

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 1, 2016

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CASE NO. PUE-2015-00127

APPLICATION OF

DOSWELL LIMITED PARTNERSHIP

For approval and certification of a
340 MW electric generating facility in
Hanover County pursuant to §§ 56-46.1
and 56-580 D of the Code of Virginia

FINAL ORDER

On December 4, 2015, Doswell Limited Partnership ("Doswell" or "Applicant") filed with the State Corporation Commission ("Commission") an application ("Application") for a certificate of public convenience and necessity ("Certificate") to construct and operate a nominal 340 megawatt ("MW") generating facility, including associated facilities, in Hanover County, Virginia (collectively, the "Project"). Doswell filed its Application pursuant to §§ 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

In its Application, Doswell proposes to build the Project on the grounds of the existing Doswell Energy Center in Hanover County ("DEC Site").² The Applicant indicates that it plans to construct the Project on the east side of the DEC Site, adjacent to property zoned for heavy industrial uses and owned by Bear Island Paper Company.³

¹ 20 VAC 5-302-10 *et seq.*

² Ex. 2 (Application) at 3; Ex. 4 (Vogt Direct) at 2. The DEC Site is located south of the Little River and north of Route 738.

³ Ex. 2 (Application) at 3.

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Doswell currently operates electric generating facilities on the approximately 155-acre DEC Site.⁴ According to the Application, Doswell currently operates: (i) four combined-cycle turbines in conjunction with four duct burners capable of producing approximately 650 MW for primary electricity generation; (ii) one simple-cycle combustion turbine ("CT") capable of producing approximately 171 MW for on-demand, peaking electricity generation; and (iii) auxiliary facilities supporting these operations.⁵

Doswell requests approval to expand the DEC Site by adding a simple-cycle electric generating facility capable of firing both natural gas and ultra-low sulfur diesel ("ULSD").⁶ According to the Applicant, this Project involves the addition of two dual-fuel simple-cycle CTs that will provide on-demand, peaking electricity generation.⁷ The Applicant represents that the CTs will use dry low nitrogen oxide ("NO_x") burner technology to minimize NO_x emissions.⁸ Doswell expects the Project to begin commercial operation in March 2018.⁹

Doswell indicates that the Project will use pipeline-quality natural gas and will use ULSD when natural gas is not available.¹⁰ Doswell represents that it will obtain natural gas from its existing firm and interruptible capacity, or purchase transportation service on an as-needed basis from Virginia Natural Gas, Inc. ("VNG"), under its existing tariff, or purchase from a third

⁴ *Id.*

⁵ Ex. 4 (Vogt Direct) at 2-3.

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ Ex. 2 (Appendix) at 6.

¹⁰ Ex. 4 (Vogt Direct) at 4-5.

party.¹¹ According to the Applicant, a VNG pipeline that currently traverses the DEC Site will transport natural gas to the Project.¹² To supply gas to the new CTs, Doswell states that it plans to construct a new natural gas supply line and a new pressure-regulating and dew-point heating station on the DEC Site.¹³ The Applicant indicates that the Project will not need any new off-site pipeline facilities.¹⁴

Doswell indicates that it will purchase ULSD from wholesale fuel suppliers in the Mid-Atlantic region.¹⁵ To store the ULSD, the Applicant represents that it plans to construct a dedicated ULSD storage tank on the DEC Site or use one of its two existing approximately 7.5 million gallon storage tanks.¹⁶

Doswell indicates the Project will interconnect at Virginia Electric and Power Company's existing Four Rivers Substation, located entirely on the DEC Site.¹⁷ To interconnect the Project with the substation, Doswell expects to construct a 0.3 mile interconnection line and associated facilities, located entirely on the DEC Site.¹⁸

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ Ex. 2 (Appendix) at 6.

¹⁵ Ex. 4 (Vogt Direct) at 5.

¹⁶ *Id.*

¹⁷ *Id.*; Ex. 2 (Appendix) at 10.

¹⁸ Ex. 4 (Vogt Direct) at 5; Ex. 2 (Appendix) at 10. To accommodate the Project, the Applicant states that a 230 kilovolt breaker and associated equipment will be installed at the Four Rivers Substation. Ex. 2 (Appendix) at 10.

