

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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APPLICATION OF

APPALACHIAN POWER COMPANY

CASE NO. PUE-2015-00090

For approval and certification of the
Bland Area Improvements – 138 kV
Transmission Line Rebuild Project
Under Title 56 of the Code of Virginia

FINAL ORDER

On September 3, 2015, Appalachian Power Company ("APCo" or "Company") filed with the State Corporation Commission ("Commission") its application ("Application") for a certificate of public convenience and necessity ("CPCN") to construct and operate electric transmission facilities in Bland and Wythe Counties pursuant to § 56-46.1 of the Code of Virginia ("Code") and the Utility Facilities Act, § 56-265.1 *et seq.* of the Code.

APCo proposes to construct, own, operate, and maintain the Bland Area Improvements 138 kilovolt ("kV") Transmission Line Project ("Project"). The Company states that the Project generally consists of rebuilding the Virginia portion of the existing South Bluefield – Bland – Wythe 69 kV line to 138 kV.¹ If approved, APCo estimates the Project will cost approximately \$68 million and that the Company will need approximately 30 months after entry of the Commission's final order for engineering, design, right-of-way ("ROW") acquisition, permitting, material procurement and construction to place the Project in service.² APCo proposes an

¹ Exhibit ("Ex.") 1 (Application) at 1-2.

² *Id.* at 4; Ex. 3 (Wilcox Direct) at 5.

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in-service date of December 1, 2018, and requests expedited consideration to the extent permitted by law.³

The Company states that the Project will: (i) provide a comprehensive solution for the reliability concerns identified in the affected load area in Bland and Tazewell Counties, Virginia, and Mercer County, West Virginia; (ii) accomplish the replacement of a 90-year old 69 kV line that has reached the end of its useful life; and (iii) satisfy APCo's commitment in its 2003 Memorandum of Understanding with the U.S. Forest Service ("USFS MOU") to remove the existing 69 kV line crossing Rich Mountain.⁴

The Company states that its preferred route ("Preferred Route") for the Project is approximately 25.2 miles in length within Virginia and that 64% of the Preferred Route consists of a rebuild to 138 kV within an existing ROW, with 36% to be located on new ROW.⁵ According to the Company, over 80% of the Preferred Route would be on or adjacent to existing transmission ROW.⁶ APCo states there are three areas totaling approximately 9.4 miles where the Preferred Route diverges from the existing ROW and where new 100-foot ROW will be required on private land: (a) the relocation of the existing 69 kV line crossing Rich Mountain to address a requirement of the USFS MOU; (b) the relocation to connect the rebuilt line with the new Town Creek Substation; and (c) the relocation to accommodate the change in the southern terminus of the rebuilt line from the existing Wythe Substation to the existing Progress Park Substation.⁷ The Company represents that because more than 60% of the Project would be

³ Ex. 1 (Application) at 4.

⁴ *Id.* at 3; Ex. 3 (Wilcox Direct) at 4.

⁵ Ex. 1 (Application), Response to Guidelines at 31.

⁶ *Id.*

⁷ *Id.* at 20.

located within the existing 69 kV line ROW owned and maintained by APCo, no viable alternative for the entire Project has been identified.⁸

The Application states that the rebuilt line will be a single circuit three-phase design with a nominal phase-to-phase voltage of 138 kV, using primarily guyed-V lattice towers, H-frame steel poles and monopole steel structures.⁹ The Company indicates that the new structures will have an approximate average height of 90 to 100 feet tall with a cross arm approximately 32 to 48 feet wide, as compared to existing structures that are approximately 55 feet tall with a cross arm approximately 24 feet wide.¹⁰ As a result of the taller and more efficient proposed structures, the Company anticipates a decrease of approximately 20% in the total number of transmission line structures within the portion of the existing ROW that would be used for the Project.¹¹

The Company proposes to construct the Project within a 100-foot ROW to be located within a 500-foot corridor in order to have the flexibility to shift the centerline of the 100-foot ROW of the transmission line up to 200 feet in either direction from the centerline shown in the Application to address issues that become evident only after completion of final engineering, ground surveys, and interview of landowners.¹² The Company states that the ROW may need to be wider than 100 feet in a few locations, but except for a few instances involving steep terrain and very long spans, the ROW typically would not exceed 125 feet wide.¹³ The Company

⁸ *Id.* at 28.

⁹ Ex. 4 (Earhart Direct) at 3-4.

¹⁰ *Id.* at 4; Ex. 1 (Application), Response to Guidelines at 36.

