

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
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PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2019-00117

For a declaratory judgment

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2019-00118

For a declaratory judgment

FINAL ORDER

On July 15, 2019, Virginia Electric and Power Company ("Dominion" or "Company") filed a Petition for Declaratory Judgment with the State Corporation Commission ("Commission") seeking a determination that: (i) a competitive service provider ("CSP") must have control of sufficient renewable generation resources, including renewable capacity and associated renewable energy, to enable it to provide the full load requirements of the customers it intends to serve pursuant to Code § 56-577 A 5 ("Section A 5"); and (ii) Direct Energy Business, LLC ("Direct Energy"), a CSP seeking to serve customers in Dominion's service territory, has not satisfactorily demonstrated that it can provide "electric energy provided 100 percent from renewable energy" as required by Section A 5. This Petition for Declaratory Judgment is docketed as Case No. PUR-2019-00117.

On July 16, 2019, Dominion filed a separate Petition for Declaratory Judgment with the Commission seeking a determination that: (i) a CSP must have control of sufficient renewable generation resources, including renewable capacity and associated renewable energy, to enable it to provide the full load requirements of the customers it intends to serve pursuant to Section A 5;

and (ii) Calpine Energy Solutions, LLC ("Calpine"), a CSP seeking to serve customers in Dominion's service territory, has not satisfactorily demonstrated that it can provide "electric energy provided 100 percent from renewable energy" as required by Section A 5. This Petition for Declaratory Judgment is docketed as Case No. PUR-2019-00118.

On July 22, 2019, Direct Energy filed a motion for temporary injunctive relief and expedited action ("Direct Energy Motion") in Case No. PUR-2019-00117.

On July 22, 2019, Calpine filed a motion for temporary injunctive relief and expedited action ("Calpine Motion") in Case No. PUR-2019-00118.

On July 23, 2019, the Commission issued orders docketing these cases and establishing dates for responses and replies to the Direct Energy and Calpine Motions.

On July 25, 2019, the Commission issued orders that, among other things, scheduled hearings on the Direct Energy and Calpine Motions for August 7, 2019.

On or before July 31, 2019, in Case No. PUR-2019-00117, notices of participation were filed by Telco Pros, Inc.,<sup>1</sup> and the Renewable Energy Buyers Alliance ("REBA").

On or before July 31, 2019, in Case No. PUR-2019-00118, notices of participation were filed by Costco Wholesale Corporation ("Costco"), The Kroger Co. ("Kroger"), and REBA.

On August 7, 2019, hearings on the Direct Energy and Calpine Motions were convened as scheduled.

On August 8, 2019, the Commission issued a scheduling order that, among other things: established a deadline for any additional notices of participation; permitted briefs to be filed on or before August 16, 2019; and scheduled a hearing for August 20, 2019, to address any factual

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<sup>1</sup> The Commission grants the unopposed motion by Telco Pros, Inc., to accept its Amended August 6, 2019 Reply out of time.

assertions contained in the pleadings to the extent such were not already presented during the August 7, 2019 hearings.

On or before August 16, 2019, the following filed briefs in Case No. PUR-2019-00117: Dominion; Direct Energy; REBA; and Commission Staff ("Staff").

On or before August 16, 2019, the following filed briefs in Case No. PUR-2019-00118: Dominion; Calpine; Costco; Kroger; REBA; and Staff.

On August 20, 2019, the hearing was convened as scheduled, at which the following participated: Dominion; Direct Energy; Calpine; Costco; Kroger; REBA; and Staff.

On August 21, 2019, the Commission issued an Order on Enrollments, which ordered the Company immediately to resume processing enrollment requests under Section A 5 for customers who wish to purchase from Direct Energy or Calpine, pending the Commission's Final Order in these dockets.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Code of Virginia

Section A 5 states in full (emphases added):

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.

For purposes herein, Code § 56-576 defines "renewable energy" as follows:

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

### Petitions for Declaratory Judgment

The Petitions for Declaratory Judgment expressly request that the Commission enter an order:

- (A) confirming that, for a [CSP] to serve customers under Section A 5, it must have control of sufficient renewable generation resources, including renewable capacity and associated renewable energy, to enable it to serve the full load requirements of the customers it intends to serve consistent with the standard approved by the Commission for [Appalachian Power Company ("APCo")] in the Rider WWS Order;<sup>2</sup>
- (B) declaring that [Direct Energy and Calpine have] not satisfactorily demonstrated that [they] can serve customers "electric energy provided 100 percent from renewable energy" pursuant to Section A 5; and
- (C) providing any other relief as the Commission may deem appropriate.<sup>3</sup>

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<sup>2</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").

<sup>3</sup> Petitions for Declaratory Judgment at 16-17.