According to the Applicant, Doswell is a special-purpose entity organized to develop, construct, own, and operate the facilities on the DEC Site including the proposed Project.¹⁹ Doswell explains that it is controlled by its two partners²⁰ and is 100% owned by affiliates of LS Power.²¹ The Applicant represents that Doswell, its two controlling partners, and LS Power have extensive experience in the development of projects of this nature.²² Doswell also indicates that LS Power is in a strong financial position and is well positioned to fund development of the Project.²³

Doswell asserts that the Project is not contrary to the public interest and will have no material adverse effect on the reliability of electric service provided by a regulated public utility.²⁴ In fact, the Applicant represents that the Project will promote the public interest by providing economic benefits to Hanover County and the surrounding area, and will enhance the reliability of the electricity supply in the Commonwealth and the Mid-Atlantic region, particularly during peak demand times and extreme weather events.²⁵ Further, Doswell states that the Project will meet rising demand for electricity in the Mid-Atlantic region with appropriate, environmentally responsible technology; advance the goals set forth in the 2010 Virginia Energy Plan by providing in-state generating capacity; leverage the Commonwealth's existing infrastructure by enhancing an existing generation asset without

¹⁹ Ex. 2 (Application) at 2.

²⁰ Doswell I, LLC as a general partner and Doswell LP, LLC as a limited partner.

²¹ Ex. 2 (Application) at 2.

²² *Id.*

²³ Ex. 2 (Appendix) at 1.

²⁴ Ex. 2 (Application) at 6.

²⁵ *Id.*; Ex. 4 (Vogt Direct) at 7-8.

requiring the acquisition of additional land; and enhance the competitive market for wholesale electricity in the region by offering generation that will not be owned by an incumbent electric utility.²⁶ In addition, the Applicant states that because it is not a regulated utility, it bears any business risk associated with the Project rather than ratepayers in Virginia.²⁷

Doswell indicates in its Application that it will obtain all necessary approvals and permits required for environmental impacts and asserts that the Project will have minimal adverse environmental effects.²⁸ In addition, the Applicant represents that it will comply with all necessary conditions imposed by the regulatory agencies with oversight responsibilities for all environmental aspects of the Project to ensure protection of public health and the environment.²⁹

On December 22, 2015, the Commission issued an Order for Notice and Hearing ("Procedural Order") that, among other things, established a procedural schedule, provided the opportunity for any interested person to comment or participate in this proceeding as a respondent, directed the Commission's Staff ("Staff") to investigate the Application and file testimony and exhibits, provided the opportunity for the Applicant to file rebuttal testimony and exhibits, scheduled an evidentiary hearing, and assigned a Hearing Examiner to conduct further proceedings in this matter.

In the Procedural Order, the Commission noted that the Staff requested the Department of Environmental Quality ("DEQ") to coordinate an environmental review of the Project.³⁰ DEQ

²⁶ Ex. 2 (Application) at 6-7; Ex. 4 (Vogt Direct) at 8-9.

²⁷ Ex. 4 (Vogt Direct) at 9; Ex. 2 (Appendix) at 13.

²⁸ Ex. 2 (Application) at 4-5; Ex. 4 (Vogt Direct) at 6.

²⁹ Ex. 2 (Application) at 4; Ex. 4 (Vogt Direct) at 6.

³⁰ Procedural Order at 5-6.

filed a report ("DEQ Report") on the proposed Project on February 26, 2016.³¹ The DEQ Report summarizes the proposed Project's potential impacts, makes recommendations for minimizing those impacts, and outlines the Applicant's responsibilities for compliance with legal requirements governing environmental protection. The DEQ Report contained the following recommendations:

1. Conduct an on-site delineation of all wetlands and stream crossings within the Project area with verification by the U.S. Army Corps of Engineers, using accepted methods and procedures, and follow DEQ's recommendations to avoid and minimize impacts to wetlands and streams;
2. Follow DEQ's recommendation regarding air quality protection, as applicable;
3. Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable;
4. Coordinate with the Department of Conservation and Recreation's Division of Natural Heritage for updates to the Biotics Data System database;
5. Coordinate with the Department of Game and Inland Fisheries ("DGIF") regarding its recommendations to coordinate with the U.S. Fish and Wildlife Service ("USFWS") regarding a protected species and to protect wildlife resources;
6. Coordinate with the Department of Aviation ("DOA") as necessary regarding its recommendations to ensure pilot safety;
7. Coordinate with the Department of Health ("DOH") on the implementation of mitigation measures to protect water supplies;
8. Follow the principles and practices of pollution prevention to the maximum extent practicable; and
9. Limit the use of pesticides and herbicides to the extent practicable.³²

On March 25, 2016, the Staff filed its testimony in this proceeding. Staff stated that since Doswell is not a regulated public utility, it bears any business risk associated with the Project.³³

³¹ Ex. 6 (DEQ Report).

³² *Id.* at 6.

it intends to ensure that its employees and contractors take due care in transporting materials in and out of the Project site, in compliance with the Virginia DOH's recommendation.⁴⁵

The hearing was convened on April 20, 2016. Doswell, REC, and the Staff participated in the hearing. No public witnesses testified at the hearing.

On May 3, 2016, Michael D. Thomas, Hearing Examiner, issued his report in this proceeding ("Report" or "Hearing Examiner's Report"). The Hearing Examiner found that: (1) the Project will not have a material adverse effect upon the reliability of the electric service provided by any public utility; (2) the Project is not otherwise contrary to the public interest; (3) the Project will comply with all applicable environmental laws and regulations;⁴⁶ and (4) the Project will have a positive economic impact on the Commonwealth.⁴⁷ The Hearing Examiner recommended that the Commission adopt the findings in his Report and grant Doswell a Certificate to construct and operate the Project.⁴⁸

On May 10, 2016, Doswell filed comments on the Hearing Examiner's Report requesting that the Commission adopt the findings and recommendations in the Report, approve the Company's Application, and issue a Certificate for the Project.⁴⁹ On May 10, the Staff filed a letter advising the Commission that it would not file comments on the Hearing Examiner's Report.

⁴⁵ *Id.* at 8.

⁴⁶ The Hearing Examiner agreed with the Applicant's objections, set forth in its rebuttal testimony, to certain requirements in the DEQ Report. *See* Hearing Examiner's Report at 12-13.

⁴⁷ Hearing Examiner's Report at 13-14.

⁴⁸ *Id.* at 14.

⁴⁹ Doswell's Comments on the Hearing Examiner's Report at 3.

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

Code of Virginia

Section 56-580 D of the Code provides in part:

The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility . . . , and (iii) are not otherwise contrary to the public interest.

Further, with regard to generating facilities, § 56-580 D of the Code directs that "[t]he Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1," Section 56-46.1 A of the Code provides in part:

Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. . . . In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2.

Subsection 56-46.1 A also provides:

In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans,

and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters.

Section 56-580 D of the Code contains language limiting the Commission's authority that is nearly identical to the language set forth in § 56-46.1 A.

The Code also directs the Commission to consider the effect of a proposed project on economic development in Virginia. Section 56-46.1 of the Code states in part:

Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

Similarly, § 56-596 A of the Code provides that "[i]n all relevant proceedings pursuant to [the Virginia Electric Utility Regulation] Act, the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth."

Reliability

We agree with the Hearing Examiner that there is no evidence in the record that the Project will have an adverse impact on the reliability of electric service provided by public utilities in Virginia.⁵⁰ The record in this case reflects that the construction of an additional electric generation facility such as the Project is likely to improve reliability in the Commonwealth and the Mid-Atlantic region, particularly during peak times.⁵¹

⁵⁰ Hearing Examiner's Report at 11.

⁵¹ See, e.g., *id.* at 11-12; Ex. 5 (Pratt Direct) at 13.

