

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

APPALACHIAN POWER COMPANY

CASE NO. PUR-2024-00024

For a 2024 biennial review of its base rates,
terms and conditions pursuant to § 56-585.8
of the Code of Virginia

2024 APR 25 P 1:18

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HEARING EXAMINER'S PROTECTIVE RULING

April 25, 2024

On March 29, 2024, Appalachian Power Company ("APCo" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") for a review of the Company's rates and terms and conditions for the provision of generation and distribution services. Concurrent with filing the Application, the Company filed a Motion for Entry of a Protective Ruling ("Motion"), together with a proposed protective ruling for the Commission's consideration ("Proposed Ruling"), in accordance with 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Rules of Practice").¹

In support of its Motion, the Company represented that it submitted information with its Application that is confidential in nature and should not be publicly disclosed.² APCo also represented that it anticipates receiving discovery in this proceeding requesting confidential information.³

On April 25, 2024, the Commission issued an Order for Notice and Hearing ("Procedural Order") that, among other things, appointed a Hearing Examiner to rule on any discovery matters that may arise during this case, including ruling on the Motion.⁴

I find that the below Protective Ruling should be entered to facilitate the filing and exchange of confidential information and to permit the development of all issues in this proceeding. The terms of this Ruling are substantially similar to those in the Proposed Ruling and to protections recently adopted in other Commission cases.⁵ I also recognize that this Protective Ruling may be subject to modification upon motion and good cause shown. Accordingly,

IT IS DIRECTED THAT the following procedures shall be established for the filing, exchange, and handling of confidential information and documents in this case:

¹ 5 VAC 5-20-10 *et seq.*

² Motion at 1.

³ *Id.*

⁴ Procedural Order at 6. The Procedural Order also appointed a Hearing Examiner to rule on any *pro hac vice* motions that are filed in this case. *Id.*

⁵ I note that, unlike the Proposed Ruling, this Protective Ruling includes a good faith conferring requirement in Paragraph 7.

(1) Any documents, materials, and information to be filed with or delivered to the Commission or produced by any party to another party or Staff, including transcripts, which the producing party designates and clearly marks as confidential or as containing trade secrets, privileged, or confidential commercial or financial information ("Confidential Information"), shall be filed, produced, examined, and used only in accordance with the conditions set forth below. Information that is available to the public anywhere else will not be granted confidential treatment and shall not be designated as "Confidential Information" by any party.

(2) Parties shall clearly mark and file under seal with, or deliver to, the Commission all information otherwise required to be filed or delivered but considered by the party to be Confidential Information. Items filed or delivered under seal shall be securely sealed in an opaque container that is clearly labeled "UNDER SEAL" and, if filed, shall meet the other requirements for filing contained in the Commission's Rules of Practice. An original and fifteen (15) copies of all such information shall be filed with the Clerk of the Commission and one (1) additional copy of all such information shall also be delivered under seal to the Staff counsel assigned to the matter.

(3) Parties shall also file with, or deliver to, the Commission an original and one (1) copy of an expurgated or redacted version of all such documents containing Confidential Information for use and review by the public. On every document filed or delivered under seal as containing some Confidential Information, the producing party shall mark each individual page of the document that contains such Confidential Information, and shall clearly indicate the specific information requested to be treated as confidential by the use of highlighting, underscoring, bracketing, or other appropriate marking. All remaining materials on each page of the document shall be treated as non-confidential and be available for public use and review, as well as introduction at any hearing without regard to the remaining procedures established by this Protective Ruling. If an entire document is confidential, or if all information provided in electronic format is confidential, a marking prominently displayed on the first page of such document, or at the beginning of any information provided in electronic format, indicating that the entire document is confidential, shall suffice.

(4) If information that is requested pursuant to a discovery request in this proceeding is considered by the producing party to be Confidential Information, the producing party shall clearly mark all Confidential Information produced to Staff or other individuals authorized under this Protective Ruling to receive Confidential Information.

(5) Confidential Information from this proceeding that is retained by an attorney pursuant to Paragraph (17) (a), below, is not precluded from use in a subsequent Commission proceeding (if otherwise relevant and admissible), but shall remain subject to this Protective Ruling and any future order or ruling related thereto. Otherwise, all Confidential Information filed or produced by a party shall be used solely for the purpose of this proceeding (including any appeals).

(6) Access to Confidential Information shall be provided and specifically limited to Staff and any party, their counsel and expert witnesses, and to support personnel working on this case or a future case, subject to the conditions in Paragraphs (5), (17) (a), and (17) (b), under the supervision of said counsel or expert witnesses and to whom it is necessary that the Confidential

Information be shown for the purpose of this or a future proceeding, provided each such person granted access has previously executed an Agreement to Adhere to Protective Ruling ("Agreement"), which is set forth as Attachment A to this Protective Ruling. Staff and Staff counsel are not required to sign the Agreement, but are hereby ordered to preserve the confidentiality of the Confidential Information. All Agreements shall be promptly forwarded to the producing party and Staff counsel, and filed with the Clerk of the Commission upon execution.