## Analysis

First, as always, the Commission starts with the relevant statute, which in this instance is Code § 56-577. In this regard, "[f]or purposes of implementing retail choice under Code § 56-577, the Commission exercises a legislative function delegated to it by the General Assembly."<sup>4</sup> As explained by the Supreme Court of Virginia, "[w]hen 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 statute."<sup>5</sup>

For example, the Commission has previously exercised such discretion in aggregation cases under Code § 56-577 A 4,<sup>6</sup> as well as under Section A 5 (discussed further below). As also explained by the Court, and "[a]s the Commission observed, [the differences in the retail choice provisions in Code § 56-577] 'simply reflect different requirements imposed by the General Assembly for different competitive purchase options explicitly permitted by statute.'"<sup>7</sup> As a result, the Commission exercises its discretionary authority given to it by the General Assembly under the specific – and unique – conditions attendant to each of the separate retail choice provisions within Code § 56-577.

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<sup>4</sup> *Appalachian Power Company v. Collegiate Clean Energy, LLC*, Case No. PUR-2018-00039, 2018 S.C.C. Ann. Rept. 382, 384, Final Order (Sept. 21, 2018).

<sup>5</sup> *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 284 Va. 726, 741 (2012). See also *City of Alexandria v. State Corp. Comm'n*, 296 Va. 79, 94 (2018).

<sup>6</sup> See, e.g., *Petition of Costco Wholesale Corporation, 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-2018-00088, Doc. Con. Cen. No. 190560108, Final Order (May 30, 2019); *Petitions of Wal-mart Stores East, LP, 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 Nos. PUR-2017-00173, PUR 2017-00174, Doc. Con. Cen. Nos. 190230080, 190230081, Final Order (Feb. 25, 2019); *Petition of Reynolds Group Holdings 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-2017-00109, 2018 S.C.C. Ann. Rept. 255, Opinion (May 16, 2018).

<sup>7</sup> *Virginia Elec. and Power Co. v. State Corp. Comm'n*, 295 Va. 256, 266 (2018).

For purposes of the instant proceedings, Section A 5 does not address every parameter attendant to purchasing "electric energy provided 100 percent from renewable energy." Thus, in prior decisions under Section A 5, the Commission appropriately exercised its sound discretion related thereto. Indeed, Dominion acknowledges this paradigm and likewise concludes that there is no "doubt that the Commission possesses the requisite authority to set the parameters of providing electric service under Section A 5," and that "the Commission is empowered with broad discretion to establish, among other things, minimum standards to provide service as contemplated by the statute."<sup>8</sup>

Furthermore, the Company stated that it initiated the instant cases so "the Commission can decide whether [the CSPs'] service is compliant" with Section A 5, and that it "paused [the CSPs'] enrollments so that a determination could be made before those customers were switched."<sup>9</sup> Moreover, the Petitions for Declaratory Judgment do not contend that the answers to the Company's requested declarations are outside the scope of the Commission's delegated authority; to the contrary, Dominion explained that "the crux of this case is a proper reading of the Commission's precedent on what constitutes serving a customer's full load with 100 percent renewable energy."<sup>10</sup>

The pleas for relief contained in sections (A), (B), and (C) of the Petitions for Declaratory Judgment are addressed below *seriatim*.

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<sup>8</sup> Dominion's Pre-hearing Briefs at 2, 4.

<sup>9</sup> Tr. 20, 25 (PUR-2019-00117, Aug. 7, 2019).

<sup>10</sup> Tr. 26 (PUR-2019-00117, Aug. 7, 2019).

*(A) Rider WWS Order*

As quoted above, Dominion asks the Commission to issue an order declaring that a CSP "must have control of sufficient renewable generation resources, including renewable capacity and associated renewable energy, to enable it to serve the full load requirements of the customers it intends to serve *consistent with the standard approved . . . in the Rider WWS Order.*"<sup>11</sup> The Commission denies this requested declaration. The Commission's Rider WWS Order did not require "renewable capacity," nor did it define "full load requirements" to mean (as argued by Dominion) "full load *at all times*"<sup>12</sup> or "full load requirements *around the clock.*"<sup>13</sup>

The Commission's Rider WWS Order found that APCo's proposed tariff satisfied Section A 5. Nothing in that order, however, found that APCo's proposal was the *only* way to comply with Section A 5. That is, contrary to Dominion's assertion, nothing in the Rider WWS Order found that the only way to satisfy Section A 5 is to possess a renewable generation portfolio with characteristics similar to that proposed by APCo. Rather, the Rider WWS Order addressed two aspects of "electric energy provided 100 percent from renewable energy" under Section A 5: (1) the *amount* of energy supplied to the customer; and (2) the *time period* for matching load and supply. Specifically with respect to these aspects, that order: (1) repeated the Commission's prior rejection of *partial* competitive supply under Section A 5; and (2) for the first time, approved a specific time period for matching renewable supply with the customer's

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<sup>11</sup> Petitions for Declaratory Judgment at 16-17 (emphasis added).

