COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 28, 2012

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2011-00117

For approval of a Community Solar Power Program and for certification of proposed distributed solar generation facilities pursuant to Chapter 771 of the 2011 Virginia Acts of Assembly and §§ 56-46.1 and 56-580 D of the Code of Virginia

ORDER

Pursuant to House Bill 1686, enacted as Chapter 771 of the 2011 Virginia Acts of Assembly ("Chapter 771"), §§ 56-46.1 and 56-580 D of the Code of Virginia ("Code"), and the Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility,[1] Virginia Electric and Power Company ("Dominion" or "Company") filed a completed Application for approval of a Community Solar Power Program ("Solar Program") with the State Corporation Commission ("Commission") on February 29, 2012.

Dominion has proposed a Solar Program that consists of two separate components. The first component permits the Company to purchase up to three megawatts ("MW") of energy output from customer-owned distributed solar generation installations as an alternative to net energy metering ("Customer-owned facilities"); the Company also requests approval of a special tariff for such purpose in a separate proceeding, Case No. PUE-2012-00064.[2] The second

[1] *See* 20 VAC 5-302-10 *et seq.*

[2] *Petition of Virginia Electric and Power Company, For approval of a special tariff to facilitate customer-owned distributed solar generation pursuant to Chapter 771 of the 2011 Virginia Acts of Assembly*, Case No. PUE-2012-00064, Petition (May 17, 2012).

component, which is at issue in the present proceeding, is a proposal to construct and operate up to 30 MW of Company-owned solar distributed generation facilities ("Solar DG Program" or "Company-owned facilities"). The Solar DG Program would be comprised of approximately thirty to fifty installations at commercial, industrial, and community customer locations dispersed throughout the Company's Virginia service territory, with each installation ranging from 500 kilowatts to 2 MW. Dominion requests a "blanket" certificate of public convenience and necessity ("CPCN") to construct and operate the 30 MW of Company-owned facilities.[3]

Dominion proposes to construct and operate the 30 MW of Company-owned facilities in two phases. In Phase I, the Company would construct and operate up to 10 MW of distributed solar generation between the date the Application is approved and December 31, 2013. In Phase II, the Company would construct and operate no more than 20 MW of distributed solar generation between January 1, 2014, and December 31, 2015.[4]

Pursuant to the Company's February 29, 2012 supplemental filing in support of its Application, the total estimated cost for the construction of the Company-owned distributed solar generation facilities is not expected to exceed $111 million, excluding financing costs.[5] According to the filing, the net present value of the Company-owned facilities is negative by $60.9 million.[6] Dominion states that it will seek to recover Phase I costs as a part of base rates in a future biennial review proceeding. The Company claims that it may, at a later time, seek to recover costs related to Phase II through a rate adjustment clause.[7]

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[3] Application at 4, 13-14.

[4] *Id.* at 6.

[5] Supplemental Filing in Support of Application at 3.

[6] *Id.* at 4.

[7] Application at 10-11.

Dominion also states that the Company-owned facilities "will produce renewable energy that qualifies for use under the Virginia [Renewable Portfolio Standard ('RPS')] [P]rogram established under Va. Code § 56-585.2, and will contribute to the Company's Commission-approved RPS [Program]."[8]

The Commission issued an Order for Notice and Hearing in this case on March 23, 2012, which, in part, ordered Dominion to provide notice of its Application to the public; provided interested parties an opportunity to comment on, or participate in, the case; set a public hearing date; and established dates for the filing of testimony. Notices of participation were filed by: the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); MeadWestvaco Corporation ("MeadWestvaco"); Mr. Michel King; and the Chesapeake Climate Action Network, Appalachian Voices, and the Virginia Chapter of the Sierra Club (collectively, "Environmental Respondents"). Dominion, MeadWestvaco, and the Commission's Staff ("Staff") submitted pre-filed testimony, and the Commission received over 2,000 written and electronic comments in this case.

The Commission convened a hearing commencing on September 19, 2012, that continued on September 20 and 24, 2012. Counsel for Dominion, Consumer Counsel, MeadWestvaco, the Environmental Respondents, and Staff were present at the hearing. Mr. King also appeared at the hearing, *pro se*.

On November 7, 2012, post-hearing briefs were filed by the Company, Consumer Counsel, Environmental Respondents, MeadWestvaco, and Staff. On November 8, 2012, MeadWestvaco filed its issue matrix one day out-of-time. On November 19, 2012, Mr. King filed a post-hearing brief and a Request for Leave to File Post-Hearing Brief Out-of-Time.

