

## STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 7, 2024

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PETITION OF

VIRGINIA DISTRIBUTED SOLAR ALLIANCE

CASE NO. PUR-2024-00150

For injunctive relief against Virginia Electric and Power Company, for commencement of Staff investigation, and for expedited consideration

ORDER

On August 16, 2024, pursuant to Rule 100 of the Rules of Practice and Procedure of the State Corporation Commission ("Commission"),<sup>1</sup> Virginia Distributed Solar Alliance ("VDSA") filed a petition for injunctive relief against Virginia Electric and Power Company ("Dominion" or "Company"), and for commencement of an investigation by the Commission Staff ("Petition").<sup>2</sup>

Previously, in Case No. PUR-2023-00097, VDSA filed a Complaint and Petition for Injunctive Relief and Request for Expedited Action, seeking: (i) an injunction from the Commission to immediately suspend imposition of Dominion's Interconnection Parameters for Net Metering Distributed Energy Resources ("Interconnection Parameters") on mid-sized nonresidential net energy metering projects ("Mid-sized NEM Projects"), and (ii) an injunction to prohibit Dominion from requiring eligible nonresidential customer-generators to sign a Small Generator Interconnection Agreement ("SGIA") for Mid-sized NEM Projects.<sup>3</sup> The Commission

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<sup>1</sup> 5 VAC 5-20-10 *et seq.*

<sup>2</sup> Petition at 1.

<sup>3</sup> *Petition of Virginia Distributed Solar Alliance, For injunctive relief against Virginia Electric and Power Company*, Case No. PUR-2023-00097, Doc. Con. Cen. No. 230840172, Final Order at 1-2 ("Case No. PUR-2023-00097 Final Order") (Aug. 30, 2023).

issued an injunction in that case suspending the imposition of the Interconnection Parameters on Midsized NEM Projects and suspending the requirement of SGAs for Midsized NEM Projects until the Commission completed the investigations and rulemaking that had been established in Case Nos. PUR-2022-00073 and PUR-2023-00069.<sup>4</sup> However, in granting the injunctions, the Commission found that "Dominion should continue to take the actions necessary to maintain the immediate safety and reliability of its system; this may include, but need not be limited to, seeking specific authority from this Commission in one or more formal proceedings."<sup>5</sup>

Thereafter, in Case No. PUR-2023-00069, Dominion filed a motion to, in part, grant it interim authority to establish and implement minimum safety standards for Midsized NEM Projects, which Dominion asserted was needed to responsibly manage, maintain, and operate its grid safely and reliably. In a Hearing Examiner's Ruling dated November 6, 2023, the Chief Hearing Examiner granted Dominion interim authority to: (i) continue to require either a fiber optic or a cellular-based direct transfer trip ("DTT") communication system, at the customer's election ("Interim Parameters"), and (ii) require the installation of a distributed generation panel ("DG Panel"), under certain conditions.<sup>6</sup> The November 6, 2023 Ruling further provided that in the event Dominion used its interim authority to require DTT and/or a DG Panel, the vendor or

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<sup>4</sup> *Id.* at 4. See also *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of revising the Commission's Regulations Governing Interconnection of Small Electrical Generators and Storage*, Case No. PUR-2023-00069, Doc. Con. Cen. No. 230510089, Order Initiating Rulemaking Proceeding (May 2, 2023); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter considering utility distributed energy resource interconnection-related issues and questions*, Case No. PUR-2022-00073, Doc. Con. Cen. No. 220530158, Order for Comment (May 24, 2022).

<sup>5</sup> Case No. PUR-2023-00097 Final Order at 5.

<sup>6</sup> *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of revising the Commission's Regulations Governing Interconnection of Small Electrical Generators and Storage*, Case No. PUR-2023-00069, Doc. Con. Cen. No. 231110133, Hearing Examiner's Ruling (Nov. 6, 2023) ("November 6, 2023 Ruling"). On November 16, 2023, VDSA filed a motion to certify the November 6, 2023 Ruling to the Commission. On November 27, 2023, the Chief Hearing Examiner declined to certify the November 6, 2023 Ruling to the Commission.

customer would have the right to appeal the Company's requirement of DTT and/or a DG Panel by petitioning the Commission for an evidentiary proceeding in which Dominion would bear the burden of proving the necessity and reasonableness of such requirement(s).<sup>7</sup>