<sup>12</sup> See Dominion's Pre-hearing Briefs at 3 (emphasis added).

<sup>13</sup> See *id.* at 4 (emphasis added).

load.<sup>14</sup> Because of the relevance to Dominion's arguments herein, the Commission will further discuss each of these two findings.

First, as to the *amount* of energy supplied to the customer, Section A 5 does not specify whether a customer is permitted to purchase only *part* of its energy requirements under Section A 5. Thus, this question is left to the Commission's sound discretion. In 2018, the Commission exercised that discretion and rejected a CSP's request to supply only 25% of a customer's load, finding that a customer must "take its full load requirements" under Section A 5.<sup>15</sup> Subsequently, in the Rider WWS Order, the Commission applied this same standard to utilities, finding that a utility's tariff under Section A 5 also "must supply the customer's full load requirements."<sup>16</sup>

Second, Section A 5 also does not specify the *time period* for matching customer load and renewable supply; thus, this question is likewise left to the Commission's sound discretion. The Commission exercised that discretion for the first time in the Rider WWS Order. In that proceeding, APCo proposed to match a customer's load with renewable supply on a monthly basis.<sup>17</sup> Dominion was a party in that case, objected to APCo's proposal, and argued for the same "around the clock" matching standard that it seeks in the instant proceedings.<sup>18</sup> The Commission, however, rejected Dominion's request and found "that it is reasonable, for purposes

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<sup>14</sup> See, e.g., Rider WWS Order at 5-6.

<sup>15</sup> *Petition of English Biomass Partners-Ferrum, LLC, for a declaratory judgment*, Case No. PUR-2017-00117, 2018 S.C.C. Ann. Rept. 263, 265, Final Order (Apr. 20, 2018).

<sup>16</sup> Rider WWS Order at 5.

<sup>17</sup> See, e.g., *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, Report of D. Mathias Roussy, Jr., Hearing Examiner at 26 (Sept. 25, 2018) ("Rider WWS Hearing Examiner's Report").

<sup>18</sup> See, e.g., *id.* at 27.



of supplying 100 percent renewable energy under this statute, to match renewable generation with a participating customer's load on a *monthly* basis."<sup>19</sup> Subsequent to the Rider WWS Order, the Commission also: (a) found that it is reasonable to apply the monthly matching standard to both utilities and CSPs;<sup>20</sup> and (b) denied APCo's request to adopt a "renewable capacity" standard under Section A 5.<sup>21</sup>

In sum, contrary to Dominion's current claim, Commission precedent requiring a customer to take its "full load requirements" under Section A 5 speaks to the *amount* of energy supplied, not to the *time period* for matching load and supply. There is also no Commission precedent establishing a "renewable capacity" or "around the clock" requirement under Section A 5. Rather, pursuant to Commission precedent, a retail supplier (*i.e.*, either the utility or a CSP) under Section A 5 may match a customer's load with renewable supply on a monthly basis.

*(B) Direct Energy and Calpine*

Next, Dominion asks the Commission to declare that Direct Energy and Calpine have not satisfactorily demonstrated that they can supply their customers with electric energy provided 100 percent from renewable energy.<sup>22</sup> The Commission denies this requested declaration. We find that the information provided by Direct Energy and Calpine (regarding each CSP's customer load and wholesale generation contracts) reasonably establishes that these CSPs have contracted

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<sup>19</sup> Rider WWS Order at 5-6 (emphasis in original).

<sup>20</sup> *Appalachian Power Company v. Collegiate Clean Energy, LLC*, Case No. PUR-2018-00134, Final Order at 6-7 (June 11, 2019).

<sup>21</sup> *Id.* at 6.

<sup>22</sup> Petitions for Declaratory Judgment at 17.

for sufficient renewable energy in order to match renewable supply with a participating customer's load on a monthly basis.<sup>23</sup>

*(C) Other Relief – Verifying Compliance*

Dominion's third and final plea asks the Commission to provide any other relief that we may deem appropriate.<sup>24</sup> Based on the record in this proceeding, the Commission finds that Direct Energy and Calpine shall provide subsequent data to verify continued compliance with the Commission's requirements under Section A 5.

