



November 27, 2017

Mr. Joel H. Peck, Clerk
State Corporation Commission
c/o Document Control Center
P.O. Box 2118
Richmond, VA 23218-2118

RE: Public Comments of the Retail Energy Supply Association
*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

Dear Mr. Peck:

On May 9, 2017, Virginia Electric and Power Company ("Dominion" or "Company") filed with the State Corporation Commission ("Commission") an application ("Application") pursuant to §§ 56-577 A 5 and 56-234 of the Code of Virginia ("Code") for approval of what it characterizes as six new renewable energy tariffs whereby existing or new non-residential customers with peak measured demands of 1,000 kilowatts or greater can voluntarily elect to purchase 100% of their energy needs from renewable energy resources. These proposed "tariffs" are collectively designated the "CRG Rate Schedules." Dominion requests that the CRG Rate Schedules be approved as 100% renewable energy tariffs under Va. Code § 56-577 A 5. While the CRG Rate Schedules would only apply to customers with peak demands above 1 MW, Dominion has also requested approval to offer a similar program for residential customers.¹

Ordering Paragraph (9) of the Commission's June 1, 2017, Order for Notice and Hearing provided that, on or before October 11, 2017, any interested person may file written comments with the Commission Clerk. The Hearing Examiner assigned to this case, in a September 11, 2017, Ruling, extended the deadline for written comments until November 27, 2017. Pursuant to the Commission's June 1 Order, and the Hearing Examiner's September 11 Ruling, the Retail Energy Supply Association ("RESA")² submits the following comments.

¹ See Case No. PUR-2017-00157.

² The comments expressed in this filing represent the position of the Retail Energy Supply Association as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to

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I. Introduction

For the reasons described below, RESA requests that the Commission deny Dominion's Application. Importantly, the CRG Rate Schedules do not contain a price and lack other critical terms. Therefore, RESA does not believe there is an evidentiary basis upon which the Commission could find the CRG rates to be "just and reasonable" as required by law. The CRG Rate Schedules also contain unreasonable and undefined administrative fees, including a proposal to recover a margin, equal to the Company's most recently approved rate of return on common equity ("ROE"), applied to any purchased power costs ("PPA" costs).

The CRG Rate Schedules, by Dominion's own admission, represent a novel and "untested"³ approach to providing renewable generation to customers. Yet the CRG Rate Schedules, if approved, would likely prohibit the majority of Dominion's customers from exercising their existing statutory right to shop for competitive generation supply pursuant to Va. Code § 56-577 A 5. RESA asserts that the clear statutory rights of Dominion's customers to purchase 100% renewable energy should not be rescinded based on an "untested" program, with numerous flaws, that may never be used by Dominion's customers.

II. The CRG Rate Schedules do not constitute "tariffs" that could be approved by the Commission.

As a preliminary matter, the CRG Rate Schedules do not constitute "tariffs" or "rates" that could be approved or rejected by the Commission. There is no price or defined product associated with the proposal. Dominion's Application simply states that the Company will "endeavor" to find and secure appropriate renewable resources on behalf of a participating customer.⁴ Dominion will also negotiate the PPA rate on behalf of a participating customer, which will include a margin equal to the Company's most recently authorized ROE. Customers will not be guaranteed to receive a particular type of resource from a particular geographic region. The Application does not even include a price per kWh or a formula or cost structure by which a price per kWh could be determined.⁵

promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

³ Morgan Rebuttal at 6.

⁴ See, e.g., Application at 13.

⁵ Dominion witness Morgan offered a rate formula in his rebuttal testimony.

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Instead of a rate, or even a methodology for determining a rate, Dominion's Application merely conveys an invitation for customers to negotiate a special contract with Dominion. While the CRG Rate Schedules may provide a limited framework for such negotiations, the CRG Rate Schedules cannot be characterized as an "offer" or a "tariff" for renewable energy. Direct Energy Services, LLC ("Direct") witness Lacey correctly describes the proposal as "nothing more than an offer to customers to engage in a negotiation process with Dominion and one or more other renewable energy suppliers to develop a portfolio of renewable energy resources."⁶

In this respect, Dominion's Application provides even less specificity than the renewable energy tariff proposed by Appalachian Power Company ("APCo"), which the Commission rejected in Case No. PUE-2016-00051 ("Rider REO"). Like Dominion, APCo proposed a renewable energy offering under Va. Code § 56-577 A 5. Rider REO contained a defined price per kWh and specified the renewable energy resources from which customers would receive power. However, the Commission rejected Rider REO on September 13, 2017, after finding that APCo had not demonstrated that Rider REO would result in just and reasonable rates for customers. The Commission stated that, "[t]he fact that Rider REO is voluntary does not render the proposed rate reasonable as a matter of law."⁷ Unlike APCo's proposal, Dominion's Application does not even provide a price or type of generation resource, and it omits many terms and conditions of service. Therefore, Dominion's Application provides *even less* of an evidentiary basis upon which the Commission could approve its renewable energy proposal.