In its Petition in the instant case, VDSA seeks to have the Commission issue an injunction suspending the imposition of the Interim Parameters and all additional substation and distribution upgrade costs imposed on Midsized NEM Projects following the issuance of the Interim Parameters (collectively, "Interim Requirements").<sup>8</sup> VDSA states that, if the Commission will not immediately enjoin the Interim Requirements in their entirety, VDSA seeks in the alternative to have the Commission immediately enjoin Dominion from imposing any costs or delays caused by the Interim Requirements on Midsized NEM Projects.<sup>9</sup>

Additionally, through its Petition, VDSA seeks to have the Commission enjoin Dominion from interconnecting net metering projects beyond the 30-day timeline for residential net metering projects and the 60-day timeline for nonresidential net metering projects (collectively, "30 and 60 Day Timeframes") that are set forth in the Commission's Regulations Governing Net Energy Metering ("Net Metering Regulations").<sup>10</sup> Instead, VDSA requests that the Commission direct that all net metering projects are deemed to have received permission to operate ("PTO") in any instance where Dominion has failed to meet the 30 and 60 Day Timeframes and failed to timely submit a waiver request accompanied by an explanation of why the waiver is needed for

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<sup>7</sup> November 6, 2023 Ruling at 13.

<sup>8</sup> Petition at 3-4. VDSA asserts these requirements constitute an unauthorized pilot program and violate Virginia law governing interconnection of utility distribution energy resources. *Id.* at 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* See Net Metering Regulations at 20 VAC 5-315-10 *et seq.*

matters reasonably beyond the utility's control.<sup>11</sup> VDSA further states that, if the Commission will not immediately enjoin Dominion from delaying interconnections beyond the 30 and 60 Day Timeframes, VDSA seeks, in the alternative:

to have the Commission resolve this issue via a Staff investigation concluded no later than September 30, 2024 that addresses if it is consistent with Virginia law for Dominion to routinely delay implementation of interconnection for net metering projects beyond the 30 and 60 Day Timeframes, including whether (a) the burden imposed by such delays should be borne entirely by net metering projects or should instead be borne at least in part by Dominion and (b) whether all net metering projects are deemed to have received PTO in any instance where Dominion has failed to timely submit a waiver request accompanied by an explanation of why the waiver is needed for matters reasonably beyond the utility's control.<sup>12</sup>

VDSA seeks the requested injunctions pending the outcome of an evidentiary hearing on Dominion's DTT requirements, which will be held in a separate docket, as directed by the Commission as part of its August 7, 2024 Order Directing Evidentiary Proceeding, Pilot and Improvements to the Interconnection Process in Case No. PUR-2022-00073.<sup>13</sup>

On August 21, 2024, the Commission issued an Order establishing dates for Dominion to file a response to the Petition ("Response") and for VDSA to file a reply ("Reply").

On August 30, 2024, Dominion filed its Response, in which the Company asserts, among other things, that the Petition is barred by collateral estoppel and should be dismissed because the issues raised in the Petition were litigated and fully addressed in the November 6, 2023 Ruling in

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<sup>11</sup> Petition at 4-5.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* See also *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter considering utility distributed energy resource interconnection-related issues and questions*, Case No. PUR-2022-00073, Doc. Con. Cen. No. 240820139, Order Directing Evidentiary Proceeding, Pilot and Improvements to the Interconnection Process ("Order Directing Evidentiary Proceeding") (Aug. 7, 2024).

Case No. PUR-2023-00069.<sup>14</sup> The Company further argues that, if VDSA's claims are not barred by collateral estoppel, the relief sought in the Petition should still be denied because the facts do not support the requested injunctive relief.<sup>15</sup> Dominion claims that its development and implementation of the Interim Requirements comply with applicable law and regulations and the November 6, 2023 Ruling.<sup>16</sup> The Company also emphasizes that it has a responsibility to manage, maintain, and operate its grid safely and reliably, and that the Chief Hearing Examiner recognized this responsibility when he granted the Company interim authority in Case No. PUR-2023-00069.<sup>17</sup>

On September 6, 2024, VDSA filed its Reply. In its Reply, VDSA claims that the relief requested in the Petition should be granted because the Response "does not refute the fundamental premise of the Petition: in the absence of an injunctive ruling, Dominion will, in direct conflict with Virginia law, Virginia regulations, and Commission precedent, have nullified the opportunities provided under current Virginia law for a significant portion of the non-residential net metering market for at least 3.5 years and may succeed in eliminating such opportunities altogether."<sup>18</sup>

NOW THE COMMISSION, having considered the Petition, the Response, and the Reply, finds that the Petition should be denied.

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<sup>14</sup> See Response at 3, 15-18.

<sup>15</sup> See *id.* at 3, 19-26.