Specifically, the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules"),<sup>25</sup> as well as the Company's Competitive Service Provider Coordination Tariff ("CSP Coordination Tariff"), address verification attendant to CSPs that supply service under Section A 5. For example:

- "A [CSP] that claims its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such documentation may be made available through electronic means and a written explanation shall be provided promptly upon request of any customer, prospective customer, [CSP], local distribution company, or the Commission."<sup>26</sup>

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<sup>23</sup> See, e.g., Exs. 1C, 2C (PUR-2019-00118); Exs. 2, 9 (PUR-2019-00117); Tr. 9, 46-47, 49 (PUR-2019-00117, Aug. 7, 2019); Tr. 54-55 (PUR-2019-00118, Aug. 7, 2019); Tr. 190-91 (combined, Aug. 20, 2019). In addition, the Commission hereby denies the Company's objection to the admission of Exhibits 4C and 5C (Tr. 227-228, 250 (combined, Aug. 20, 2019)). Dominion did not establish that it was prejudiced by such admission. These additional exhibits, however, are not necessary in order to make our factual findings herein. As noted at the hearing, Exhibits 4C and 5C do not amend any of the elements needed, or relied upon by Calpine, to satisfy the Commission's monthly matching standard under Section A 5. Tr. 228 (combined, Aug. 20, 2019).

<sup>24</sup> Petitions for Declaratory Judgment at 17.

<sup>25</sup> 20 VAC 5-312-10, *et seq.*

<sup>26</sup> 20 VAC 5-312-70 E.

- "[T]he CSP shall prove, by affidavit or otherwise, that it will provide Electricity Supply Service provided 100 percent from renewable energy in accordance with § 56-576 and § 56-577 A 5 of the Code of Virginia."<sup>27</sup>
- "The CSP may be subject to revocation of its registration and termination of Coordination Service if it is found to be in noncompliance as provided for in Section 8.0."<sup>28</sup>
- "Noncompliance with this Tariff shall include, but is not limited to the following: . . . CSP's failure to provide Electricity Supply Service provided 100 percent from renewable energy in accordance with § 56-576 and § 56-577 A 5 of the Code of Virginia, if the CSP has provided an affidavit or other proof of its intention to do so."<sup>29</sup>
- "If the CSP fails to comply with its obligations under the Tariff, prior to terminating the CSP's Coordination Services the Company shall notify the CSP of the impending termination of Coordination Services and its effective date, the alleged action or inaction that merits such termination of Coordination Services, and the actions, if any, that the CSP may take to avoid the termination of Coordination Services. . . . A copy of the notice shall be forwarded contemporaneously to the Commission's Division of [Public Utility Regulation ('Division')]. . . ."<sup>30</sup>

In accordance with the Retail Access Rules and CSP Coordination Tariff, the Commission finds that Direct Energy and Calpine shall:

- (1) provide Dominion with information comparable to the documentation provided in this proceeding regarding subsequent wholesale generation contracts to establish that these CSPs have continued to contract for sufficient renewable energy in order to match renewable supply with their customers' load on a monthly

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<sup>27</sup> CSP Coordination Tariff, § 6.2.1.2.

<sup>28</sup> *Id.*, § 6.4.

<sup>29</sup> *Id.*, § 8.2.2.

<sup>30</sup> *Id.*, § 8.3.

basis;<sup>31</sup> and

- (2) submit documentation to the Division and Dominion within 90 days from the end of each calendar quarter, which confirms that such CSP matched renewable supply with customer load during each of the three months comprising the respective calendar quarter.

#### Dominion's Proposed Standard

The Commission now turns to Dominion's additional request for adoption of a precisely-worded standard under Section A 5. Specifically, during the hearing on August 20, 2019, Dominion presented – for the first time – a proposal that the Company titled "Standard necessary to satisfy requirements of Section A 5," which would mandate as follows:

The provider must be able to demonstrate the ability to provide energy (*i.e.*, capacity) through ownership or contract rights from sufficient renewable energy resources to serve the full load requirements 100% of the time, including at peak demand, for any customers they intend to serve, to a high degree of statistical certainty. Once this is demonstrated, compliance is measured monthly.<sup>32</sup>

First, as detailed above in response to the specific relief requested in the Company's Petitions for Declaratory Judgment, Commission precedent under Section A 5 does not mandate renewable "capacity," "peak demand," or "100% of the time" requirements.<sup>33</sup> Indeed, such proposals have been rejected by the Commission to date. Thus, Dominion's proposed standard does not serve as a restatement or declaration of current law.

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<sup>31</sup> The evidence presented by Direct Energy currently shows monthly wholesale contract quantities through December 2019. *See, e.g.*, Ex. 9 at 2. The evidence presented by Calpine shows monthly wholesale contract quantities for more than two years. *See, e.g.*, Tr. 234.

<sup>32</sup> *See, e.g.*, Ex. 8 (PUR-2019-00117).