¹¹ Ex. 4 (Earhart Direct) at 4.

¹² *Id.* at 6-7.

¹³ *Id.* at 12.

requests expansion of the 500-foot corridor in the vicinity of U.S. Route 52 near the community of Bland to afford the Company flexibility to determine the final location of the proposed Town Creek Substation after completing surveys, studies, design work and landowner consultations.¹⁴

On October 9, 2015, the Commission issued an Order for Notice and Hearing ("Procedural Order") in this proceeding that, among other things, docketed the case; directed the Company to provide public notice of the Application; provided an opportunity for interested persons to file comments or participate in this proceeding by filing a notice of participation; directed the Commission Staff ("Staff") to investigate the Application and file testimony and exhibits containing its findings and recommendations thereon; and scheduled a public hearing for February 23, 2016. The evidentiary hearing was subsequently rescheduled for April 12, 2016, and the February 23, 2016 hearing was retained for the receipt of testimony from public witnesses.

As noted in the Procedural Order, the Staff requested that the Department of Environmental Quality ("DEQ") coordinate a review of the proposed Project by state and local agencies and file a report thereon. DEQ filed its report ("DEQ Report") with the Commission on November 18, 2015. The DEQ Report provides eight general recommendations for the Commission's consideration that are in addition to any requirements of federal, state, or local law. Specifically, the DEQ Report recommended that APCo should:

- 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;
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, as applicable;

¹⁴ *Id.* at 7.

- Coordinate with the Department of Conservation and Recreation's Division of Natural Heritage regarding its recommendations to protect natural heritage resources, including its recommendation to conduct plant surveys for certain species in the project area, as well as for updates to the Biotics Data System database if six months have passed before the project is implemented;
- Coordinate with the Department of Game and Inland Fisheries ("DGIF") as necessary regarding its recommendations to minimize impacts to wildlife and natural resources, including its recommendation to conduct mussel and bat surveys;
- Coordinate with the Department of Historic Resources regarding its recommendations to protect historic and archaeological resources;
- Coordinate with the Virginia Department of Health's Office of Drinking Water regarding its recommendations to protect public drinking water sources;
- Follow the principles and practices of pollution prevention to the maximum extent practicable; and
- Limit the use of pesticides and herbicides to the extent practicable.¹⁵

On January 12, 2016, the Board of Supervisors of Wythe County, Virginia, filed a notice of participation in this proceeding. A public comment was filed in this proceeding on January 14, 2016.

On January 19, 2016, 36 individuals (collectively, "Local Residents") filed a Motion to File a Late Notice ("Motion") and Notice of Participation ("Notice") in this case. On February 2, 2016, the Hearing Examiner issued a Ruling finding the Motion and Notice procedurally deficient and denying both without prejudice. However, the Hearing Examiner found the Local Residents' Notice reflected significant local interest in the Application and therefore found it appropriate to schedule a local hearing in Bland County, Virginia, on April 7, 2016, for the receipt of testimony of public witnesses.

¹⁵ Ex. 8 (DEQ Report) at 5-6.

On February 29, 2016, Staff filed its testimony and exhibits summarizing the results of its investigation of the Company's Application. Staff concludes that the Company has demonstrated a need for the Project and that the Project is the preferable solution to address the electrical violations identified by APCo. Staff notes that the existing 69 kV line is at the end of its useful life and must be replaced and that the Project will satisfy the Company's obligations under the USFS MOU. Staff states that the Company's preferred route minimizes cost, new ROW requirements, and the impact on existing residences, scenic assets, historic districts, and the environment.¹⁶

On March 22, 2016, APCo filed the rebuttal testimony of its witness. In its rebuttal testimony, the Company states that, while it concurs with many of the recommendations listed in the DEQ Report, it objects to two recommendations.¹⁷ First, APCo objects to a recommendation made by the DGIF that the Company "maintain naturally vegetated buffers of at least 100 feet in width around wetlands and on both sides of all perennial and intermittent streams, where practicable"¹⁸ APCo contends that this recommendation may present safety and reliability risks due to the potential for vegetation and wire contact from tall tree growth.¹⁹ APCo states that where reasonable and practical, it will utilize selective clearing methods to retain low-growth shrubs and other compatible vegetation within (i) 50 feet of all year-round streams,

¹⁶ Ex. 7 (Essah Direct) at 26.

¹⁷ Ex. 9 (Earhart Rebuttal) at 2.

¹⁸ *Id.* (citing Ex. 8 (DEQ Report) at 20).

