

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 23, 2023

STATE CLERK'S OFFICE
DOCUMENT CONTROL CENTER

230340088

PETITION OF
APPALACHIAN POWER COMPANY

2023 MAR 23 AM 9:17
CASE NO. PUR-2023-00028

For approval of middle-mile broadband
capacity projects pursuant to § 56-585.1:9
of the Code of Virginia

ORDER FOR NOTICE AND HEARING

On March 2, 2023, Appalachian Power Company ("APCo" or "Company") filed a petition ("Petition") with the State Corporation Commission ("Commission"), pursuant to § 56-585.1:9 of the Code of Virginia ("Code"), seeking approval of two new projects to provide broadband capacity to Internet Service Providers ("ISPs") in areas of Virginia that are unserved by broadband.¹ Specifically, APCo requests approval of: (1) a project to provide middle-mile broadband Internet capacity in unserved areas of Patrick, Henry, and Franklin Counties, Virginia (the "PHF Project"); and (2) a project to provide middle-mile broadband Internet capacity in unserved areas of Giles County, Virginia (the "GC Project") (collectively, the "Projects").² Pursuant to Code § 56-585.1:9, the Commission must issue a final order on the Petition within six months of the date of filing.

According to the Petition, with the proposed Projects, APCo seeks to expand middle-mile broadband capacity in the unserved areas of Patrick, Henry, Franklin and Giles Counties.³ The Company states that the areas targeted by the Projects are "unserved by broadband" pursuant to

¹ Petition at 1.

² *Id.*

³ *Id.* at 4.

Code § 56-585.1:9 D.⁴ The Company states that, for the PHF Project, the Virginia Telecommunication Initiative of the Department of Housing and Community Development ("DHCD") has issued a grant or loan to construct a broadband service project within the last 18 months, and the grant or loan recipient is the ISP to which the utility proposes to lease capacity.⁵ The Company further states that, for the GC Project, the DHCD has certified within the last 18 months that the designated area is unserved.⁶

The Company states that the PHF Project entails the installation of approximately 380 miles of 288-strand fiber optic cable on the Company's distribution system, and the GC Project entails the installation of approximately 100 miles of 144-strand fiber optic cable.⁷ The Company states that these installations will also provide a communications platform for APCo's own distribution grid network backhaul requirements.⁸ The Company states that it will lease a portion of the middle-mile broadband infrastructure to RiverStreet Networks of Virginia, the ISP selected by the counties to provide service to unserved areas in Patrick, Henry, and Franklin Counties, and a separate lease to GigaBeam Networks, LLC, as the ISP selected to provide service to unserved areas in Giles County.⁹ APCo states that the estimated capital investment for the PHF Project is approximately \$56.9 million, and the estimated investment for the GC Project

⁴ *Id.* at 5.

⁵ *Id.* (citing Code § 56-585.1:9 D).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Direct Testimony of Amanda C. Cox at 5.

is approximately \$12 million.¹⁰ APCo is not requesting cost recovery through a rate adjustment clause at this time, but expects to do so in a future filing.¹¹

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; APCo should provide public notice of its Petition; public hearings should be scheduled for the purpose of receiving testimony and evidence on the Petition; interested persons should have an opportunity to file comments on the Petition or to participate as respondents in this proceeding; and the Staff of the Commission ("Staff") should be directed to investigate the Petition and file testimony and exhibits containing its findings and recommendations thereon. We also appoint a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission, including filing a final report containing the Hearing Examiner's findings and recommendations.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of testimony and 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-2023-00028.
- (2) All pleadings 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 and Procedure ("Rules of Practice").¹² Confidential and Extraordinarily Sensitive Information shall not be

¹⁰ Petition at 5.

¹¹ *Id.*; Direct Testimony of William K. Castle at 2-3.

¹² 5 VAC 5-20-10 *et seq.*

submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. 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.

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the 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.

(4) As provided by Code § 12.1-31 and 5 VAC 5-20-120, *Procedures before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission, including filing a final report. The Hearing Examiner shall file a final report in this case on or before July 19, 2023. Any comments on such final report shall be filed on or before July 26, 2023. A copy of each filing made with the Commission's Clerk's office in this matter shall also be sent electronically to the Office of the Hearing Examiners.¹³

(5) The Commission hereby schedules a telephonic hearing for the receipt of testimony from public witnesses on the Petition, as follows:

¹³ Such electronic copies shall be sent to: Wendy.Starkey@scc.virginia.gov, LeaAnn.Robertson@scc.virginia.gov, and Kaitlyn.Mcclure@scc.virginia.gov.