(7) Staff or any party to the proceeding may challenge the confidential designation of particular information by filing a motion with the Commission. Any motion filed under this section shall, except for good cause shown, be accompanied by a certification that the movant has in good faith conferred or attempted to confer with the party asserting confidential treatment in an effort to resolve the dispute without Commission action. The Commission or Hearing Examiner will conduct an *in camera* review of the challenged documents, materials or information. Upon challenge, the information shall be treated as confidential pursuant to the Rules of Practice only where the party requesting confidential treatment can demonstrate to the satisfaction of the Commission or Hearing Examiner that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure. In no event shall any party disclose the Confidential Information it has received subject to this Protective Ruling absent a finding by the Commission or Hearing Examiner that such information does not require confidential treatment.

(a) Within five (5) business days of the filing of the motion, the party requesting confidential treatment shall file a response. The response shall respond to each and every document and all information that is subject to the party's motion. The response shall: (i) describe each document and all information, such description to include the character and contents of each document and all information to the extent reasonably possible without disclosing the Confidential Information; (ii) explain in detail why the information requires confidential treatment; and (iii) describe and explain in detail the anticipated harms that might be suffered as a result of the failure of the document to be treated as confidential.

(b) Within five (5) business days of the filing of the motion, Staff or any party to the proceeding may file a response.

(c) Within three (3) business days of the filing of any response, the party objecting to confidential treatment, or Staff if Staff is challenging confidentiality, may file a reply.

(d) Upon a determination by the Commission or the Hearing Examiner that all or portions of any materials filed under seal are not entitled to confidential treatment, the filing party shall file an original and one (1) copy of the redacted, or unredacted if applicable, version of the document reflecting the determination.

(8) The Commission or the Hearing Examiner may challenge, *sua sponte*, the confidential designation of particular information at any time during the proceeding. If, prior to the hearing, the Commission or the Hearing Examiner challenges the confidential designation of particular information, the Commission or the Hearing Examiner shall issue an order or ruling directing the party requesting confidential treatment to demonstrate that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure. The Commission or the Hearing Examiner will conduct an *in camera* review of the challenged documents, materials or information. The party requesting confidential treatment shall submit a response as directed by the Commission or the Hearing Examiner. The response shall respond to each and every document and all information that is subject to the order or ruling. The response shall: (a) explain in detail why the information requires confidential treatment; and (b) describe and explain in detail the anticipated harms that might be suffered as a result of the failure of the document to be treated as confidential. In no event shall any party disclose the Confidential Information it has received subject to this Protective Ruling absent a finding by the Commission or the Hearing Examiner that such information does not require confidential treatment.

(9) In the event that any party or Staff seeks permission to grant access to any Confidential Information to any person other than a person authorized to receive such information under Paragraph (6) above, Staff or the party desiring permission shall first obtain the consent of counsel for the producing party. In the event of a negative response, Staff or the party seeking disclosure permission may file a motion with the Commission for such permission and shall bear the burden of proving the necessity for such disclosure.

(10) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under Paragraph (6) above unless specifically ordered otherwise by the Commission or Hearing Examiner. Parties are encouraged to seek consent to disclose information or documents designated as confidential from the producing party to the maximum extent practicable before filing a motion pursuant to Paragraph (9) above.

(11) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding that the producing party has designated as Confidential Information until further Order of the Commission or Hearing Examiner Ruling.

(12) A producing party is obligated to separate to the fullest extent practicable non-confidential documents, materials, and information from Confidential Information and to provide the non-confidential documents, materials, and information without restriction.

(13) To the extent that a party contends the terms of this Protective Ruling do not provide sufficient protection to prevent harm to the producing party or to others, the party may request additional protection for extraordinarily sensitive information by filing a motion with the Commission, pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170. The moving party shall also file such extraordinarily sensitive information with the Clerk of the Commission under seal and deliver a copy of the extraordinarily sensitive information to Staff counsel under seal, pursuant to Paragraph (2) above. The producing party has the burden to demonstrate to the satisfaction of

the Commission that this Protective Ruling does not provide the extraordinarily sensitive information sufficient protection and that the proposed restrictions are necessary.

(a) The motion shall: (i) describe each document and all information for which additional protection is sought, such description to include the character and contents of each document and all information to the extent reasonably possible without disclosing the extraordinarily sensitive information; (ii) explain in detail for each document and all information why the confidential treatment afforded under this Protective Ruling is not sufficient to protect the producing party's interests; (iii) describe and explain in detail the anticipated harms that might be suffered if the information is not afforded the higher protection; and (iv) explain the producing party's proposed additional restrictions and why such restrictions are the minimum necessary to protect that party.

