

**MEMORANDUM**

TO: VML/VACo APCo Steering Committee  
FROM: Counsel to the Steering Committee  
DATE: December 9, 2019  
RE: Minutes of Steering Committee Meeting on December 9, 2019

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The VML/VACo APCo Steering Committee met on December 9, 2019, at 11:00 a.m. EST at the Harvester Performance Center, 450 Franklin Street, Rocky Mount, Virginia 24151, pursuant to written notices sent to all members of the Committee. The meeting was called to order by C. James Ervin, Chairman. The Chairman called the meeting to order at approximately 11:10 a.m., and each person in attendance was asked to identify himself or herself.

**Attendance**

In attendance during the meeting were the Chairman, C. James Ervin, Manager, Town of Rocky Mount; Robert Bengtson, Director of Public Works, City of Roanoke; Laura Carini, Deputy City Attorney, City of Roanoke; Barry W. Thompson, Town of Vinton; Sarah Carter, Town of Amherst; Dean Lynch, Executive Director, Virginia Association of Counties; Scott Shirley, Western Virginia Water Authority; Chris Whitlow, Franklin County; John Clark, Town of Chilhowie; Michelle Gowdy, Executive Director, Virginia Municipal League; and Sandra Harrington, Government Relations Associate,

Virginia Municipal League. [insert], participated via telephone. Also, in attendance during the meeting were Robert D. Perrow and John L. Walker, III, legal counsel for the Steering Committee.

### **Approval of Minutes of April 24, 2019 Meeting**

In accordance with the Agenda, the Chairman called for any changes to the Minutes of the previous Steering Committee meeting on April 24, 2019, that had been distributed to the members present. There being no changes, the Minutes were approved unanimously.

### **Overview and Purpose of the Benefits of the Steering Committee**

In accordance with the Agenda, the Chairman addressed the history, purpose and benefits of the Steering Committee. Mr. Walker referred the attendees to a handout memorandum attached hereto as Exhibit A, which provides an overview of the successes and benefits of the Steering Committee over the past 5 years. The Chairman discussed the current organization of the Steering Committee and compared the organization to that of the public authorities in the Dominion Energy service area. The Chairman then led a discussion of the benefits of operating as a Steering Committee with voluntary membership and the need to formalize the organizational structure of the Steering Committee.

The Chairman reported that the Steering Committee will be sent proposed by-laws governing the organization of the Steering Committee, including the creation of an Executive Committee, and a draft participation agreement for public authorities to sign

pledging to pay assessments issued by the Steering Committee. The Chairman stated that, following the distribution of these organizational documents, a meeting will be called for the consideration of the adoption of these organizational documents.

### **Financial Report**

The Chairman called on Ms. Harrington for a financial report. Ms. Harrington reported that funds on hand totaled \$194,637 and that the unpaid assessments totaled \$101,485.

### **Contract Negotiations with APCo**

The Chairman called on counsel to the Committee to report on the status of contract negotiations with APCo. Mr. Walker reported that, to appreciate the process of negotiating the new contract with APCo, it is important for the Committee to understand what happened during the negotiation of the current 2016-2020 contract. Mr. Walker explained that the material developments relating to those negotiations are summarized on page 1 of the handout memorandum (Exhibit A), and he provided an overview of those developments for the attendees. In counsel's view, this history highlights how APCo tries to use the inherent complexities of utility accounting to its financial advantage in the course of contractual negotiations and how it is counsel for the Steering Committee's job to scrutinize APCo's cost of service numbers in order to expose any deficiencies and thereby negotiate more favorable terms for the Public Authorities. Mr. Walker emphasized the necessity and the importance of using

consultants with utility accounting expertise to assist in reviewing and analyzing APCo's data as the Steering Committee has always done.

With respect to negotiation of the new APCo contract, Mr. Walker reported that the current contract expires on June 30, 2020, that the parties will once again use APCo's cost of service (COS) data for the Public Authorities in 2018-2019 as the baseline for the negotiations, that APCo has agreed to provide the first draft of the COS analysis to counsel for the Steering Committee on or before April 30, 2020 and that the Steering Committee will provide its initial analysis of APCo's COS data to APCo on or before June 15, 2020. While counsel's goal is to get a new contract with the Public Authorities as soon as possible, Mr. Walker emphasized that the base rate case that APCo must file by March 31, 2020 will affect the timing of the contractual negotiations. In all likelihood, APCo's COS data will not be finally approved by the SCC until the first quarter of 2021, and it would be imprudent for the contract to be finalized before that time because the underlying numbers in APCO's COS analysis could change substantially.

Mr. Walker advised that Steering Committee counsel met with APCo representatives in September and November to discuss the negotiations process and timetable and specific contractual issues. According to Mr. Walker, APCo is amenable to a street lighting tariff that would provide for all sodium street lights to be replaced with LED street lights. APCo wants to account for this conversion cost on the front end but emphasized that the LED street lighting would result in much lower maintenance costs and higher efficiency over the long term. Mr. Walker informed the Steering Committee that counsel will request that APCo provide more information on the cost of this

conversion. Mr. Walker then informed the Steering Committee that, during these meetings, APCo raised the issue of net metering and pointed out that the 3MG limit under the current net metering tariff was already used up. Counsel for the Steering Committee informed APCo that, based on demand, the Steering Committee would be interested in raising the limit to 5-10MW but would also need additional information about any costs that APCo would charge for this increase. Mr. Walker stated that Mr. Perrow would further elaborate on net metering issues relating to the Steering Committee later in the meeting.

### **Update on Legal Developments and Rate Cases**

In accordance with the Agenda, the Chairman called on counsel to the Committee to report on legal developments affecting the public authorities and APCo cases in the State Corporation Commission since the previous meeting of the Committee on April 24, 2019.

