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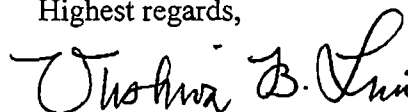
*Application of Virginia Electric and Power Company.
For approval and certification of electric transmission facilities:
Haymarket 230 kV Double Circuit Transmission Line and 230-34.5 kV Haymarket Substation
Case No. PUE-2015-00107*

Dear Mr. Peck:

Enclosed for electronic filing in the above-captioned proceeding, please find the
Consolidated Reply of Virginia Electric and Power Company.

Please do not hesitate to call if you have any questions in regard to the enclosed.

Highest regards,



Vishwa B. Link

Enc.

cc: Hon. Glenn P. Richardson, Hearing Examiner
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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF)	
)	
VIRGINIA ELECTRIC AND POWER COMPANY)	
)	Case No. PUE-2015-00107
For approval and certification of)	
electric transmission facilities for)	
Haymarket 230 kV Double Circuit Transmission Line)	
and 230-34.5 kV Haymarket Substation)	

CONSOLIDATED REPLY OF VIRGINIA ELECTRIC AND POWER COMPANY

Pursuant to Rule 110 of the Rules of Practice and Procedure¹ of the State Corporation Commission ("Commission"), 5 VAC 5-20-110, and the Hearing Examiner's Ruling of August 19, 2016, Virginia Electric and Power Company ("Dominion Virginia Power" or the "Company"), by counsel, hereby submits its Consolidated Reply to the Responses of the Commission Staff ("Staff"), Somerset Crossing Home Owners Association ("Somerset"), and the Coalition to Protect Prince William County ("Coalition") to the August 18, 2016 Letter ("Letter")² filed by the Company objecting to the inclusion of three new options/remedies in Staff's post-hearing brief into the record in this matter. For its Reply, the Company respectfully states as follows:

INTRODUCTION

This case concerns the Company's application ("Application") for a certificate of public convenience and necessity ("CPCN") for the proposed Haymarket 230 kilovolt ("kV") double circuit transmission line and 230-34.5 kV Haymarket Substation (the "Project"). The

¹ 5 VAC 5-20-10 *et seq.* (the "Procedural Rules").

² The Hearing Examiner's August 19, 2016 Ruling found, among other things, that the Company's Letter should be treated as a motion. Hearing Examiner's Ruling at 1 (Aug. 19, 2016). The Company does not object to the Company's Letter being treated as a motion, specifically a motion to strike.

Company's Application was filed pursuant to §§ 56-46.1 and 56-265.1 of the Code of Virginia ("Va. Code"). On December 11, 2015, the Commission issued an Order for Notice and Hearing that, among other things, assigned a Hearing Examiner to conduct all further proceedings in this matter, established a procedural schedule, set an evidentiary hearing for May 10, 2016, directed the Company to publish notice of its Application, permitted interested parties to participate in this case by filing comments or notices of participation, directed Staff to conduct an investigation of the Company's Application and to file testimony and exhibits thereon, and provided the Company with the opportunity to file rebuttal testimony. The procedural schedule was further modified by the Hearing Examiner's Rulings issued on February 8, 2016 and March 21, 2016, resulting in the evidentiary hearing being rescheduled to commence on June 21, 2016.

The Company's objection to the identified portions of the Staff's post-hearing brief rests on the fundamental principles of procedural due process. The Staff's three new options/remedies purportedly addressing a "misallocation of costs" are found nowhere in the pre-filed testimony and nowhere in the evidentiary hearing transcript.³ And they are different from the three options sponsored by the Staff's own witness in the case, which were subject to development through pre-filed rebuttal testimony, cross-examination and briefing.⁴ Raising these three new options during a post-hearing brief is improper. No party – neither the Company, nor the affected customer, nor any other potentially affected customer – has been afforded an opportunity to participate and be heard on these options because they were untimely raised. Moreover, it is unclear whether, if timely raised, these options could even be adopted by the Commission in this

³ See Staff's Post-Hearing Brief at 18-19. Nor does Staff cite to any legal authority under which the Commission could adopt these remedies.

