COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 2, 2018

APPLICATION OF

APPALACHIAN POWER COMPANY

CASE NO. PUR-2017-00031

For a rate adjustment clause pursuant to
§ 56-585.1 A 6 of the Code of Virginia

FINAL ORDER

On July 5, 2017, Appalachian Power Company ("APCo" or "Company"), pursuant to § 56-585.1 A 6 of the Code of Virginia ("Code"), filed with the State Corporation Commission ("Commission") an application ("Application") seeking approval of a rate adjustment clause to recover costs associated with the Company's proposed acquisition of the Beech Ridge II and Hardin wind generation facilities (collectively, "Wind Facilities") being constructed in West Virginia and Ohio, respectively.

On July 27, 2017, the Commission issued an Order for Notice and Hearing in this proceeding that, among other things, docketed the Application, scheduled a public hearing on the Application, required APCo to publish notice of its Application, gave interested persons the opportunity to comment on or participate in the proceeding, and appointed a Hearing Examiner to rule on all discovery matters that arose during the course of the proceeding.

Notices of participation were filed by the VML/VACo APCo Steering Committee ("Steering Committee"),[1] the Old Dominion Committee for Fair Utility Rates ("Committee"),[2]

[1] The Steering Committee was established by the Virginia Municipal League and the Virginia Association of Counties, and it is comprised of "representatives of local governments and other political subdivisions of the Commonwealth served by the Company." Steering Committee Notice of Participation at 1.

[2] The "members of the Committee are customers of [APCo]." Committee Notice of Participation at 1.

Steel Dynamics, Inc. ("SDI"), and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). On December 5, 2017, the Committee and SDI filed the testimony of their respective witnesses. On December 19, 2017, the Staff of the Commission ("Staff") filed the testimony of its witnesses. On January 16, 2018, APCo filed its rebuttal testimony. On February 1, 2018, the Committee filed a Motion to Dismiss ("Motion") and Brief in Support of its Motion to Dismiss.

The Commission convened the public hearing on February 6, 2018, to receive public witness testimony and evidence on the Company's Application from Staff, respondents, and the Company. No public witnesses appeared.[3] The Commission received testimony from witnesses on behalf of the participants and admitted evidence on the Application. On March 9, 2018, the Company, the Steering Committee, the Committee, SDI, Consumer Counsel and Staff filed post-hearing briefs.

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds that the Application is denied. Put simply, the capacity and energy from these generating facilities is not needed by APCo to serve its Virginia customers. Thus, we find that it is neither reasonable nor prudent for APCo to acquire the Wind Facilities and then recover the costs from Virginia customers based on the record before us. Accordingly, we do not approve the rate adjustment clause requested in this proceeding.

Code of Virginia

Section 56-585.1 A 6 of the Code states in part as follows:

> 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates,

[3] Tr. 12.

> petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of . . . (ii) one or more other generation facilities . . . . A utility that constructs or makes modifications to any such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below . . . . A utility seeking approval to construct or purchase a generating facility described in clause (i) or (ii) shall demonstrate that it has considered and weighed alternative options, including third-party market alternatives, in its selection process.

In addition, Code § 56-585.1 A 7 provides, among other things:

> Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility.

Finally, § 56-585.1 D provides:

> The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources, the Commission shall consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and shall also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by consumers.

Need

We find that the Company has failed to establish that the Wind Facilities are needed at this time.[4] Without such a need, it is neither reasonable nor prudent for APCo to recover the costs of the Wind Facilities from its Virginia customers through a rate adjustment clause.