(b) Within three (3) business days of the filing of the motion, Staff and any party may file a response to the motion.

(c) Within two (2) business days of the filing of any response, the producing party may file a reply.

(14) In the event that Staff or a party seeks to use Confidential Information in filed pleadings, testimony, or other documents, Staff or the party seeking such introduction shall:

(a) file both confidential and non-confidential versions of the pleading, testimony, or other document. Confidential versions of the filed pleadings, testimony, or other documents shall clearly indicate the confidential material, including extraordinarily sensitive information, if any, contained within by highlighting, underscoring, bracketing, or other appropriate marking; and

(b) submit the confidential version to the Clerk of the Commission securely sealed in an opaque container that is clearly labeled "UNDER SEAL." Non-confidential versions of filed pleadings, testimony, or other documents shall redact all references to the Confidential Information. The filed pleadings, testimony, or other documents containing the Confidential Information shall be kept under seal unless and until the Commission rules to the contrary. Each party having signed Attachment A hereof, Staff, and each party to whom the Confidential Information belongs shall receive a copy of those parts of the filed pleadings, testimony, or other documents that contain references to or portions of the designated Confidential Information; provided, however, that a party shall not be entitled to receive an unredacted copy of filed pleadings, testimony, or other documents that include extraordinarily sensitive information for which additional protective treatment has been provided for by Order of the Commission or Hearing Examiner Ruling, unless such party otherwise has been provided access to such information contained in such filed pleadings, testimony, or other documents by such Order or Ruling. Each party having signed Attachment A hereof and Staff shall be bound by the Protective Ruling insofar as it restricts the use of and granting of access to the Confidential Information and by any such Order or Ruling providing additional protections for the extraordinarily sensitive information.

(15) Oral testimony regarding Confidential Information, if ruled admissible by the Commission or the Hearing Examiner, will be taken *in camera* and in the presence of only Staff and those other persons who have been granted access to such specific Confidential Information pursuant to this Protective Ruling. That portion of the transcript recording such testimony shall be placed in the record under seal.

(16) No person authorized under this Protective Ruling to have access to Confidential Information shall disseminate, communicate, or reveal any such Confidential Information to any person not specifically authorized under this Protective Ruling to have access to the same.

(17) (a) Attorneys may retain Confidential Information contained in their notes, other work product, and documents that are part of the record in this proceeding (including, but not limited to, transcripts, testimony, exhibits, pleadings, rulings, and orders), provided that Confidential Information contained therein must continue to be treated as directed by this Protective Ruling.

(b) If not covered by (a), above, at the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Protective Ruling shall be returned to the producing party or destroyed. In addition, at such time, any notes, analysis, or other documents prepared containing Confidential Information shall be destroyed. At such time, any originals or reproductions of any Confidential Information, or any notes, analysis, or other documents prepared containing Confidential Information in Staff's possession, will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. The producing party shall also retain all Confidential Information for a period of at least five (5) years after the conclusion of this proceeding (including any appeals). Insofar as the provisions of this Protective Ruling restrict the communications and use of the Confidential Information produced hereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

(18) Any party or person who obtains Confidential Information and thereafter fails to reasonably protect or misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, including the penalties provided for in § 12.1-33 of the Code of Virginia. This provision is not intended to limit the producing party's rights to pursue any other legal or equitable remedies that may otherwise exist.

 for
Bryan D. Stogdale
Hearing Examiner

The Clerk of the Commission is requested to send a copy of this Protective Ruling 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, VA 23219.

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ATTACHMENT A

APPLICATION OF

APPALACHIAN POWER COMPANY

CASE NO. PUR-2024-00024

For a 2024 biennial review of its base rates,
terms and conditions pursuant to § 56-585.8
of the Code of Virginia

AGREEMENT TO ADHERE TO PROTECTIVE RULING

I, _____, on behalf of and representing _____,
hereby acknowledge having read and understood the terms of the Protective Ruling entered in
this proceeding on April 25, 2024, and agree to treat all Confidential Information that I receive in
connection with Case No. PUR-2024-00024 as set forth in that Protective Ruling. Such
treatment shall include, but not be limited to: (1) not disseminating, communicating, or
revealing any Confidential Information to any person, other than Staff, not specifically
authorized to receive Confidential Information under that Protective Ruling; (2) if an attorney
licensed to practice law in Virginia, admitted *pro hac vice* in this case, or employed as corporate
counsel, returning or destroying all Confidential Information produced pursuant to that
Protective Ruling except for the attorney's notes and work product, and documents that are part
of the record in this proceeding (including, but not limited to, transcripts, testimony, exhibits,
pleadings, rulings, and orders); and (3) if not covered by (2), above, returning or destroying all
Confidential Information produced pursuant to that Protective Ruling.

Signature

Printed Name

On behalf of

Date