¹⁹ *Id.*

A hearing was convened as scheduled on February 23, 2016, for the receipt of testimony from public witnesses. One public witness testified at the February 23, 2016 hearing. A local hearing was convened as scheduled on April 7, 2016, at the Bland County Courthouse for the receipt of testimony of public witnesses. Four public witnesses testified at the April 7, 2016 hearing. The Hearing Examiner convened an evidentiary hearing as scheduled on April 12, 2016. The Company and the Staff participated at the hearing.

On May 12, 2016, the Report of A. Ann Berkebile, Hearing Examiner ("Hearing Examiner's Report" or "Report") was issued. The Report sets forth the procedural history of the case; summarizes the record; analyzes the evidence and issues in this proceeding; sets forth findings and recommendations; and advises the case participants of their opportunity to comment on the Hearing Examiner's Report.

The Hearing Examiner recommends that the Commission grant the requested certificate of public convenience and necessity to construct and operate the proposed transmission facilities using the Company's Preferred Route based on the following findings:

- (1) The Project is justified by the public convenience and necessity;
- (2) The Commission should approve the Company's Preferred Route for the transmission line portion of the Project;
- (3) The Commission should issue a CPCN for the completion of the Project; and
- (4) The unopposed recommendations in the DEQ Report should be adopted by the Commission as conditions of approval.²⁶

On May 13, 2016, the Company filed a letter concurring with the Hearing Examiner's Report and stating that the Company had no comments. On May 16, 2016, the Staff filed a letter stating that it had no comments to the Hearing Examiner's Report.

²⁶ Hearing Examiner's Report at 13.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that certificates of public convenience and necessity should be issued authorizing the proposed Project, subject to the findings and conditions contained in this Final Order, and that the public convenience and necessity require that the Company construct, own, and operate the Project.

Approval

The statutory scheme governing the Company's Application is found in several chapters of Title 56 of the Code.

Section 56-265.2 A of the Code provides that "it shall be unlawful for any public utility to construct . . . facilities for use in public utility service . . . without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege."

Section 56-46.1 of the Code further directs the Commission to consider several factors when reviewing the Company's Application. Subsection A of the statute provides that:

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 Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth . . . and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

Section 56-46.1 B of the Code further provides that: "[a]s a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to

follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned."

The Code further requires the Commission to consider existing right-of-way easements when siting transmission lines. Section 56-46.1 C of the Code provides that "[i]n any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company." In addition, § 56-259 C of the Code provides that "[p]rior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way."

Need and Service Reliability

We agree with the Hearing Examiner that the Project is needed to enhance system reliability and operational flexibility for areas within Bland, Tazewell, and Wythe counties in Virginia.²⁷ In addition, the Project replaces a 69 kV transmission line that has reached the end of its service life and fulfills the Company's obligations under the USFS MOU.²⁸ Based on the facts and circumstances of this case, the Company has sufficiently demonstrated the public need for the Project to be constructed at 138 kV.

Routing and Right-of-Way

The Hearing Examiner found that the majority of the Company's Preferred Route will be located within existing ROW and reasonably avoids or minimizes adverse impacts to scenic assets, historic districts, and the environment.²⁹ We agree with the Hearing Examiner that the

²⁷ Hearing Examiner's Report at 10-11.

²⁸ *Id.* at 11.

²⁹ *Id.* at 11.

Preferred Route should be approved and that the evidence does not support modification to the Preferred Route.³⁰

As required by § 56-259 C of the Code, the Company sufficiently considered the feasibility of locating the Project "on, over, or under existing easements of rights-of-way."

Economic Development

We find that the proposed Project will promote economic development in the area of the Project as well as in the Commonwealth of Virginia by improving reliability for customers in the area and meeting growing electrical demands.³¹

Scenic Assets and Historic Districts

We agree with the Hearing Examiner that the proposed Project will have a minimal impact on scenic assets and historic districts consistent with § 56-46.1 B of the Code due to the extensive use of existing ROW by the proposed Project.³²

Environmental Impact

Pursuant to §§ 56-46.1 A and B of the Code, the Commission is required to consider the proposed Project's impact on the environment and to establish such conditions as may be desirable or necessary to minimize adverse environmental impact. The statute further provides that the Commission shall receive, and give consideration to, all reports that relate to the proposed Project by state agencies concerned with environmental protection.

We agree with the Hearing Examiner that there are no adverse environmental impacts that would prevent the construction or operation of the proposed Project.³³ However, the

³⁰ *Id.* at 11-12.