⁴ There is no dispute that Staff Witness Neil Joshipura's pre-filed testimony was subject to cross-examination by the Company. However, as discussed herein, the three remedies proposed by Staff's post-hearing brief are entirely different from, and go well beyond, those sponsored by Mr. Joshipura, as quoted in Somerset's Response. See Somerset Response at 3.

proceeding on a CPCN for transmission facilities. For these reasons, the options presented on pages 18-19 of Staff's post-hearing brief should be stricken or disregarded.

ARGUMENT

A. Staff's New Options for Cost Allocation Are Procedurally Improper and Do Not Afford Affected Parties Notice and an Opportunity to Be Heard.

In the Order for Notice and Hearing, the Commission found that "Staff should be directed to investigate the Application and file testimony and exhibits containing its findings and recommendations thereon."⁵ As directed, the Staff submitted the Prefiled Testimony of Neil Joshipura on June 2, 2016. Therein, Mr. Joshipura presented Staff's findings and recommendations on the issue of "Cost Allocation and Recovery," including "Staff's Interpretation of the Company's Line Extension Policy" and the "Treatment of Projected Costs Under Section XXII" of the Company's Line Extension policy.⁶ During the evidentiary hearing, Mr. Joshipura further testified that:

The Staff essentially believes the Commission has with respect to cost allocation and cost recovery roughly *three* options, which is, one, the project is not deemed a line extension and cost assignments are assigned through NITS; or option two would be the Commission deems it as a line extension and subject to Section XXII; and the third one would be the Commission deems it a line extension, but Section XXII is not applicable for a transmission facility. So it's roughly *three* options for the Commission to decide on.⁷

Because these options were properly made known during the course of the proceeding, they were subject to rebuttal testimony, cross-examination and briefing by the Company and other parties, as well as questioning from the Hearing Examiner.

Surprisingly, then, the Staff's post-hearing brief appears to abandon the options presented by Mr. Joshipura and to present three entirely new options. As Staff states on page 18 of its

⁵ Order for Notice and Hearing at 4.

⁶ See Exhibit 19 at 17:3-20:6.

⁷ Tr. 259:19-260:5 (emphasis added).

post-hearing brief, “[t]he Commission has a number of useful options to address this misallocation of costs. As discussed above, a strict application of the current Line Extension policy does not seem to produce any entirely fair result.” Upon abandonment of its position supported by its pre-filed testimony and live testimony at the evidentiary hearing, Staff’s post-hearing brief proceeds to lay out the three new options as follows:

[T]he Commission *could amend the Line Extension policy* to (i) eliminate any ambiguity regarding its application to line extensions requiring new transmission facilities, and (ii) establish a fairer allocation mechanism of the costs of such projects, including the Haymarket project, whether built overhead or underground.

The Commission *could issue the CPCN* for either the I-66 Overhead or the I-66 Hybrid route *on the condition that the Customer step forward and agree to contribute in an appropriate manner to the construction of the Project that it alone at this time needs built.* The Commission could even make such a contribution refundable over time (as has at times been the practice with the extension of natural gas facilities) as other, non-customer load dependent on the facilities to be built develops. Either of these options would establish a contribution in aid of construction on the part of the particular customer and reduce costs of the project allocable to other ratepayers.

Finally, . . . the Commission *could establish a new rate category as part of the Company’s Rider T*, in which DVP recovers from its retail customers the wholesale costs of the NITS service it receives from PJM. The Commission could assign some portion of capital cost recovery or the on-going revenue requirements for the Project to the Customer in a marginally higher Rider T rate to be paid by Customer and thereby recover from Customer, throughout the life of the Project, an appropriate amount of the costs of the Project which Customer’s load alone has caused to be constructed.⁸

On their face, these three options are distinctly different from those presented in Mr. Joshipura’s pre-filed and live testimony, and go well beyond application or interpretation of the Company’s Commission-approved Line Extension policy, an issue raised by the Staff.