<sup>33</sup> The Company stated that its proposed standard reflects its view of the Commission's precedent on this issue to date. Tr. 123 (combined, Aug. 20, 2019).

Second, to the extent Dominion proposed its standard to reflect what the Company believes current law should reflect, the Commission agrees with objections raised in these proceedings that such request improperly goes beyond the specific relief requested in the Petitions for Declaratory Judgment.<sup>34</sup>

Third, as noted above, Dominion previously requested the Commission to require "around the clock" supply of renewable energy under Section A 5 as part of the Rider WWS proceeding, and the Commission rejected such request. Thus, any attempt by Dominion at this time to attack or appeal the Commission's Rider WWS Order collaterally would also be improper.<sup>35</sup>

Fourth, the Company's new proposal is also procedurally inappropriate to the extent Dominion now suggests that its proposed standard is required – *as a matter of law* – to comply with the plain language of Section A 5. Rather, as noted herein, the Company has previously taken the contradictory position and accepted that this implementation question lies within the Commission's discretionary authority.<sup>36</sup>

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<sup>34</sup> In addition, the Commission finds that the instant declaratory judgment cases should not be transformed into a generic or rulemaking proceeding. *See, e.g.*, Calpine Pre-hearing Brief at 10; Direct Energy Pre-hearing Brief at 15.

<sup>35</sup> The Commission also notes that the Hearing Examiner in the Rider WWS proceeding likewise (1) did not find that hourly matching is mandated by statute, and (2) recommended that the Commission implement monthly matching. Rider WWS Hearing Examiner's Report at 27-28. No party in that case filed comments objecting to the Hearing Examiner's conclusion that this question lies within the Commission's discretionary authority.

<sup>36</sup> *See, e.g., Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 455 n.11 (2016) ("Under appropriate-reprobate principles, as we recently explained, 'a litigant may not take successive positions in the course of litigation that are either inconsistent with each other or mutually contradictory,'" (internal quotation marks and citations omitted)). *See also Eilber v. Floor Care Specialists, Inc.*, 294 Va. 438, 442 (2017) (Under the prohibition against approbation and reprobation, "a party is prohibited from assuming successive positions in an action or series of actions, regarding the same fact or state of facts, which are inconsistent with each other or are mutually contradictory.") (internal quotation marks and citations omitted).

Finally in this regard, even if Dominion's new proposal were procedurally appropriate, which it is not, the Commission further finds that such proposed standard is neither legally nor factually required, as addressed further below.<sup>37</sup>

### *Findings of Law*

The Commission's analysis once again starts with the statute. Because the Company does "not offer an approved tariff for electric energy provided 100 percent from renewable energy," the plain language of Section A 5 mandates that Dominion's customers "shall" be permitted to purchase renewable energy from a CSP.<sup>38</sup> This is a statutory right given to customers. The statute says "shall," not "may." The General Assembly has not given the Commission the discretion to take that specific right away from customers; rather, the statutory right exists if the utility does not offer "electric energy provided 100 percent from renewable energy."

The plain language of Section A 5 also says "energy," not "capacity." Section A 5 gives customers the right to purchase "electric *energy* provided 100 percent from renewable *energy*," as well as the right "[t]o continue purchasing renewable *energy*" under certain conditions after the utility has an approved tariff for such.<sup>39</sup> Electric energy and electric capacity are two different things, and the General Assembly has referenced both in Code § 56-577.<sup>40</sup>

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<sup>37</sup> Accordingly, for the purposes of considering Dominion's arguments herein, the Commission denies Direct Energy's continuing objection (which was joined by Calpine and Kroger) to evidence claimed to be beyond the scope of the specific requests for relief contained in the Petitions for Declaratory Judgment. *See, e.g.*, Tr. 8-9 (combined, Aug. 20, 2019).

<sup>38</sup> Code § 56-577 A 5 a.

<sup>39</sup> Code §§ 56-577 A 5 a and b, respectively.

<sup>40</sup> *See* Code § 56-577 A 6 ("shall continue to pay its incumbent electric utility for the non-fuel generation *capacity* and transmission related costs incurred by the incumbent electric utility in order to meet the customer's *capacity* obligations . . .") (emphasis added).

Accordingly, the plain language of the statute does not *require* customers to buy renewable electric "capacity."