RESA supports the Motion to Dismiss filed by Direct on July 26, 2017.⁸ As Direct notes, "[t]here is simply no way that the Commission could determine that the unstated and yet-to-be-negotiated rates that Dominion will charge would be reasonable and just" or in "the public interest." Dominion's Application, lacking critical terms and conditions, does not present a record upon which it could be approved. While the Commission is given broad latitude to make findings of fact in cases such as this, all such findings should be based on *some* evidence in the record.⁹ In this case, Dominion has presented none. Because the Commission has not been requested to approve any particular rate or offering, there is no way for the Commission determine that such future rates would be just and reasonable.

⁶ Direct Testimony of Frank Lacey at 7.

⁷ PUE-2016-00051, Final Order at 6, note 21.

⁸ Direct's Motion is currently pending.

⁹ See *Board of Supervisors v. Appalachian Power Co.*, 216 Va. 93, 105 (Va. 1975).

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Direct correctly notes that, “Dominion actually seeks nothing more than the ability it already has to enter into special contracts, but with added ‘benefits’ of avoiding Commission oversight while eliminating competition.”¹⁰

The fact that the CRG Rate Schedules would be voluntary should have no bearing on the Commission’s consideration of whether those rates are just and reasonable. Dominion appears to believe – incorrectly – that the CRG Rate Schedules are just and reasonable simply by virtue of the fact that they would be voluntary. This is incorrect. And in denying APCo’s proposal, the Commission noted that “[t]he fact that Rider REO is voluntary does not render the proposed rate reasonable as a matter of law.”¹¹ The Commission also has a general duty under several provisions of the Code of Virginia to ensure that all rates charged to customers are just and reasonable.¹²

Finally, RESA notes that some customers now have corporate sustainability goals that require that they purchase and utilize *only* 100% renewable energy. For these customers – and to the extent that approval of Dominion’s Application may foreclose retail competition – the CRG Rate Schedules would not be voluntary. They would be mandatory for such customers, representing their only option to purchase 100% renewable energy.

III. Approval of the CRG Rate Schedules would likely eliminate competitive supply options for most Virginia customers.

The Code of Virginia contains two exceptions to the exclusive franchise rights of monopoly utilities such as Dominion. First, Va. Code § 56-577 A 3 authorizes individual retail customers (or a group of retail customers) with peak load of 5 MW or more to shop for competitive generation supply. Second, Va. Code § 56-577 A 5 authorizes any retail customer to purchase 100% renewable energy from a supplier licensed to do business in Virginia, so long as their incumbent utility does not offer an approved tariff for 100% renewable energy. The General Assembly, therefore, has clearly expressed its support for retail choice in certain circumstances.

If Dominion’s proposal is approved and found to constitute a 100% renewable energy tariff, Dominion’s retail customers would lose their existing right to purchase renewable energy from competitive suppliers.

¹⁰ Direct Energy Motion to Dismiss at 1.

¹¹ PUE-2016-00051, Final Order at 6, note 21.

¹² See, e.g., Va. Code §§ 56-234, 56-235.2.

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RESA believes that rights conferred by the General Assembly should not be rescinded without substantial evidence that a renewable energy tariff proposal is reasonable, in the public interest, and will actually be utilized by customers. Dominion's Application does not satisfy this standard.

IV. Dominion's proposal to recover a return on equity on PPA costs is unreasonable, contrary to general utility practice, and does not reflect the risk faced by the Company.

Dominion's Application also proposes to recover a margin equal to its most recently authorized rate of return on common equity ("ROE") on purchased power costs and the costs of new facilities used to serve CRG customers. The Application states that, "[t]o the extent that the CRG Portfolio includes PPAs, the Company proposes to base its rate on the purchased power costs plus a margin equal to the Company's most recently-approved return on equity."¹³ This would be a departure from how purchased power costs are traditionally recovered. Purchased power costs are recovered through each utility's fuel factor, pursuant to Va. Code § 56-249.6. PPA costs, like fuel, are recovered on a dollar-for-dollar basis, with no rate of return markup applied, because the utility purchasing the power typically does not deploy any capital or face any serious risk.¹⁴

Dominion, however, does not present any justification for why CRG PPA costs should be treated differently from all other purchased power costs. Dominion will not deploy any capital when negotiating a PPA on behalf of a customer. Because any renewable energy seller will also require a profit return, Dominion's proposal would require a participating customer to pay rates that include *two* rates of return – one for the seller and one for Dominion.