<sup>16</sup> See *id.* at 3.

<sup>17</sup> See *id.* at 3, 14-15, 46.

<sup>18</sup> Reply at 1.

In its request for injunctive relief, VDSA cites to Code §§ 56-6, 56-35, and 56-247 as the basis for the Commission's jurisdiction over this matter.<sup>19</sup> VDSA also relies on Code §§ 56-578 and 56-585.1 as the legal basis for the action sought in the Petition.<sup>20</sup> Code § 56-6 states, in part:

Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this or any other chapter under this title, by any public service corporation chartered or doing business in this Commonwealth, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record. If the grievance complained of be established, the Commission, sitting as a court of record, shall have jurisdiction, by injunction, to restrain such public service corporation from continuing the same, and to enjoin obedience to the requirements of this law....

Further, in assessing whether to grant the requested relief, the Commission is to apply the standards for such applied by the other "courts of record" in the Commonwealth. The Supreme Court of Virginia, in Rule 3:26, enumerates this standard as follows:

A court may issue a preliminary injunction only if it first determines that the movant will more likely than not suffer irreparable harm without the preliminary injunction .... If the irreparable-harm threshold has been met, the court must determine whether the following factors support the issuance of a preliminary injunction:

- i. whether the movant has asserted a legally viable claim based on credible facts (not mere allegations) demonstrating that the underlying claim will more likely than not succeed on the merits;
- ii. whether the balance of hardships—that is, the harm to the movant without the preliminary injunction compared with the harm to the nonmovant with the preliminary injunction—favors granting the preliminary injunction; and
- iii. whether the public interest, if any, supports the issuance of a preliminary injunction.

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<sup>19</sup> See Petition at 8-9.

<sup>20</sup> See *id.* at 9-10. The Petition also cites to Code § 56-576, among other statutory provisions.

A preliminary injunction may be issued only if it is supported by factors (i) and (ii), and it is not contrary to the public interest in factor (iii).<sup>21</sup>

The petitioner has the burden of establishing that the relief requested in the Petition should be granted. For the reasons set forth below, we find that the burden has not been met in this instance. VDSA has failed to demonstrate the irreparable harm required to issue an injunction. In addition, we find, for the reasons addressed herein, that VDSA has not met its burden of demonstrating that it has "a legally viable claim based on credible facts (not mere allegations) demonstrating that the underlying claim will more likely than not succeed on the merits."

First, as noted above, the Chief Hearing Examiner's November 6, 2023 Ruling provided an avenue for relief for parties aggrieved by Dominion's application of the Interim Parameters, by filing with the Commission to initiate a proceeding in which Dominion would bear the burden of proving that its actions were warranted. To date, no vendor or customer has filed such a petition, as the current Petition by VDSA has not been brought on behalf of a specific customer or vendor who wishes to appeal a Dominion finding that DTT and/or a DG Panel is required. Nor does VDSA's Petition request an evidentiary proceeding to determine the merits of Dominion's actions related to such a specific aggrieved party.

Next, Dominion requested, and received, interim authority to establish and implement the Interim Parameters in Case No. PUR-2023-00069.<sup>22</sup> Numerous arguments raised by VDSA in this proceeding in support of its requested injunction were previously raised in response to

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<sup>21</sup> Va. R. Sup. Ct. 3:26.

<sup>22</sup> See November 6, 2023 Ruling at 13.

Dominion's request to implement the Interim Parameters in Case No. PUR-2023-00069.<sup>23</sup> These arguments were considered by the Chief Hearing Examiner before he issued the November 6, 2023 Ruling approving the Interim Parameters as set forth in that Ruling.<sup>24</sup> We concur with the Chief Hearing Examiner's findings in the November 6, 2023 Ruling. We also concur with Dominion that several concerns raised by VDSA, including Dominion's use of dual carrier cellular DTT, and its requirement that certain substation equipment beyond the DG Panel be upgraded, are not inconsistent with the November 6, 2023 Ruling.<sup>25</sup> Thus, the Petition does not establish that the Interim Parameters violate any applicable laws or prior Commission directives or Orders.<sup>26</sup>

Further, in Case No. PUR-2023-00097, the Commission enjoined and suspended Dominion's Interconnection Parameters on an interim basis, but directed Dominion to continue to