Next, Dominion's conflation of "energy" and "capacity" also ignores the common industry usage of those terms, as reflected in the PJM Interconnection, LLC ("PJM") wholesale market.<sup>41</sup> Indeed, the Company acknowledges that energy and capacity are "two products," which "can be differentiated" and are procured individually in the PJM wholesale market.<sup>42</sup> Dominion applied to this Commission in 2003 to become a member of PJM,<sup>43</sup> and the Company cannot now ignore that it, as well as Calpine and Direct Energy, participate in PJM, which bifurcates its "energy" and "capacity" markets.<sup>44</sup>

In addition, as explained above, the plain language of Section A 5 does not specify the time period that must be met for matching customer load and renewable supply. Under Dominion's proposal, a CSP must demonstrate the ability to serve a customer's full load requirements 100% of the time.<sup>45</sup> There is nothing in the plain language of Section A 5, however, that mandates Dominion's "100% of the time" (*i.e.*, "around the clock") requirement.

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<sup>41</sup> Wholesale energy and capacity markets are administered by PJM, subject to regulation by the Federal Energy Regulatory Commission. *See, e.g.*, Staff Brief at 9; Tr. 172-173.

<sup>42</sup> *See, e.g.*, Tr. 99 (PUR-2019-00117, Aug. 7, 2019); Tr. 99-100 (PUR-2019-00118, Aug. 7, 2019); Tr. 141 (combined, Aug. 20, 2019).

<sup>43</sup> *Commonwealth of Virginia, ex. rel. State Corporation Commission, Ex Parte, In re: Virginia Electric Power Company; Regional Transmission Entities*, Case No. PUE-2000-00551, Application (filed June 27, 2003). The Commission approved Dominion's request subject to specific terms and conditions. *Id.*, 2004 S.C.C. Ann. Rept. 294, Order Granting Approval (Nov. 10, 2004).

<sup>44</sup> *See, e.g.*, Staff Brief at 9-11; Tr. 141 (combined, Aug. 20, 2019).

<sup>45</sup> The Company also requests that CSPs demonstrate compliance on a "monthly" basis. This compliance demonstration, however, is separate from Dominion's proposed "100% of the time" matching standard. *See, e.g.*, Tr. 78-79, 100-101, 112 (combined, Aug. 20, 2019).

Rather, as found in the Rider WWS Order, this question is left to the Commission's sound discretion.

In sum, the plain language of Section A 5 does not mandate – as a matter of law – adoption of Dominion's proffered standard.

#### *Findings of Fact*

Based on the record in this case, the Commission again finds that it is reasonable for a supplier (*i.e.*, either the utility or a CSP) under Section A 5 "to match renewable generation with a participating customer's load on a *monthly* basis."<sup>46</sup>

Initially, it is important to recognize that it is not possible to direct specific types of energy (*i.e.*, renewable electrons) to specific customers on an interconnected electric grid such as PJM.<sup>47</sup> The physics of the electric grid make it impossible for any load serving entity ("LSE"), including Dominion, to ensure that any customer receives "around the clock" renewable energy. That is, all of Dominion's customers physically receive a mix of energy types (renewable and non-renewable electrons) based on the customer's location and the generation mix providing service to the grid at a given time.<sup>48</sup> The question of whether an offering is "electric energy 100 percent from renewable energy" under Section A 5, therefore, must be a function of offsetting customer load on the grid with supply from renewable resources over a specified period of time.

Next, significant discussion occurred during the course of these proceedings over the meaning of "capacity" in the context of Dominion's proposed "renewable capacity" standard.

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<sup>46</sup> Rider WWS Order at 5-6 (emphasis in original).

<sup>47</sup> See, e.g., Tr. 80-81 (PUR-2019-00117, Aug. 7, 2019); Tr. 82-83, 139-140 (combined, Aug. 20, 2019).

<sup>48</sup> See, e.g., Tr. 82-83, 139-140 (combined, Aug. 20, 2019).



Dominion described "capacity" and "renewable capacity" in several different ways over the course of these proceedings, including the following:

- "long-term control of the generation";<sup>49</sup>
- "a contractual right to the generation asset; not just the energy that is out there . . .";<sup>50</sup>
- a "contractual or ownership control of sufficient output rights to [renewable] generation to meet the peak requirements of customers and the full energy requirements of customers";<sup>51</sup>
- "the ability to serve peak load";<sup>52</sup>
- "the ability to provide energy on demand";<sup>53</sup>
- "the ability to provide energy on a ratable basis of megawatts";<sup>54</sup>
- "capacity to deliver the [renewable] electrons on a 24/7 basis";<sup>55</sup>
- "rights to a certain amount of firm power on demand";<sup>56</sup>
- a showing that the CSP "has control of, and the ability to call upon, [a] renewable generation resource at any time during the month, day or night";<sup>57</sup>

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<sup>49</sup> Tr. 31 (PUR-2019-00117, Aug. 7, 2019). *See also* Dominion's Pre-hearing Briefs at 7-8.

<sup>50</sup> Tr. 32 (PUR-2019-00117, Aug. 7, 2019).