Moreover, Dominion proposes to apply "its most recently-approved" ROE to the CRG contract costs. Thus, Dominion seeks to have CRG rates calculated based on an ROE determined in a wholly different context. Such a rate determination could not result in just and reasonable rates. For example, the most recently approved ROE could be an ROE for a generation facility that includes a rate of return bonus pursuant to Va. Code 56-585.1 A 6. In its February 27, 2017, Final Order in Case No. PUE-2016-00059, the Commission authorized an ROE of 11.4% for Dominion's Rider B RAC. This ROE is based on a cost of capital analysis undertaken by the Commission, but also includes a 200 basis points bonus pursuant to Va. Code 56-585.1 A 6.

¹³ Application at 6.

¹⁴ The SCC has repeatedly stated that the fuel factor statute, Va. Code § 56-249.6, "permits *dollar for dollar* recovery of prudently incurred fuel costs." See SCC Case No. PUE-2011-00045, Order Establishing Fuel Factor at pp. 3-4 (June 27, 2011) (emphasis original).

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Whether a particular rate of return is just and reasonable depends on the risk faced by the utility.¹⁵ Dominion, to the extent that it enters into PPAs to support the CRG Rate Schedules, will deploy no capital and face little investment risk. It is not appropriate for a rate of return determined in a different context to be applied to the CRG Rate Schedules.

V. The undefined fees associated with the CRG Rate Schedules are unreasonable.

In addition to a margin or ROE, Dominion also proposes to recover several categories of fees from customers participating the CRG Rate Schedules. Dominion states that each customer will pay a “negotiated administrative fee to reflect the Company’s additional billing and contracting expenses.”¹⁶ Dominion’s Application contains no details regarding how this fee will be negotiated or determined. All customers must also pay a \$2,000 non-refundable “application fee” to apply for participation in the program, which is intended to “defray the Company’s costs related to the enrollment and solicitation process.” It is not clear why both fees are necessary, especially considering that Dominion’s Application states that “the Company has significant experience and contacts in the wholesale renewable energy markets within PJM, and therefore is well-suited to identify and transact for the renewable energy supply requested by a participating customer.”¹⁷ Moreover, as noted by Direct witness Lacey, it appears that most of these administrative and procurement costs would already be recovered through current base rates.¹⁸

VI. The CRG Rate Schedules are not necessary.

Finally, the CRG Rate Schedules are simply not necessary. Dominion already has the ability to enter into special rate contracts with individual customers. Virginia Code Section 56-235.2 provides that “the Commission may approve ... special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest.” Virginia Code Section 56-234(B) also authorizes “experiments involving the use of special rates.” Dominion has received approval to offer 100% renewable energy under special contracts to Amazon and to the Commonwealth of Virginia.¹⁹ Dominion has also received

¹⁵ The U.S. Supreme Court has held that “whether a particular rate is ‘unjust’ or ‘unreasonable’ will depend to some extent on what is a fair rate of return given the risks under a particular rate setting system.” *Duquesne Light Company v. Barasch*, 488 U.S. 299, 310 (1989).

¹⁶ Application at 6-7.

¹⁷ Application at 5.

¹⁸ Direct Testimony of Frank Lacey at 13-14.

¹⁹ See Case No. PUE-2016-00079.

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Commission approval to offer a 100% renewable generation tariff, Schedule RG, and a voluntary customer purchase option through which a customer usage is offset by the purchase of renewable energy certificates.²⁰ And on October 24, 2017, Dominion requested approval of yet another experimental renewable energy tariff, designated Schedule RF, which would serve commercial customers with 100% renewable energy.²¹

Therefore, the Code of Virginia provides Dominion many options to serve customers with renewable energy – without foreclosing retail choice in the Commonwealth.

VII. Conclusion

For the reasons described herein, RESA requests that the Commission deny Dominion's Application. The proposed CRG Rate Schedules contain unreasonable fees, may not allow customers to choose their preferred resource, and are unlikely to be used by customers. Approval would also prevent customers from purchasing renewable energy from competitive suppliers – a right that was expressly conferred by the General Assembly when it enacted Va. Code § 56-577 A 5 in 2007. The Commission should not permit the "untested" and unreasonably priced program to deprive customers of their existing rights to purchase renewable energy. The CRG Rate Schedules are contrary to the public interest and should be denied.

Sincerely,

/s/ Tracy McCormick

Executive Director
Retail Energy Supply Association

²⁰ See Dominion Energy Green Power Program, available at <https://www.dominionenergy.com/home-and-small-business/ways-to-save/renewable-energy-programs/dominion-energy-green-power>.

²¹ Case No. PUR-2017-00137.