. In accordance therewith, all pleadings, briefs, or other documents required to be served in this matter shall be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice. Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission has directed that service on parties and Commission Staff in this matter shall be accomplished by electronic means. Please refer to the Commission's Order for Notice and Comment for further

instructions concerning Confidential or Extraordinarily Sensitive Information.

An electronic copy of the Application and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Company, Robert F. Riley, Esquire, Williams Mullen, 1666 K Street NW, Suite 1200, Washington, DC 20006, or rriley@williamsmullen.com.

On or before May 28, 2021 any interested person may file comments on the Application by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. All comments shall refer to Case No. PUR-2021-00035.

On or before May 10, 2021, any interested person or entity may participate as a respondent by filing, with the Clerk of the Commission at the address above or scc.virginia.gov/clk/efiling/, a notice of participation in accordance with the Commission's Rules of Practice. Notices of participation shall include the email addresses of the party or its counsel. The respondent simultaneously shall serve a copy of the notice of participation on counsel to the Company. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2021-00035. For additional information about participation as a respondent, any person or entity should obtain a copy of the Commission's Order for Notice and Comment.

On or before May 10, 2021, any interested person or entity may file, with the Clerk of the Commission at the address above or scc.virginia.gov/clk/efiling/, a request that the Commission convene a hearing on the Company's Application. Requests for hearing must include the email address of the filer or its counsel, along with: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement for the legal basis for such action; and (iv) a precise statement why the issues raised in the request for a hearing cannot be addressed adequately without a hearing. Any request for hearing simultaneously shall be served

on counsel to the Company. All requests for hearing shall refer to Case No. PUR-2021-00035.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Comment, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

The public version of the Application, the Commission's Rules of Practice, and the Commission's Order for Notice and Comment may be viewed at the Commission's website: scc.virginia.gov/pages/Case-Information.

PIGEON RUN SOLAR, LLC

(7) On or before April 9, 2021, the Company shall serve a copy of this Order for Notice and Comment on the following officials, to the extent the position exists, in each county, city, and town in which the BESS will be constructed: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent official) of every city and town; and the county, city, or town attorney. Service shall be made electronically where possible; if electronic service is not possible, service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served.

(8) On or before April 23, 2021, Pigeon Run shall file proof of the service required by Ordering Paragraphs (6) and (7), including the name, title, address and electronic mail address (if applicable) of each official served, with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, or by filing electronically at scc.virginia.gov/clk/efiling/.

(9) On or before May 28, 2021, any interested person or entity may file comments on the Application by following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. All comments shall refer to Case No. PUR-2021-00035.

(10) On or before May 10, 2021, any person or entity may participate as a respondent in this proceeding by filing, with the Clerk of the Commission at the address in Ordering Paragraph (8) or scc.virginia.gov/clk/efiling/, a notice of participation in accordance with the Commission's Rules of Practice. Such notice of participation shall include the email addresses of such parties or their counsel. The respondent simultaneously shall serve a copy of the notice of participation on counsel to the Company. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2021-00035.

(11) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon such respondent a copy of this Order for Notice and Comment, a copy of the public version of the Application, and all materials filed by Pigeon Run with the Commission unless these materials have already been provided to the respondent.

(12) On or before May 10, 2021, any interested person or entity may file, with the Clerk of the Commission at the address in Ordering Paragraph (8) or scc.virginia.gov/clk/efiling, and in accordance with the Rules of Practice, a request that the Commission convene a hearing on the Company's Application. Requests for hearing must include the email address of the filer or its

counsel, along with: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement for the legal basis for such action; and (iv) a precise statement why the issues raised in the request for a hearing cannot be addressed adequately without a hearing. Any request for hearing simultaneously shall be served on counsel to the Company. All requests for hearing shall refer to Case No. PUR-2021-00035.

(13) The Staff shall investigate the Application. On or before June 7, 2021, the Staff shall file with the Clerk of the Commission its report and exhibits regarding its investigation of the Application.

(14) On or before June 21, 2021, Pigeon Run may file with the Clerk of the Commission a reply to any comments filed on the Company's Application by interested persons or to any response filed by the Commission's Staff.

(15) All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(16) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to

the Staff.²⁸ Except as modified herein, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq.*

(17) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

Robert F. Riley, Esquire, Garland S. Carr, Esquire, and Bradley J. Nowak, Esquire, Williams Mullen, 1666 K Street NW, Suite 1200, Washington, DC 20006, rriley@williamsmullen.com; gcarr@williamsmullen.com, bnowak@williamsmullen.com; Pauline Ung, Legal Vice President, 174 Power Global, 200 Spectrum Center Drive, Irvine, CA 62618, pauline.ung@174powerglobal.com; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424, mbrowder@oag.state.va.us.

²⁸ The assigned Staff attorney is identified on the Commission's website, scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2021-00035, in the appropriate box.