³¹ *See, e.g.*, Ex. 7 (Essah Direct) at 24.

³² Hearing Examiner's Report at 11.

³³ *Id.* at 12.

Commission conditions the approval granted herein on the conditions recommended in the DEQ Report, with certain exceptions. As recommended by the Hearing Examiner, the Commission does not require APCo to: (i) maintain naturally vegetated buffers of at least 100 feet around wetlands or perennial and intermittent streams; or (ii) adhere to time-of-year restrictions when conducting tree removal and ground clearing activities.³⁴ APCo should obtain all necessary environmental permits and approvals that are needed to construct and operate the Project.³⁵

Accordingly, IT IS ORDERED THAT:

(1) APCo is authorized to construct and operate the Project, as proposed in its Application, subject to the findings and conditions imposed herein.

(2) Pursuant to §§ 56-46.1, 56-265.2 of the Code, and related provisions of Title 56 of the Code, the Company's request for certificates of public convenience and necessity to construct and operate the Project is granted, as provided for herein, and subject to the requirements set forth herein.

³⁴ The Commission has previously declined to require APCo to comply with similar recommendations in prior cases. *See, e.g., Application of Appalachian Power Company, For approval and certification of the Tazewell-Bearwallow 138 kV Transmission Line Rebuild Project Under Title 56 of the Code of Virginia*, Case No. PUE-2015-00021, Doc. Con. Cen. No. 150920178, Final Order (Sept. 14, 2015); *Application of Appalachian Power Company, For approval and certification of electric transmission facilities in Tazewell and Buchanan Counties: Richlands-Whitewood 138 kV Transmission Line Project*, Case No. PUE-2014-00040, 2014 S.C.C. Ann. Rept. 427, Final Order (Oct. 31, 2014); *Application of Appalachian Power Company, For a certificate of public convenience and necessity to construct and operate electric transmission facilities in Campbell County and the City of Lynchburg: South Lynchburg Area Improvements 138 kV Transmission Line Project*, Case No. PUE-2013-00126, 2014 S.C.C. Ann. Rept. 340, Final Order (June 24, 2014); *Application of Appalachian Power Company, For approval and certification of the Cloverdale-Lexington 500 kV Transmission Line Reconductoring Project under Title 56 of the Code of Virginia*, Case No. PUE-2013-00133, 2014 S.C.C. Ann. Rept. 353, Final Order (June 19, 2014); *Application of Appalachian Power Company, For a Certificate of Public Convenience and Necessity Authorizing Operation of the Falling Branch-Merrimac 138 kV Transmission Line*, Case No. PUE-2012-00007, 2012 S.C.C. Ann. Rept. 380, Order (Dec. 21, 2012).

³⁵ *See* Ex. 4 (Earhart Direct) at 15-16.

(3) Pursuant to the Utility Facilities Act, § 56-265.1 *et seq.* of the Code, the Commission issues the following certificates of public convenience and necessity to the Company:

Certificate No. ET-27d which authorizes Appalachian Power Company under the Utility Facilities Act to operate certificated transmission lines and facilities in Bland County, all as shown on the map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2015-00090; cancels Certificate No. ET-27c, issued to Appalachian Power Company on May 31, 2001, in Case No. PUE-1997-00766.

Certificate No. ET-51g which authorizes Appalachian Power Company under the Utility Facilities Act to operate certificated transmission lines and facilities in Wythe County, all as shown on the map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2015-00090; cancels Certificate No. ET-51f, issued to Appalachian Power Company on October 10, 2013, in Case No. PUE-2012-00132.

(4) Within thirty (30) days from the date of this Final Order, the Company shall provide the Commission's Division of Energy Regulation with three copies of an appropriate map that shows the routing of the transmission line approved herein.

(5) Upon receiving the map directed in Ordering Paragraph (4), the Commission's Division of Energy Regulation forthwith shall provide the Company copies of the certificates of public convenience and necessity issued in Ordering Paragraph (3) with the map attached.

(6) The Project approved herein must be constructed and in service by December 1, 2018; however, the Company is granted leave to apply for an extension for good cause shown.

(7) As there is nothing further to come before the Commission this matter is dismissed, and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: H. Allen Glover, Jr., Esquire, and George J.A. Clemo, Esquire, Woods Rogers PLC, Wells Fargo Tower, Suite 1400, Post Office Box 14125, Roanoke, Virginia 24038; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer 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 Division of Energy Regulation.

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