<sup>51</sup> Tr. 112 (PUR-2019-00117, Aug. 7, 2019). *See also* Tr. 89 (combined, Aug. 20, 2019).

<sup>52</sup> Tr. 115 (PUR-2019-00117, Aug. 7, 2019).

<sup>53</sup> Tr. 86 (combined, Aug. 20, 2019). *See also* Tr. 85 (combined, Aug. 20, 2019) ("rights to . . . energy on a deliverable basis").

<sup>54</sup> Tr. 101 (combined, Aug. 20, 2019).

<sup>55</sup> Tr. 32 (PUR-2019-00118, Aug. 7, 2019).

<sup>56</sup> Tr. 100 (PUR-2019-00118, Aug. 7, 2019).

<sup>57</sup> Dominion Pre-hearing Briefs at 7-8.

- "specifically identified, dedicated renewable generation resources to cover the customers' peak loads on a real-time, or virtually real-time, basis";<sup>58</sup> and
- "a contract with a rate for megawatt hour delivery in megawatts."<sup>59</sup>

Further, as quoted above, at the August 20, 2019 hearing, the Company proposed a specifically-worded standard that requires a CSP to show that it can serve all of its customers' "full load requirements 100% of the time, including at peak demand," with renewable energy "to a high degree of statistical certainty."<sup>60</sup>

Dominion concedes, however, that its proposed "renewable capacity" standard does not reflect the realities of the capacity construct established in PJM.<sup>61</sup> Specifically, the PJM capacity market is designed to "procur[e] the appropriate amount of power supply resources needed to meet predicted energy demand three years in the future."<sup>62</sup> PJM ensures that sufficient generation resources will be available to meet the system peak plus a reserve margin.<sup>63</sup> Importantly in this regard, the record reflects that all LSEs within PJM, including Dominion,

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<sup>58</sup> Dominion Pre-hearing Briefs at 10-11 (emphasis omitted).

<sup>59</sup> Tr. 77 (combined, Aug. 20, 2019).

<sup>60</sup> Tr. 14 (combined, Aug. 20, 2019); Ex. 8 (PUR-2019-00117). Dominion has not clearly defined what it means to meet its proposed standard with a "high degree of statistical certainty." *See, e.g.*, Tr. 153 (PUR-2019-00117, Aug. 7, 2019); Tr. 135 (combined, Aug. 20, 2019). In addition, as a practical matter, Dominion does not currently have demand meters installed on all customer premises necessary to measure hourly customer demand; without such metering information, hourly matching would require CSPs to adhere to a standard based on customer profiles rather than actual customer usage. *See, e.g.*, Tr. 79 (PUR-2019-00117, Aug. 7, 2019); Tr. 122, 220 (combined, Aug. 20, 2019).

<sup>61</sup> Tr. 101-102, 158-159 (combined, Aug. 20, 2019).

<sup>62</sup> Staff Brief at 9; Tr. 172-173.

<sup>63</sup> *See, e.g.*, Tr. 73 (PUR-2019-00117, Aug. 7, 2019).

Direct Energy and Calpine, are required to meet applicable reliability requirements and are subject to PJM capacity charges associated with the peak load of their customers.<sup>64</sup>

In PJM, there is no such thing as a capacity market for "renewable-only" capacity.<sup>65</sup> As such, there is no option under Dominion's standard for CSPs to procure renewable-only capacity through the PJM capacity market.<sup>66</sup> Instead, Dominion asserts that control of renewable capacity would have to be procured by CSPs through either owning renewable generation or contracting with renewable generators.<sup>67</sup> Such a requirement, however, is not otherwise applicable to LSEs operating in PJM.<sup>68</sup> Moreover, Dominion acknowledges that the actual dispatch of resources is not governed by a hypothetical "renewable capacity" construct but, rather, by physics and the operational needs of the PJM pool.<sup>69</sup>

Dominion's proposed standard is also not necessary to ensure reliability of service. Dominion acknowledges that the PJM wholesale market ensures energy is delivered to customers at all times, and that the CSP bears the cost of providing that energy.<sup>70</sup> Dominion, in fact, concedes that "this is not a reliability case" and does not challenge Direct Energy's and Calpine's ability to meet reliability requirements established by PJM.<sup>71</sup>

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<sup>64</sup> *See, e.g.*, Staff Brief at 9-10; Tr. 172-173.

<sup>65</sup> *See, e.g.*, Tr. 53 (PUR-2019-00118, Aug. 7, 2019).

<sup>66</sup> *See, e.g.*, Tr. 53 (PUR-2019-00118, Aug. 7, 2019).

<sup>67</sup> *See, e.g.*, Petition for Declaratory Judgment (PUR-2019-00117) at 2-3.