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[8] *Id.* at 21.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.

This is the first case filed pursuant to Chapter 771, which provides as follows:

> § 1. That in order to promote solar energy through distributed generation, the State Corporation Commission shall exercise its existing authority to consider for approval, after notice to all affected parties and opportunity for hearing, petitions filed by a utility to construct and operate distributed solar generation facilities and to offer special tariffs to facilitate customer-owned distributed solar generation as alternatives to net energy metering, with an aggregate amount of rated generating capacity of up to 0.20 percent of each electric utility's adjusted Virginia peak load for the calendar year 2010. Such petitions may be made during the period of July 1, 2011, through July 1, 2015, and the Commission, on its own motion, may extend this period an additional year for good cause. Each distributed solar generation installation approved pursuant to this section shall be considered to be part of a demonstration program to assess benefits to the utility's distribution system, including constrained or high load growth circuits, for a period of five years from the date each installation becomes operational. Thereafter each installation shall cease to be part of a demonstration program and, in the case of a utility-owned installation, shall continue to operate as a utility-owned generating facility, and in the case of a customer-owned installation, shall continue to provide power to the utility pursuant to the terms of the agreed upon tariff arrangement. Subject to review by the Commission, such utility-owned distributed solar generation facilities and tariffs for power generated from customer-owned distributed solar installations shall be prioritized in areas identified by the utility as areas where localized solar generation would provide benefits to the utility's distribution system, including constrained or high-growth areas. The Commission shall approve such programs or distributed generation facilities if it determines that the programs or facilities, including those targeting constrained or high load growth areas, are reasonably designed to be in furtherance of the public interest.
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> § 2. A utility participating in demonstration programs pursuant to § 1 of this act shall use reasonable efforts to ensure that at least four of the distributed solar installation sites included in the demonstration projects shall be in a community setting, which shall include, but not be limited to, to the extent permitted by law, participation by local governments, schools, community

> associations, neighborhood associations, or nonprofit organizations. The capacity of each such community installation shall not exceed 500 kilowatts.
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> § 3. When a utility proposes solar distributed generation resources as permitted in § 1 of this act comprised of multiple installations combined collectively, the Commission shall consider such projects as one small non-combustible renewable power generation facility for purposes of project approval pursuant to §§ 10.1-1197.5, 10.1-1197.8, 56-265.2, 56-580 and 56-585.1 of the Code of Virginia. A "small non-combustible renewable power generation facility" is a small renewable energy project that generates electricity from sunlight and may consist of one or more installations distributed on separate structures or facilities, whether such installations are treated each as a stand-alone small renewable energy project or are combined and treated collectively as one small renewable energy project.
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> § 4. The Commission shall provide annual reports on any demonstration programs approved pursuant to this act to the Governor and the chairmen of the House and Senate Committees on Commerce and Labor.

In addition, as to small renewable energy projects, § 56-580 D of the Code further directs the Commission as follows:

> The Commission shall complete any proceeding under this section, or under any provision of the Utility Facilities Act (§ 56-265.1 *et seq.*), involving an application for a certificate, permit, or approval required for the construction or operation by a public utility of a small renewable energy project as defined in § 10.1-1197.5, within nine months following the utility's submission of a complete application therefore. Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

This is not a typical CPCN proceeding. Chapter 771 creates new standards and policies applicable to specific solar generation that we must implement herein. In addition, as opposed to establishing the benefits of the proposed solar generation facilities up front, Chapter 771 allows the utility to create a "demonstration program" to assess the benefits thereof. Thus, it is in

accordance with the unique provisions of Chapter 771 that we analyze and approve the Solar DG Program. Specifically, we find that Dominion's proposed Solar DG Program satisfies the standards of Chapter 771 and §§ 56-46.1 and 56-580 D of the Code, subject to the requirements ordered herein. We likewise find that, absent such requirements, the proposed Solar DG Program does not satisfy the statutory standards and is not approved.

First, we find that the Solar DG Program shall have a total cost cap of $80 million (including, but not limited to, capital, financing, and operation and maintenance costs) at this time, in order to be "reasonably designed to be in furtherance of the public interest" as required by Chapter 771. Chapter 771 does not direct approval of this demonstration program regardless of the cost to ratepayers. As noted earlier, the Company's current projection is $111 million (excluding financing costs). In addition, Dominion acknowledges that this proposal has a *negative* net present value of about $61 million, which means that (when compared to other generation options) customers are expected to lose money as a result of this program.[9] We find that the proposed demonstration Solar DG Program – the benefits of which are unknown at this time – at the level of cost proposed by Dominion is not in furtherance of the public interest. We conclude that the Company can gain reasonable experience and data based on the implementation of the program at the cost level approved herein, after which Dominion can file an application under Chapter 771 seeking to raise the cost cap if it believes the results at that point warrant such action. In addition, based on the actual results obtained, Dominion and other participants can evaluate whether any additional MWs available under Chapter 771 should be allocated to Customer-owned, as opposed to Company-owned, facilities.[10]

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[9] *See* Ex. 21 (Vaswani supplemental direct) at 3.