- (a) A hearing for the receipt of testimony from public witnesses on the Petition shall be convened telephonically at 10 a.m., on June 27, 2023, with no witness present in the Commission's courtroom.¹⁴
- (b) To promote fairness for all public witnesses, each witness will be allotted five minutes to provide testimony.
- (c) On or before June 22, 2023, any person desiring to offer testimony as a public witness shall provide to the Commission (a) your name, and (b) the telephone number that you wish the Commission to call during the hearing to receive your testimony. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at scc.virginia.gov/pages/Webcasting; (ii) by completing and emailing the PDF version of this form to SCCInfo@scc.virginia.gov; or (iii) by calling (804) 371-9141.
- (d) Beginning at 10 a.m., on June 27, 2023, the Hearing Examiner assigned to this case will telephone sequentially each person who has signed up to testify as provided above. This hearing will not be convened, and the parties will be notified of such, if no person signs up to testify as a public witness.
- (e) This public witness hearing will be webcast at scc.virginia.gov/pages/Webcasting.

(6) A public evidentiary hearing shall be convened on June 28, 2023, at 10 a.m., in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive the testimony and evidence of the Company, any respondents, and the Staff.

(7) An electronic copy of the Company's Petition may be obtained by submitting a written request to counsel for the Company: James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, jrbacha@aep.com or James G. Ritter, Esquire, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219, ritterj@huntonak.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

¹⁴ The Commission will convene counsel of record in this proceeding to attend the public witness hearing virtually.

(8) On or before April 13, 2023, the Company shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Company's service territory within Virginia:

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NOTICE TO THE PUBLIC OF A PETITION BY
APPALACHIAN POWER COMPANY
FOR APPROVAL OF MIDDLE-MILE BROADBAND
CAPACITY PROJECTS PURSUANT TO § 56-585.1:9 OF THE
CODE OF VIRGINIA
CASE NO. PUR-2023-00028

- Appalachian Power Company has applied for approval of two (2) new projects to provide broadband capacity to Internet Service Providers in areas of Virginia that are unserved by broadband.
- The Hearing Examiner appointed to this case will hold a telephonic hearing on June 27, 2023, to receive public witness testimony on this Petition.
- The Hearing Examiner will hold an evidentiary hearing in this case on June 28, 2023.
- Further information about this case is available on the SCC website at:
scc.virginia.gov/pages/Case-Information.

On March 2, 2023, Appalachian Power Company ("APCo" or "Company") filed a petition ("Petition") with the State Corporation Commission ("Commission"), pursuant to § 56-585.1:9 of the Code of Virginia ("Code"), seeking approval of two new projects to provide broadband capacity to Internet Service Providers ("ISPs") in areas of Virginia that are unserved by broadband. Specifically, APCo requests approval of: (1) a project to provide middle-mile broadband Internet capacity in unserved areas of Patrick, Henry, and Franklin Counties, Virginia (the "PHF Project"); and (2) a project to provide middle-mile broadband Internet capacity in unserved areas of Giles County, Virginia (the "GC Project") (collectively, the "Projects"). Pursuant to Code § 56-585.1:9, the Commission must issue a final order on the Petition within six months of the date of filing.

According to the Petition, with the proposed Projects, APCo seeks to expand middle-mile broadband capacity in the unserved areas of Patrick, Henry, Franklin and Giles Counties. The Company states that the areas targeted by the Projects are

"unserved by broadband" pursuant to Code § 56-585.1:9 D. The Company states that, for the PHF Project, the Virginia Telecommunication Initiative of the Department of Housing and Community Development ("DHCD") has issued a grant or loan to construct a broadband service project within the last 18 months, and the grant or loan recipient is the ISP to which the utility proposes to lease capacity. The Company further states that, for the GC Project, the DHCD has certified within the last 18 months that the designated area is unserved.

The Company states that the PHF Project entails the installation of approximately 380 miles of 288-strand fiber optic cable on the Company's distribution system, and the GC Project entails the installation of approximately 100 miles of 144-strand fiber optic cable. The Company states that these installations will also provide a communications platform for APCo's own distribution grid network backhaul requirements.

The Company states that it will lease a portion of the middle-mile broadband infrastructure to RiverStreet Networks of Virginia, the ISP selected by the counties to provide service to unserved areas in Patrick, Henry, and Franklin Counties, and a separate lease to GigaBeam Networks, LLC, as the ISP selected to provide service to unserved areas in Giles County. APCo states that the estimated capital investment for the PHF Project is approximately \$56.9 million, and the estimated investment for the GC Project is approximately \$12 million. APCo is not requesting cost recovery through a rate adjustment clause at this time, but expects to do so in a future filing.