<sup>68</sup> *See, e.g.*, Staff Brief at 10; Tr. 172-173.

<sup>69</sup> *See, e.g.*, Tr. 92-93; 119 (combined, Aug. 20, 2019).

<sup>70</sup> *See, e.g.*, Tr. 169-70 (combined, Aug. 20, 2019).

<sup>71</sup> *See, e.g.*, Tr. 108 (PUR-2019-00117, Aug. 7, 2019).

Dominion's "100% of the time" standard would also significantly hinder a customer's right to purchase, as permitted by Section A 5, electric energy provided from wind and solar generation due to the intermittent nature of these resources.<sup>72</sup> For example, a CSP that had 100 megawatts of offshore wind generation and 100 megawatts of customer peak load would not meet Dominion's "100% of the time" standard, because wind power is intermittent and does not generate electricity when the wind does not blow, requiring the delivery of electrons from other generators.<sup>73</sup> Indeed, a CSP with a portfolio consisting of 100% solar generation – no matter how much nameplate capacity met or exceeded peak load – would be prohibited from serving even a *single customer* under Dominion's "100% of the time" standard, because such a portfolio could not produce electricity at night.<sup>74</sup>

Furthermore, there was evidence that Dominion's "100% of the time" (*i.e.*, hourly matching) standard would represent the most stringent matching requirement of any renewable energy market in the country.<sup>75</sup> There was also evidence that an hourly matching standard could significantly increase the cost of providing service under Section A 5, potentially to the point of being cost prohibitive.<sup>76</sup> Finally, there was evidence that this Commission's existing *monthly*

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<sup>72</sup> See, e.g., Tr. 74, 95, 131-32; 207; 243-44 (combined, Aug. 20, 2019).

<sup>73</sup> See, e.g., Tr. 95, 185-86; 207 (combined, Aug. 20, 2019).

<sup>74</sup> See, e.g., Tr. 95, 131-32, 207 (combined, Aug. 20, 2019). There was also evidence showing that even with the addition of wind and run-of-river hydroelectric energy to a portfolio including solar, there could be hours when none of those generation facilities are producing electricity. See, e.g., Tr. 225 (combined, Aug. 20, 2019).

<sup>75</sup> See, e.g., Tr. 188-89 (combined, Aug. 20, 2019).

<sup>76</sup> See, e.g., Tr. 59 (PUR-2019-00118, Aug. 7, 2019); Tr.188-89 (combined, Aug. 20, 2019).

matching requirement is already more stringent than other states with renewable energy markets, which only require customer load and renewable supply to be matched on a *yearly* basis.<sup>77</sup>

In sum, the Commission continues to find that matching customer load with renewable supply on a monthly basis represents a reasonable standard under Section A 5, and, further, that Dominion's most recently proffered standard is not necessary in order to implement Section A 5 in a reasonable manner.

### Conclusion

With regard to the three specific pleas contained in Dominion's Petitions for Declaratory Judgment, we find that:

- (A) Commission precedent permits a CSP to match customer load with renewable supply on a monthly basis and does not require CSPs to provide "renewable capacity";
- (B) Direct Energy and Calpine have satisfactorily demonstrated that they can supply their customers with electric energy provided 100 percent from renewable energy on a monthly matching basis; and
- (C) Direct Energy and Calpine shall continue to provide information as directed herein.

With regard to Dominion's additional proposal to adopt its newly-worded standard for matching customer load and renewable supply, we find that such standard does not reflect current Commission precedent and is otherwise procedurally improper for purposes of the instant proceedings.

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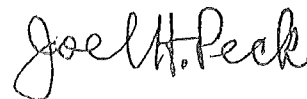
<sup>77</sup> See, e.g., Tr. 75 (PUR-2019-00117, Aug. 7, 2019); Tr. 52, 73-74 (PUR-2019-00118, Aug. 7, 2019); Tr. 189, 239 (combined, Aug. 20, 2019). There was further evidence that numerous retail choice states have implemented an *annual* matching standard for renewable portfolio requirements, with California's matching standard therefor extending out three-to-four years. Ex. 6 (PUR-2019-00118).

Finally, even if Dominion's new proposal were procedurally appropriate, which it is not, the Commission further finds that: (1) the plain language of Section A 5 does not mandate – as a matter of law – adoption of Dominion's proffered standard; and (2) matching customer load with renewable supply on a monthly basis represents a reasonable standard under Section A 5, and Dominion's proposed standard is not necessary in order to implement Section A 5 in a reasonable manner.

Accordingly, IT IS SO ORDERED, 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 shall also be sent to the Commission's Office of General Counsel and the Division of Public Utility Regulation.

A True Copy  
Teste:



Clerk of the  
State Corporation Commission