[10] *See, e.g.,* Chapter 771; Consumer Counsel's Post-hearing Brief at 25; Staff's Post-hearing Brief at 35-36.

Second, as part of the Solar DG Program, we grant Dominion a "blanket" CPCN to construct and operate Company-owned solar distributed generation facilities located at selected large commercial and industrial customer locations dispersed throughout the Company's service territory and in community (including governmental) settings, subject to the requirements set forth in this Order. We grant such a "blanket" certificate based on the specific circumstances of this case, which include the practical realities of selecting multiple locations to install these small, dispersed facilities in accordance with the unique provisions embodied within Chapter 771.

Third, the Solar DG Program is approved as a *voluntary* program, as proposed by Dominion.[11] As a result, and as agreed to by the Company, Dominion shall not exercise any eminent domain authority in order to implement this voluntary program (including the "blanket" CPCN granted herein).[12]

Fourth, as agreed to by Dominion, the Company shall comply with all other applicable state and local laws, including the Department of Environmental Quality's Permit by Rule requirements and local zoning and land-use ordinances and regulations.[13]

Fifth, Dominion shall use the proceeds it receives from selling the renewable energy certificates ("RECs") obtained from the Solar DG Program to offset the costs (including financing costs) of this program. This is consistent with the program as modeled by the Company.[14]

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[11] *See, e.g.,* Company's Post-hearing brief at 15; Ex. 11 (Corsello direct) at 3.

[12] *See, e.g.,* Tr. 188 (Company witness Barker); Tr. 793 (Company witness Corsello).

[13] *See, e.g.,* Ex. 37 (Bisha rebuttal) at 6.

[14] *See, e.g.,* Tr. 850 (Company witness Stevens); Tr. 642 (Staff witness Abbott).

Sixth, as agreed to by Dominion, the Company shall comply with the annual reporting requirements recommended by Staff.[15]

Seventh, and finally, the costs of the Solar DG Program are not being approved or incurred for the purpose of Dominion's participation in an RPS Program. Dominion does not currently need these solar facilities to meet its RPS Goals.[16] Indeed, the Company expressly stated that it is not proposing these Company-owned solar facilities for the purpose of its RPS Program: "[W]e are not doing this project to meet the requirements of [the] RPS."[17] Accordingly, at this time, the costs incurred under the Solar DG Program are not being incurred for the purpose of participation in an RPS Program.

As a result, the incremental cost allocation requirements of § 56-585.2 E of the RPS statute are not applicable. Specifically, § 56-585.2 E of the Code: (1) directs that a "utility participating in such [RPS] program shall have the right to recover all incremental costs incurred *for the purpose* of such participation in such [RPS] program"; and (2) mandates how "[a]ll incremental costs *of the RPS program* shall be allocated" and restricts that allocation to certain rate classes (emphasis added). Since the costs of the Solar DG Program are not being incurred "for the purpose" of participation in an RPS Program, any incremental costs thereof are not costs "of the RPS program" – and the RPS incremental cost allocation provisions of § 56-585.2 E of the Code are not applicable.[18]

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[15] *See, e.g.,* Dominion's Post-hearing Brief at 23; Ex. 27 (Eichenlaub direct) at 17.

[16] *See, e.g.,* Ex. 24 (Dominion's annual report to the Commission on renewable energy); Tr. 525, 541 (Company witness Muchhala).

[17] Tr. 557 (Company witness Muchhala). *See also* Tr. 563 ("We're not doing this for the RPS.").

[18] Thus, we need not reach the question as to whether the Solar DG Program, on a net cost basis, includes any "incremental costs" as that term is used in § 56-585.2 E of the Code. *See, e.g.,* Mr. King's Post-hearing Brief at 2-7.

