

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, FEBRUARY 7, 2024

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PETITION OF

RAPPAHANNOCK ELECTRIC
COOPERATIVE

HYPERSCALE ENERGY SERVICES, LLC and

CASE NO. PUR-2024-00015

HYPERSCALE ENERGY 1, LLC

For a declaratory judgment and, if necessary,
a partial waiver of the requirements of
20 VAC 5-312-20 E

ORDER INVITING COMMENTS

On January 23, 2024, Rappahannock Electric Cooperative ("REC"), Hyperscale Energy Services, LLC ("HES") and Hyperscale Energy 1, LLC ("Hyperscale") (collectively, "Petitioners") filed with the State Corporation Commission ("Commission") a Petition for Declaratory Judgment ("Petition") seeking an order confirming (1) Hyperscale may make unregulated sales of electric energy to REC's members within REC's certificated service territory and (2) REC can comply with any obligation under 20 VAC 5-312-20 E, as it applies to certain large loads, by establishing and maintaining the existence of Hyperscale and Hyperscale's readiness to provide electric supply to customers.¹ In the event that the Commission determines that 20 VAC 5-312-20 E does not permit compliance through the affiliate arrangement proposed in the Petition, REC requests that the Commission grant it a waiver of this regulation to permit

¹ Petition at 1. Concurrently with the Petition, the Petitioners filed an application under the Affiliates Act, Code § 56-76 *et seq.*, seeking Commission approval of an Operating Services Agreement between the three entities.

REC to meet certain large customers' electric supply requirements through the arrangement with Hyperscale described in the Petition.²

According to the Petitioners, REC is currently working with customers that intend to build facilities in its service territory that, when fully operational, will exceed REC's current peak load requirements to serve its members.³ REC states that it created Hyperscale and HES as wholly owned subsidiaries⁴ to allow it to meet the power supply requirements of these large customers while at the same time protecting its existing membership from the potential risks that could accompany REC's service to these new customers.⁵ Petitioners state that this arrangement has not previously been utilized by a cooperative in Virginia.⁶

REC states that it is currently preparing an application to be filed with the Commission at a later date for approval of a new tariff, Schedule LP-DF, which it intends to offer to large, high load factor customers served by dedicated distribution facilities.⁷ Through this tariff, REC will provide these very large customers distribution service, and either Hyperscale or a competitive service provider, when the customer is eligible for such service, will provide generation service.⁸

Under the proposed arrangement, Hyperscale will be the load serving entity in the PJM Interconnection, LLC ("PJM") market and procure energy and capacity on behalf of the

² *Id.* at 1-2.

³ *Id.* at 3.

⁴ Specifically, HES is a wholly owned subsidiary of REC, and Hyperscale is a wholly owned subsidiary of HES. Petition at 2.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Id.* at 4.

⁸ *Id.*

customers it has been established to serve.⁹ HES, as an agent for Hyperscale, will handle Hyperscale's duties and responsibilities for wholesale power market access including scheduling and settlement with PJM's markets.¹⁰

Petitioners state that in addition to seeking an arrangement to safely serve a specific customer that currently seeks to establish service from REC, it has garnered significant interest from other data center operators and developers throughout its service territory that would present similar issues and similar supply risks.¹¹ REC states that it intends for these additional projects to be served under the same affiliate structure through additional dedicated service affiliates of HES to minimize the risk to REC's members.¹²

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that REC should be directed to provide notice of the Petition to the affected data center customer and that interested persons should be provided an opportunity to file comments on the Petition. The Commission further finds that the Petitioners should be directed to clarify certain aspects of their Petition.

Among other things, the Petitioners seek an order confirming that "Hyperscale may make unregulated sales of electric energy to [REC's] members within [REC's] certificated territory."¹³ Petitioners also assert that "Hyperscale will enter into agreements with its customers to govern

⁹ *Id.* at 8.

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.* at 16.

this supply service."¹⁴ REC "requests that the Commission find that meeting the power supply requirements of exceptionally sized customers through the affiliate arrangement discussed in this Petition complies with the Cooperative's obligations under 20 VAC 5-312-20 E." In addition to the issues directly raised in the Petition, the Commission poses additional questions below (without exclusion of other potential issues that may be raised in this case) for purposes of the instant proceeding.

The Commission directs REC to address whether, under its proposal, the data center customer would be eligible to take regulated service from REC under an approved tariff. If not, REC should address what options and safeguards would be available to the data center customer should it be unable to reach an agreement with Hyperscale to govern supply service under REC's proposal. Are the customers under this arrangement required to consent to unregulated service, or may they request service under a regulated tariff?

The Commission also specifically invites comments from Petitioners, Staff, and any interested persons regarding whether the requested declaratory judgment complies with Code § 56-231.34 which provides, in part, that "[t]he regulated utility services of a cooperative shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are regulated utility services provided by other persons under the laws of this Commonwealth." For example, would the Commission be relinquishing jurisdiction over the rates and service being provided to the data center customer by Hyperscale under REC's proposal? In addition, the Commission invites comment on whether the Petition complies with Code § 56-231.34:1 which provides, in part, that "a cooperative that provides regulated utility services shall have the *right to offer* and make unregulated sales of electric power to its members within its certificated

¹⁴ *Id.* at 9.

service territory."¹⁵ For example, does this provision permit the Commission to *require* a data center customer to accept an offer by Hyperscale to provide generation supply service to the data center customer?

Lastly, the Commission invites comments on alternatives to the Company's proposal, including potential tariffs, to address any additional risks to REC and its members posed by serving large data center customers.¹⁶

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless they contain confidential information, and require electronic service on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUR-2024-00015.

(2) All pleadings in this matter should be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").¹⁷ Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

¹⁵ Emphasis added.

¹⁶ For example, as updated Case No. PUR-2022-00056, Mecklenburg Electric Cooperative ("Mecklenburg") has a tariff approved under Code § 56-235.2, designated Schedule RTO, under which Mecklenburg provides service to a data center customer. *Application of Mecklenburg Electric Cooperative, For approval of modification to Schedule RTO*, Case No. PUR-2022-00056, Doc. Con. Cen. No. 230430219, Order Granting Approval (Apr. 24, 2023).

¹⁷ 5 VAC 5-10-20 *et seq.*

(3) On or before February 13, 2024, Petitioners shall provide notice of the Petition to the affected data center customer by providing a copy of this Order and the Petition. Such service shall be made electronically, if possible, or by first class mail.

(4) On or before February 20, 2024, Petitioners shall file proof of notice directed by Ordering Paragraph (3). Petitioners may redact the customers' name if appropriate to protect the customers' identity.

(5) On or before February 27, 2024, Petitioners shall file a response to the issues and questions set forth herein.

(6) On or before March 8, 2024, interested persons or entities may file comments on the Petition and Petitioners' responses to the Commission's issues and questions set forth herein.

(7) On or before March 22, 2024, Staff shall file comments on the Petition and Petitioners' responses to the Commission's issues and questions set forth herein.

(8) On or before April 5, 2024, Petitioners shall file a response to the comments filed in this proceeding by interested persons and Staff.

(9) This matter is continued.

Commissioner James C. Dimitri participated in this matter.

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.