We agree with Consumer Counsel and the Steering Committee that the evidence demonstrates APCo does not have a current need for capacity and is expected to continue to have sufficient capacity to serve its native load until 2026.[5] Indeed, APCo does not assert a capacity need for the Wind Facilities.[6] Rather, APCo asserts that the Wind Facilities are needed to provide a lower cost source of energy compared to purchases from the PJM Interconnection, L.L.C. ("PJM"), wholesale market, particularly during the winter months when APCo traditionally experiences its peak demand.[7]

Based on the record in this case, we find that APCo has not established that the Wind Facilities are needed to address an energy deficiency. APCo does not assert, for example, that it is without access to sufficient energy to serve its native load.[8] The record shows that APCo is a winter-peaking utility with access to purchases through PJM, a summer-peaking regional transmission organization, which allows APCo access to excess energy during the winter months

[4] APCo's Application was filed pursuant to Code § 56-585.1 A 6 and we have evaluated it under that statute. APCo does not request approval to include the Wind Facilities in its Renewable Portfolio Standard ("RPS") program, *see* Ex. 3 (Castle direct) at 8, and accordingly, the Commission has not evaluated the Application under the standards set forth in Code § 56-585.2. Notwithstanding, APCo acknowledges that "the Company does not plan (or need) to incorporate the Wind Facilities into its RPS generation portfolio at this time." *See* APCo Post-hearing Brief at 7.

[5] *See, e.g.,* Ex. 24 (Samuel) at 6; Ex. 37 (Torpey rebuttal) at 5; Consumer Counsel Post-hearing Brief at 6-8; Staff Post-hearing Brief at 9-10; Steering Committee Post-hearing Brief at 6-7.

[6] *See, e.g.,* Ex. 24 (Samuel) at Attachment AFS-1 (APCo's Response to Staff Interrogatory No. 1-26); Tr. 44-45.

[7] *See, e.g.,* Ex. 2 (Application) at 2-3, 5; Ex. 3 (Castle direct) at 4-5, 7-8; Ex. 24 (Samuel) at Attachment AFS-1 (APCo's Response to Staff Interrogatory No. 1-26).

[8] *See, e.g.,* Staff Post-hearing Brief at 11.

when PJM is off-peak.[9] Nor has APCo established that the Wind Facilities are likely to provide energy at a lower overall cost to customers. The record calls into question APCo's forecasted energy and natural gas prices used to support its economic analysis of the Wind Facilities.[10] APCo's forecasted energy and natural gas prices appear to be inflated when compared to the current market and other independent forecasts.[11] For example, APCo forecasts natural gas prices (Henry Hub) at $4.89/MMBtu for 2018, compared to EIA's forecast of $2.88/MMBtu for 2018.[12] Incorporating inflated forecasts of energy and natural gas prices results in overstated customer benefits in APCo's economic analysis.[13] In addition, APCo's updated economic analysis presented in rebuttal shows a significant reduction in the level of proffered benefits as a result of the passage of the federal Tax Cuts and Jobs Act.[14] In reaching our decision, we fully considered that one of the benefits of the Wind Facilities is qualification for the Production Tax Credit, the value of which is incorporated into the Company's economic analysis.[15]

Based on the record in this case, we also find that APCo has not established the Wind Facilities are needed at this time as a hedge against market volatility. The record reflects that APCo conducted no analysis of the costs and benefits of such a hedge, and thus did not establish

[9] *See, e.g.*, Ex. 31 (Abbott) at 8.

[10] *See, e.g.*, Ex. 25 (Johnson) at Summary Report & Findings, pp. 7-15.

[11] *See, e.g., id.*; Ex. 13.

[12] *See, e.g.*, Ex. 10 (Bletzacker direct) at Schedule 1, p. 3; Ex. 13.

[13] *See, e.g.*, Tr. 47.

[14] Pub. L. No. 115-97, 131 Stat. 2054 (2017). *See, e.g.*, Ex. 14ES (Torpey direct) at Schedules 2-5; Ex. 37ES (Torpey rebuttal) at Schedules 1-4; Staff Post-hearing Brief at 18-19.