Economic Development

We find that the Project will provide economic benefits to Hanover County and the Commonwealth. As noted by Staff, Hanover County will benefit from an increase in the local tax base.⁵² In addition, the Project is likely to create or support a number of jobs in the area and also may result in indirect benefits to the local community as a result of an increase in employment and incomes in the area.⁵³

Environmental Impact

We must consider environmental impact. The relevant statutes, however, do not require the Commission to find any particular level of environmental benefit, or an absence of environmental harm, as a precondition to approval. Rather, the statutes direct that the Commission "shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact."⁵⁴

As noted above, DEQ coordinated an environmental review of the proposed Project and submitted a DEQ Report that, among other things, set forth recommendations for the proposed Project.⁵⁵ In its rebuttal testimony, Doswell described its objections to four specific recommendations set forth in the DEQ Report.⁵⁶ The Hearing Examiner noted Doswell's concerns with these four recommendations and agreed that Doswell should not be subject to

⁵² Ex. 5 (Pratt Direct) at 10, 13.

⁵³ *Id.* at 13.

⁵⁴ Va. Code § 56-46.1 A. *See also* Va. Code § 56-580 D (stating that "the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1 . . .").

⁵⁵ Ex. 6 (DEQ Report).

⁵⁶ Ex. 7 (Vogt Rebuttal) at 2-8.

those specific requirements as a condition of its Certificate for the Project.⁵⁷ The Hearing Examiner found that the Project would comply with all applicable environmental laws and recommendations.⁵⁸ Upon consideration of this record, we find that Doswell should be required to comply with the DEQ Report recommendations except as set forth in the Hearing Examiner's Report.⁵⁹ Further, Doswell should be required to obtain all necessary environmental permits and approvals that are needed to construct and operate the Project.⁶⁰

Public Interest

We agree with the Hearing Examiner that there is no evidence in the record that the Project is "contrary to the public interest" as contemplated by § 56-580 D of the Code.⁶¹ As discussed above, the Project is likely to produce economic benefits in terms of jobs, taxes, and revenues.

Sunset Provision

As a requirement of our approval herein, we find that the authority granted by this Final Order shall expire two years from the date hereof if construction of the Project has not

⁵⁷ Hearing Examiner's Report at 12-13.

⁵⁸ *Id.* at 13.

⁵⁹ We find that Doswell does not have to comply with the following recommendations: (1) avoidance and minimization of impacts to wetlands and streams; (2) maintaining a 100-foot vegetated buffer around wetlands and streams, using bioretention areas and time-of-year restrictions for tree removal and ground clearing to protect nesting songbirds; and (3) compliance with FAA Advisory Circular 150/3570-2 Operational Safety on Airports during construction. *See* Hearing Examiner's Report at 12-13. We also find that Doswell is not required, as a condition of the Certificate granted herein, to comply with the recommendations regarding the design of stormwater controls. We note that these controls are being addressed by Hanover County in connection with the site plan amendment process and that Doswell has committed to comply with all necessary conditions imposed by regulatory agencies with regard to environmental aspects of the Project to ensure protection of public health and the environment. *See* Ex. 7 (Vogt Rebuttal) at 7; Hearing Examiner's Report at 13.

⁶⁰ *See* Ex. 4 (Vogt Direct) at 6.

⁶¹ *Id.* at 12.

commenced, though Doswell subsequently may petition the Commission for an extension of this sunset provision for good cause shown.

Accordingly, IT IS ORDERED THAT:

(1) Upon filing the appropriate United States Geological Survey topographical maps detailing the location of the proposed facilities with the Division of Energy Regulation, subject to the findings and requirements set forth in this Final Order, pursuant to § 56-580 D of the Code, and in accordance with the record developed herein, Doswell hereby is granted authority and the following Certificate to construct and operate the Project described in this proceeding:

Certificate No. ET-205 which authorizes Doswell under §§ 56-46.1 and 56-580 D of the Code to construct and operate a 340 megawatt electric generating facility in Hanover County, Virginia.

(2) The authority granted by this Final Order shall expire two (2) years from the date hereof if construction of the Project has not commenced, though Doswell subsequently may petition the Commission for an extension of this sunset provision for good cause shown.

(3) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Timothy E. Biller, Esquire, and Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; Charles W. Payne, Jr., Esquire, and Mihir V. Elchuri, Esquire, Hirschler Fleischer, P.C., 725 Jackson Street, Suite 200, Fredericksburg, Virginia 22401; Counsel, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.