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<sup>23</sup> For example, in its Petition, VDSA argues that injunctive relief is appropriate because "Dominion has provided no actual evidence for its safety and reliability claims." *See* Petition at 23. In Case No. PUR-2023-00069, the Chief Hearing Examiner noted that VDSA opposed Dominion's request to implement Interim Parameters due in part to a lack of "credible support for a finding that imposing the requested [Interim Parameters] on an expedited basis is needed for grid safety and reliability." *See* November 6, 2023 Ruling at 3 (citing VDSA's response at 5-6). Further, in its Petition, VDSA asserts that nothing prevents Dominion from implementing parameters at its own cost while waiting for the Commission to conclude the evidentiary proceeding on Dominion's DTT requirements. *See* Petition at 26. In Case No. PUR-2023-00069, VDSA asserted that if Dominion was unable to collect the cost of equipment required to interconnect Midsized NEM Projects directly from customers installing Midsized NEM Projects, the Company could "make the case for such cost recovery via a distribution grid transformation [rate adjustment clause]." *See* November 6, 2023 Ruling at 3 (citing VDSA's response at 6).

<sup>24</sup> *See* November 6, 2023 Ruling at 3-13.

<sup>25</sup> *See* Response at 20-21.

<sup>26</sup> For clarity, this finding refers to both the Interim Parameters and Interim Requirements. We further note that in the November 6, 2023 Ruling, the Chief Hearing Examiner determined that, when Dominion elects to use its interim authority to require DTT and/or a DG Panel, the vendor or customer "shall have the right to appeal the Company's requirement of DTT and/or a DG Panel by petitioning the Commission for an evidentiary proceeding in which Dominion Energy shall bear the burden of proving the necessity and reasonableness of such requirement(s)." November 6, 2023 Ruling at 13. To date, no vendor or customer has filed such a petition, as the current Petition by VDSA has not been brought on behalf of a specific customer or vendor who wishes to appeal a Dominion finding that DTT and/or a DG Panel is required. Nor does VDSA's Petition request an evidentiary proceeding.



take the actions necessary to maintain the safety and reliability of its system.<sup>27</sup> The Chief Hearing Examiner made a similar finding in his November 6, 2023 Ruling, finding that the Interim Parameters should be adopted for certain projects "[b]ased on safety and reliability concerns...."<sup>28</sup> The Interim Parameters were thus established to maintain the safety and reliability of Dominion's system. It has not been established that safety and reliability would be maintained if the Interim Parameters were enjoined, or that there would be irreparable harm if an injunction were not granted.

In addition, as we noted in Case No. PUR-2022-00073:

The Commission appreciates that there are concerns surrounding the costs of DTT as well as concerns regarding maintaining grid safety and reliability with the addition of significant levels of DER, and we concur with the Report that a formal evidentiary proceeding would allow parties to establish a robust factual record on DTT and related alternatives which are not unduly burdensome and expensive.<sup>29</sup>

Thus, the Commission has already determined that it is appropriate to examine issues related to the Company's use of DTT, and the use of alternative technologies, in a separate, formal evidentiary proceeding that includes the establishment of a robust factual record. The Commission established that proceeding with its Order Directing Evidentiary Proceeding. VDSA's Petition essentially requests that the Commission prohibit certain Dominion requirements related to DTT *prior to* receiving evidence on or further examining such issues in

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<sup>27</sup> Case No. PUR-2023-00097 Final Order at 5.

<sup>28</sup> November 6, 2023 Ruling at 12.

<sup>29</sup> Order Directing Evidentiary Proceeding at 7.

the formal evidentiary proceeding that the Commission established for purpose of investigating just such issues.<sup>30</sup> We do not find such action to be appropriate at this time.

Moreover, with respect to VDSA's request that the Commission "direct that all net metering projects are deemed to have received PTO, including permission to install bi-directional, revenue grade meters and to accrue net metering credits, *in any instance* where Dominion has failed to timely submit a waiver request...",<sup>31</sup> we do not believe it is appropriate at this time to grant the blanket approval requested by VDSA in this proceeding, as directives related to the 30 and 60 Day Timeframes are already set forth in the Commission's Net Metering Regulations,<sup>32</sup> as well as for potential safety and reliability reasons.<sup>33</sup>

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is denied.
- (2) This matter is dismissed.

A COPY hereof shall be sent electronically 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.

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<sup>30</sup> See, e.g., Petition at 2-4.

<sup>31</sup> Petition at 37 (emphasis added).

<sup>32</sup> See 20 VAC 5-315-30.

<sup>33</sup> Nor do we elect to direct Staff to conduct an investigation regarding the 30 and 60 Day Timeframes at this time. Specific circumstances or concerns, however, may be addressed by an individual or entity through either informal or formal means. See, e.g., 5 VAC 5-20-70; 5 VAC 5-20-100.