In its Response, Staff asserts that this content is merely “*legal argument* . . . that sets forth some of the Commission’s various sources of authority to address a central issue in the

⁸ Staff Post-Hearing Brief at 18 (emphasis added).

proceeding . . . proper recovery of the costs of the project.”⁹ This argument must fail. In fact, the remedies Staff asserts are *not* simply “legal argument.” The Staff proposed that the Commission order revisions to the Company’s filed Tariff, and/or its existing rate adjustment clause under Va. Code § 56-585.1 A 4, Rider T-1, that have not been subject to notice or hearing and are clearly beyond the scope of this CPCN proceeding. Another Staff proposal would condition approval of the Project on the agreement by a retail customer, who is not a party to this proceeding, to make a voluntary contribution to recovery of the cost of a FERC-jurisdictional transmission facility. Staff cites no “sources of authority” for the Commission to direct such a remedy, and the Company is unaware of any such authority. Regardless of whether these options may or may not have any merit,¹⁰ minimum due process requires that remedies such as these proposed by the Staff be presented in a manner that allows for discussion and development.¹¹ There has been no opportunity for participation or representation by persons affected by these proposed changes, including the Company.

Further, it is the Company’s Application filed under Va. Code §§ 56-46.1 and 56-265.1, *et seq.*, for approval and certification of the Project which framed the scope of this proceeding and informed the content of the public notice as directed by the Commission’s Order for Notice and Hearing. Whether or not remedies involving changes to the Company’s filed Tariff or Rider

⁹ Staff Response at 2 (emphasis in original).

¹⁰ Neither the Company’s Letter nor this Reply intend to address in full the merits of these options or to cure Staff’s procedural flaw. The sole purpose of the Company’s Letter was to raise the procedural flaws with the options presented on pages 18-19 of Staff’s post-hearing brief and to propose a fair procedural remedy.

¹¹ Procedural due process requires notice and an opportunity to be heard in matters involving changes to filed rates and schedules. *See* Va. Code §§ 56-237, 56-237.1, 56-237.2; 56-235.3; *see also Virginia Elec. & Power Co. v. State Corp. Comm’n*, 226 Va. 541, 546 (1984) (“As we construe legislative intent, the statutory complex contemplates that all parties involved in rate-making proceedings . . . be afforded fair notice and an opportunity to introduce evidence and be heard before the Commission renders its decision.”).

T-1 cost allocation could be adopted in this CPCN proceeding, *even if timely raised*, is unclear.¹²

Nor are Staff's three new remedies supported by the record, as Staff claims. While Staff asserts on page 2 of its Response that the contents of its brief "are entirely responsive to facts well-established in the record, as cited in Staff's brief[,] there is not one cite to the evidentiary record in the discussion of its three new options.¹³ Importantly, the Hearing Examiner extended the procedural schedule by seven weeks to allow Staff and the parties "sufficient time to fully develop the contested issues in this case, *including the cost recovery issue . . .*"¹⁴ Staff has provided no justification for why these three new options were not included in Mr. Joshipura's pre-filed testimony or raised at the evidentiary hearing so that they could be subject to an appropriate level of development as directed by the Hearing Examiner.¹⁵

Lastly, Somerset and the Coalition both emphasize Staff's particular role in Commission proceedings "to see that pertinent issues on behalf of the general public interest are clearly presented to the commission."¹⁶ The Company agrees. But, the Staff (as well as the Commission)¹⁷ must follow the Commission's rules. As stated in the Company's Letter, the Procedural Rules and the Commission's Order for Notice and Hearing issued in this proceeding provided the opportunity for the Company, respondents, and the Staff to admit into the record evidence in support of their case in a manner that permits the applicant and other parties to address such evidence. The Commission established a date certain by which "[t]he Staff shall

¹² The Hearing Examiner need not render a substantive decision on whether any of the three new remedies can be addressed in the current proceeding because they are procedurally flawed, having been raised after the evidentiary record is closed.