Chapter 771 requires the Commission to "exercise its existing authority to consider for approval ... petitions filed by a utility to construct and operate distributed solar generation facilities...."[19] The Commission's "existing authority" to consider CPCN applications to construct new generation includes §§ 56-46.1 and 56-580 D of the Code, but not the RPS statute (§ 56-585.2); that is, approval under the RPS statute is not needed in order to obtain a CPCN. Indeed, that is why Dominion's Application "seeks approval of a 'blanket' CPCN pursuant to Chapter 771, as well as §§ 56-46.1 and 56-580 D of the Code...", but does not request CPCN approval under § 56-585.2 of the RPS statute.[20] In addition, for the specific solar facilities requested herein, Chapter 771 further states that the Commission "shall consider such projects as one small non-combustible renewable power generation facility for purposes of project approval pursuant to §§ 10.1-1197.5, 10.1-1197.8, 56-265.2, 56-580 and 56-585.1 of the Code...."[21] We have considered these enumerated statutes in this case as directed by Chapter 771. We have not considered, and Chapter 771 does not direct us to consider, § 56-585.2 of the Code in approving a CPCN for the Company-owned solar facilities requested herein.

Further, the Code does not mandate that the costs of any and all renewable generation must be deemed – as a matter of law – as incurred for the purpose of an RPS Program. For example, when Dominion sought approval for participation in an RPS Program, it recognized

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[19] Chapter 771, § 1.

[20] Application at 2. *See also id.* at 26:

> WHEREFORE, Dominion Virginia Power respectfully requests that the Commission expeditiously ... [g]rant a 'blanket' certificate of public convenience and necessity and approval to construct and operate up to 30 MW of Company-owned Solar DG to be comprised of multiple facilities at selected large commercial and industrial customer locations dispersed throughout the Company's service territory under Va. Code §§ 56-580 D and 56-46. 1, and in community settings (including governmental settings) as set forth in Chapter 771....

[21] Chapter 771, § 3.

that subsequent Commission approval was necessary (and affirmed that it would seek such approval) for new generation costs to be part of the RPS Program.[22] This is because the RPS statute stands separate and apart from the statutes that the Commission must apply in approving or rejecting a CPCN for generation, renewable or non-renewable. There is nothing in the plain language of the CPCN or RPS statutes that requires the Commission to treat all approved renewable generation costs as incurred "for the purpose" of an RPS Program.[23] The General Assembly could have limited the Commission's discretion in this regard, but it did not.[24]

In addition, § 56-585.2 F of the RPS statute does not modify the express incremental cost allocation requirements of § 56-585.2 E. Section 56-585.2 F addresses how a utility shall meet

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[22] Ex. 25 (Dominion's application in Case No. PUE-2009-00082) at 11:

> Changes to the Plan will also be made as the Company's IRP develops over time, indicating the need for new facilities to be built. *If new renewable generation sources are constructed, the Company will request the Commission to approve modifying the RPS Plan, as necessary. Likewise, if there are other significant changes in the Company's RPS Plan, the Company will request the Commission to approve modifying the Plan.* Therefore, to meet the RPS Goals at "reasonable cost and in a prudent manner" the Company seeks a means to retain flexibility in implementing its Plan. The Company proposes that it be permitted to make changes in how it will meet the RPS Goals under the Plan and to provide administrative updates regarding material changes to the Commission Staff. In addition, the Company will file revisions to its RPS Plan periodically with the Commission. By this manner, the Company will have the flexibility to pursue the RPS Goals by taking advantage of market, legal, and policy conditions, and the Commission will have the advantage of ongoing review of the Company's RPS Plan. (Emphasis added.)

[23] *See, e.g., Appalachian Power Co. v. State Corp. Comm'n*, 2012 Va. LEXIS 202, at *16 (Nov. 1, 2012) ("The primary objective in statutory construction is to determine and give effect to the intent of the legislature as expressed in the language of the statute. ... When a statute is unambiguous, we must apply the plain meaning of that language.") (citations omitted); *Virginia Elec. and Power Co. v. State Corp. Comm'n*, 2012 Va. LEXIS 198, at *18 (Nov. 1, 2012) ("When construing a statute, our 'primary objective ... is to ascertain and give effect to legislative intent.' ... 'When the language of a statute is unambiguous, we are bound by the plain meaning of that language.'") (citations omitted).

[24] *See, e.g., Virginia Elec. and Power Co. v. State Corp. Comm'n*, 2012 Va. LEXIS 198, at *25 (Nov. 1, 2012) ("Thus, when 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.").

its RPS Goals with existing renewable resources and RECs.[25] These provisions, however, are not part of, and do not change, the exclusive cost allocation requirements of § 56-585.2 E, which are dependent upon the specific purpose of cost incurrence.[26] Indeed, the restrictive cost allocation provisions of § 56-585.2 E do not prevent the RPS Goals from being met by existing renewables and RECs as set forth in § 56-585.2 F.