Interested persons are encouraged to review the Petition and supporting documents for the details of these and other proposals.

The Commission entered an Order for Notice and Hearing in this proceeding that, among other things, scheduled public hearings on APCo's Petition. On June 27, 2023, at 10 a.m., the Hearing Examiner assigned to this case will hold a telephonic hearing, with no witness present in the Commission's courtroom, for the purpose of receiving the testimony of public witnesses. On or before June 22, 2023 any person desiring to offer testimony as a public witness shall provide to the Commission (a) your name, and (b) the telephone number that you wish the Commission to call during the hearing to receive your testimony. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at

scc.virginia.gov/pages/Webcasting; (ii) by completing and emailing the PDF version of this form to SCCInfo@scc.virginia.gov; or (iii) by calling (804) 371-9141. This public witness hearing will be webcast at scc.virginia.gov/pages/Webcasting.

On June 28, 2023, at 10 a.m., in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, the Hearing Examiner will convene a hearing to receive testimony and evidence related to the Petition from the Company, any respondents, and the Commission's Staff ("Staff").

To promote administrative efficiency and timely service of filings upon participants, 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 and Procedure ("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. 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 the Commission's Staff in this matter shall be accomplished by electronic means. Please refer to the Commission's Order for Notice and Hearing for further instructions concerning Confidential or Extraordinarily Sensitive Information.

An electronic copy of the Company's Petition may be obtained by submitting a written request to counsel for the Company: James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, jrbacha@aep.com; or James G. Ritter, Esquire, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219, ritterj@huntonak.com.

On or before June 21, 2023, any interested person may file comments on the Petition by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those

unable, as a practical matter, to submit comments electronically may file such comments with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00028.

On or before April 28, 2023, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation at scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may file such notice by U.S. mail with the Clerk of the Commission at the address listed above. 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 Rule 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2023-00028.

On or before May 11, 2023, each respondent may file with the Clerk of the Commission, at scc.virginia.gov/clk/efiling, any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable, as a practical matter, to file testimony and exhibits electronically may file such by U.S. mail with the Clerk of the Commission at the address listed above. Each witness's testimony shall include a summary not to exceed one page. All testimony and exhibits shall be served on the Staff, the Company, and all other respondents simultaneous with its filing. In all filings, respondents shall comply with the Commission's Rules of Practice, including 5 VAC 5-20-140, *Filing and service*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2023-00028.

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 Hearing, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

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

APPALACHIAN POWER COMPANY

(9) On or before April 13, 2023, the Company shall serve a copy of this Order for Notice and Hearing on the following local officials, to the extent the position exists, in each county, city, and town in which the Company provides service in the Commonwealth of Virginia: 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.

(10) On or before April 28, 2023, the Company shall file proof of the notice and service required by Ordering Paragraphs (8) and (9) above, including the name, title, address, and electronic mail address (if applicable) of each official served, with the Clerk of the Commission at scc.virginia.gov/clk/efiling.

(11) On or before June 21, 2023, any interested person may submit comments on the Petition by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00028.

(12) On or before April 28, 2023, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation at

scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may file such notice by U.S. mail with the Clerk of the Commission at the address listed in Ordering Paragraph (11). 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-2023-00028.

(13) Within three (3) business days of receipt of a notice of participation as a respondent, the Company shall serve a copy of the Petition and supporting materials on the respondent, unless these already have been provided to the respondent.

(14) On or before May 11, 2023, each respondent may file with the Clerk of the Commission at scc.virginia.gov/clk/efiling, any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable, as a practical matter, to file testimony and exhibits electronically may file such by U.S. mail with the Clerk of the Commission at the address listed in Ordering Paragraph (11). Each witness's testimony shall include a summary not to exceed one page. In all filings, respondents shall comply with the Commission's Rules of Practice, as modified herein, including, but not limited to: 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2023-00028.

(15) On or before May 25, 2023, the Staff shall investigate APCo's Petition and file with the Clerk of the Commission its testimony and exhibits concerning the Petition. Each Staff witness's testimony shall include a summary not to exceed one page. A copy of the Staff's testimony shall be served on counsel to the Company and all respondents.

(16) On or before June 8, 2023, APCo shall file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer. Each rebuttal witness's testimony shall include a summary not to exceed one page. The Company shall serve a copy of its rebuttal testimony and exhibits on the Staff and all respondents.

(17) 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, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(18) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories 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.¹⁵ 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.*

(19) This matter is continued.

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.

¹⁵ 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-2023-00028, in the appropriate box.