¹³ See Staff's Post-Hearing Brief at 18.

¹⁴ Hearing Examiner's Ruling at 6 (Mar. 21, 2016) (emphasis added).

¹⁵ Staff's Response asserts that the legal argument "responds directly to Mr. Payne's rebuttal testimony." Staff Response at 2. Nevertheless, the content of Staff's "legal argument" does not cite or specifically respond to Mr. Payne's rebuttal testimony in any form.

¹⁶ Somerset Response at 1-2; Coalition Response at 2 (each citing Procedural Rule 5 VAC 5-20-80 D).

¹⁷ See *Virginia Comm. for Fair Utility Rates v. Virginia Elec. and Power Co.*, 243 Va. 320, 327 (1992) ("it is an elementary principle of administrative law that agencies must follow their properly promulgated rules").

investigate the Application . . . [and] shall file with the Clerk of the Commission . . . testimony and exhibits.”¹⁸ Further, the Commission directed that a public hearing on the Company’s Application be held “to receive the testimony of public witnesses and the evidence of the Company, any respondents, and Staff.”¹⁹ Given Staff’s particular role to investigate and make recommendations as set forth in Procedural Rule 80 D, it is all the more important for such recommendations (or options) to be presented in a manner that allows for the development of a complete evidentiary record, with participation by all affected parties, for the Commission’s consideration.²⁰

For all of these reasons, Staff’s three new options contained on pages 18-19 of its post-hearing brief are improper and should be procedurally barred from consideration in this proceeding.

B. Procedural Objections to the Company’s Letter Are Moot.

The Coalition asserts that the Company’s filing should not be considered because it was not authorized by any Commission rule or order, and the Company should have instead filed a motion to strike.²¹ By its August 19, 2016 Ruling, the Hearing Examiner treated the Company’s Letter as a Motion and established a briefing schedule for Staff and all parties to the proceeding. The Coalition’s arguments with respect to the procedural posture of the Letter are therefore

¹⁸ See Ordering Paragraph (14) of the December 11, 2015 Order for Notice and Hearing.

¹⁹ See Ordering Paragraph (4) of the December 11, 2015 Order for Notice and Hearing.

²⁰ See, e.g., *Virginia Electric and Power Company, Application For approval and certification of electric facilities: Remington CT-Warrenton 230 kV Double Circuit Transmission Line, Vint Hill-Wheeler and Wheeler-Loudoun 230 kV Transmission Lines, 230 kV Vint Hill Switching Station, and 230 kV Wheeler Switching Station*, Case No. PUE-2014-00025, Hearing Examiner’s Ruling at 2 (Nov. 4, 2015) (striking respondents’ attempt through briefing to impermissibly introduce new facts after the conclusion of the evidentiary hearing); *Warrenton-Wheeler*, Final Order at 7 n.8 (Feb. 11, 2016) (“We likewise decline to consider new evidence submitted after the close of the record.”); *Virginia Electric and Power Company d/b/a Dominion Virginia Power For approval and certification of electric facilities: Surry-Skiffes Creek 500 kV Transmission Line, Skiffes Creek-Wheaton 230 kV Transmission Line and Skiffes Creek 500 kV-230-kV-115 kV Switching Station*, Case No. PUE-2012-00029, Order, 2013 S.C.C. Ann. Rept. 240, 244 nn.12-13 (Nov. 26, 2013) (confirming that its decision was reached without consideration of evidence not contained in the record).

²¹ Coalition Response at 2.

moot.

CONCLUSION

WHEREFORE, for the reasons set forth herein and good cause shown, Dominion Virginia Power respectfully moves the Honorable Hearing Examiner to strike or exclude from consideration the three new options/remedies contained on pages 18-19 of Staff's post-hearing brief in the determination of the recommended and final decision in this matter.

Respectfully submitted,

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Dated: September 2, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2016, a true and accurate copy of the foregoing filed in Case No. PUE-2015-00107 was electronically delivered or mailed first class, postage pre-paid, to the following:

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