Section 56-585.2 F of the Code also requires that any deficit in such RPS Goals shall only be filled "at *reasonable* cost and in a *prudent* manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B" of § 56-585.2 (emphasis added). The new Company-owned solar facilities would not currently satisfy this statutory standard based on the facts in this case. This is based on the scope, high cost, and negative net present value of these facilities (especially when compared to the other methods by which Dominion is meeting its RPS Goals pursuant to the Commission's prior approval of Dominion's RPS Program),[27] and in conjunction with the fact that the Company does not currently need (and did not propose) these facilities for purposes of its RPS Program.

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[25] Section 56-585.2 F of the Code provides in part as follows: (1) a "utility participating in such [RPS] program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible"; and (2) a "participating utility may sell renewable energy certificates produced at its own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates and the net difference in price between the renewable energy certificates shall be credited to customers."

[26] Further, if a utility sells RECs from a renewable facility, such action does not, in and of itself, automatically translate into a finding – either statutorily or factually – that the costs of such facility were incurred "for the purpose" of an RPS Program. *See* Consumer Counsel's Post-hearing Brief at 16-18; Staff's Post-hearing Brief at 19-20.

[27] *See, e.g.,* Ex. 25 (Dominion's application in Case No. PUE-2009-00082).

Finally, we have ascertained the plain meaning of these statutes in context, which is consistent with the CPCN and RPS statutes as a whole.[28] These statutes, and the Commission's implementation thereof, permit Dominion to recover the just and reasonable costs of its renewable generation, regardless of whether such generation was built or obtained for the purpose of the RPS Program. Our implementation of these statutes also enables Dominion to meet fully its RPS Goals and to obtain the bonus rate of return on equity granted by the RPS statute.[29] In addition, Dominion may build new renewable generation even if such generation does not meet the separate requirements of the RPS statute; otherwise, even if the CPCN statutes are met, all new renewable generation could be rejected if it does not meet the separate RPS standards.[30] There is nothing in the plain language or operation of the CPCN and RPS statutes that would dictate such a result. Moreover, since the RPS statute is separate from the CPCN requirements, it is consistent and harmonious that the General Assembly explicitly tied the special RPS cost allocation provisions only to those incremental (or extra) costs that were incurred "for the purpose" of the RPS Program – and not necessarily to all of the costs for all new renewable generation.[31]

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[28] *See, e.g., Virginia Elec. and Power Co. v. State Corp. Comm'n*, 2012 Va. LEXIS 198, at *18-19 (Nov. 1, 2012) ("Moreover, in evaluating a statute in this way, we have said that 'consideration of the entire statute ... to place its terms in context to ascertain their plain meaning does not offend the rule because 'it is our duty to interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal.'") (citations omitted).

[29] *See, e.g.,* Va. Code §§ 56-585.2 C and D.

[30] For example, if the Solar DG Program is also required to meet the RPS requirements, Consumer Counsel requests that the Commission reject Dominion's Application and deny the CPCN request for new renewable generation. *See, e.g.,* Consumer Counsel's Post-hearing Brief at 22-23.

[31] By applying the plain language limitations of Chapter 771 and § 56-585.2 of the Code, and by not inserting additional requirements in the CPCN or RPS statutes, the Commission has avoided ignoring, or adding to, the words of these statutes. *See, e.g., Appalachian Power Co. v. State Corp. Comm'n*, 2012 Va. LEXIS 202, at *17-19 (Nov. 1, 2012) ("Rules of statutory construction prohibit adding language to or deleting language from a statute. ... Adding words to a statute in this manner violates a well-established tenet of statutory construction. ... '[W]e are not free to add [to] language, nor to ignore language, contained in statutes.'") (citations omitted).

Accordingly, IT IS ORDERED THAT:

(1) The Company's Solar DG Program is approved, subject to the requirements set forth in this Order.

(2) We grant Dominion a "blanket" CPCN to construct and operate Company-owned solar distributed generation facilities located at selected large commercial and industrial customer locations dispersed throughout the Company's service territory and in community (including governmental) settings, subject to the requirements set forth in this Order.

(3) The outstanding motions to strike made during the evidentiary hearing are denied.

(4) We accept MeadWestvaco's issue matrix out-of-time, and we grant Mr. King's request to file his post-hearing brief out-of-time.

(5) 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 Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.