[15] *See, e.g.*, Tr. 48.

that these Wind Facilities provide a superior hedge compared to other available alternatives.[16] Moreover, as noted above, APCo has access to the PJM market, particularly during the winter months when APCo experiences its peak, which provides a hedge against PJM peak prices occurring during the summer months.

Other Statutory Requirements, the Committee's Motion and Cost Allocation

Having found that it is neither reasonable nor prudent under Virginia law for APCo to acquire the Wind Facilities based on the record before us, we need not make findings related to the other statutory requirements attendant to this Application, including consideration of alternatives. Similarly, we do not reach the merits of the Committee's Motion, nor do we reach cost allocation issues raised by the participants.

Senate Bill 966

Finally, the Commission takes judicial notice of Senate Bill 966 ("SB 966"), which was passed by the 2018 Regular Session of the Virginia General Assembly and signed into law by the Governor.[17] SB 966 includes a legislative predetermination that the construction or purchase of power generated from solar or wind generating facilities up to certain quantities is "in the public interest," and the Commission is mandated to make such a finding in applicable cases.[18] SB 966 does not take effect until July 1, 2018, and whether SB 966 would affect the outcome of this Application was not considered herein. There are at least two issues that may be pertinent if raised in future cases in which SB 966 is applicable for the construction or purchase of wind

[16] *See, e.g.,* Tr. 243-244; Tr. 280.

[17] SB 966 was signed into law by the Governor on March 9, 2018, and is effective July 1, 2018. 2018 Va. Acts Ch. 296.

[18] *See* 2018 Va. Acts Ch. 296, Code §§ 56-585.1 A 6, 56-585.1:1 G, 56-585.1:4. *See also* Enactment Clause 14.

power such as proposed in this proceeding: first, whether SB 966's solar and wind mandate provisions require this Commission to approve wind or solar projects regardless of any finding as to need; and, second, whether the language in SB 966 restricting the benefit of the solar and wind mandate only to facilities that are "located in the Commonwealth [of Virginia]"[19] (thus denying the benefit of the solar and wind mandate to out-of-state facilities such as APCo proposes in this Application) represents a violation of the United States Constitution under the United States Supreme Court's "dormant Commerce Clause" jurisprudence.[20] Neither of these issues were litigated herein.

Accordingly, IT IS ORDERED THAT the Application is denied and this matter is dismissed.

AN ATTESTED COPY hereof shall be sent 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 State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[19] *See* 2018 Va. Acts Ch. 296, Code §§ 56-585.1 A 6, 56-585.1:1 G, 56-585.1:4.

[20] *See, e.g., Illinois Commerce Comm'n v. Federal Energy Regulatory Comm'n*, 721 F.3d 764, 776 (7th Cir. 2013) ("Michigan cannot, without violating the commerce clause of Article I of the Constitution, discriminate against out-of-state renewable energy.") (Opinion by Posner, J.,); *see also Wyoming v. Oklahoma*, 502 U.S. 437 (1992) (striking down Oklahoma law mandating that coal-fired generating plants use at least ten percent Oklahoma-mined coal). *Cf. Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity to construct and operate an electric generation facility in Wise County, Virginia, and for approval of a rate adjustment clause under §§ 56-585.1, 56-580 D, and 56-46.1 of the Code of Virginia*, Case No. PUE-2007-00066, 2008 S.C.C. Ann. Rept. 385, 388, Final Order (Mar. 31, 2008) ("[T]he Virginia statute is factually distinct from the Oklahoma statute found unconstitutional in *Wyoming v. Oklahoma*...."); *Appalachian Voices, et al. v. State Corp. Comm'n*, 277 Va. 509, 519-520 (2009) (affirming SCC decision in PUE-2007-00066) ("Simply stated, the statute in question does not require – and the Commission did not order – that any amount of Virginia coal be used in the proposed coal-fired plant," and "even if the challenged provisions of [the Code] were found to violate the Commerce Clause, severance of the allegedly impermissible language would save the statute from invalidation.").