### **Cases in the State Corporation Commission**

Mr. Perrow provided each member in attendance with a Memorandum on the status of each completed and pending case, a copy of which is attached as Exhibit B. Mr. Perrow reported that since the previous meeting, three pending cases in the State Corporation Commission (“Commission”) had been decided, and five cases were pending.

Mr. Perrow then discussed each of the cases listed in the Memorandum and provided information on the importance of the issues in each case, as well as the

outcome of the decided cases. Mr. Perrow stated that the case involving the adoption of guidelines for the Pilot Program for Net Metering had resulted in the adoption of guidelines by December 1, 2019, but that the Commission's Order stated that the Commission would be considering amendments to the Guidelines after it extended the comment period to January 15, 2020.

Mr. Perrow reported that, in three of the Rate Adjustment Clause cases filed by APCo, APCo was seeking a slight decrease in rates.

### **Renewable Energy Options**

Mr. Perrow reported on the various options for renewable energy available to the public authorities.

#### **A. Pilot program for municipal net energy metering**

Mr. Perrow reported on a new provision of the Virginia Electric Utility Act, creating a six-year pilot program for municipal net energy metering that is codified as Va. Code § 56-585.1:8, and provided a copy of the statute, an article with questions and answers about the program, a copy of the guidelines for the program effective December 1, 2019, and a copy of the Comments on the Guidelines filed by counsel on behalf of the Steering Committee, which are attached collectively as Exhibit C. Mr. Perrow reported that he expected that the guidelines will be amended.

#### **B. Existing Net Metering Tariff**

Mr. Perrow reviewed the origin of the net metering tariff in the current contract. The net metering tariff for public authorities did not exist before the last contract in 2016. Counsel recognized that a few public authorities were considering net metering and that

there was no contract provision permitting net metering. Accordingly, counsel negotiated for a net metering tariff in the current contract. The amount of energy that could be used for net metering under the current tariff has effectively reached its limit. Mr. Perrow advised that discussions with APCo on increasing the limit have begun.

### **C. Direct Purchase of Renewable Energy from APCo**

Mr. Perrow advised the Committee that APCo recently offered to sell renewable energy directly to the public authorities. Mr. Perrow reported that APCo has been requested to provide more information on this proposal so it could be evaluated. Mr. Perrow reported that APCo's current renewable energy rider for its jurisdictional customers sells renewable energy at rates that are 4% higher than current rates, even though APCo uses non-renewable energy sources that have been in their generation fleet for decades.

Due to the interest in renewable energy and the various renewable energy options, counsel asked for authority to negotiate the requirements for the direct purchase of renewable energy from APCo. Following a discussion, the Chairman asked for a motion with respect to the next assessment. Upon motion duly seconded and passed unanimously, the Committee resolved as follows:

RESOLVED that the Steering Committee directs its legal counsel, Williams Mullen, to determine the requirements for Public Authorities to purchase renewable energy directly from APCo, inform the Public Authorities of such requirements and assist interested Public Authorities in negotiations with APCo.

### **D. Energy Generation by Public School Buildings and Facilities**

Mr. Perrow reported that a public school building or facility that has been modernized according to statute and generates energy from sunlight may enter into a contract to generate energy on terms and conditions negotiated between the customer and APCo.

**Comments from Executive Directors of the  
Virginia Association of Counties and The Virginia Municipal League**

On behalf of the Virginia Association of Counties, Mr. Lynch observed that, in recent years, the Committee had been working well and obtaining favorable results, but the work and accomplishments of the Committee were not widely known among many County officials and VACo. The structural changes that the Chairman discussed at the beginning of the meeting will help to remedy this information deficiency.

On behalf of the Virginia Municipal League, Ms. Gowdy said that she agreed with the points raised by Mr. Lynch. She discussed the approach of public authorities in the Dominion service area in negotiating rates with Dominion. She added that the Committee would benefit from operating under a more formal structure as previously discussed.

**Assessment for 2019**

Pursuant to the Agenda, the Chairman called on legal counsel to report on the need for an assessment. Following a discussion, the Chairman asked for a motion with respect to the next assessment. Upon motion duly seconded and passed unanimously, the Committee resolved as follows:

RESOLVED that the Steering Committee authorizes an assessment in the amount of \$250,000 to be issued to all of the Public Authorities (pro-rata in proportion to the kwh usage



of each in relation to the total aggregate usage of all PAs) in order to retain Legal Counsel and consultants to assist Legal Counsel with respect to the Public Authorities contracts with APCo, rate cases filed and expected to be filed by APCo, and other litigation affecting rates charged by APCo with notices of such assessments to be sent near, but before February 1, 2020 for payment on or before July 1, 2020.

### **Other Business**

The Chairman noted that, in accordance with customary practice, the Committee needed to take action on a resolution retaining Williams Mullen for the 2020-2021 fiscal year. Following a discussion and upon motion duly seconded and passed unanimously, the Committee resolved as follows:

RESOLVED that the Steering Committee directs its legal counsel, Williams Mullen, to participate in, and/or monitor rate cases filed by APCo as counsel determines is necessary to protect the interests of the Public Authorities, to negotiate the Public Authorities contracts with APCo, and to employ consultants for such assistance as counsel may deem necessary, bearing in mind the financial resources of the Committee.

The Chairman asked if there was any other business to come before the Committee. There being no other business to come before the Committee, the meeting was adjourned at approximately 2:15 p.m.

Any questions or comments are to be directed as follows:

Robert D. Perrow  
John L. Walker, III  
WILLIAMS MULLEN  
200 South 10<sup>th</sup> Street, 16<sup>th</sup> Floor  
P.O. Box 1320 (23218)  
Richmond, VA 23219  
Phone: 804.420.6446  
Facsimile 804.420.6507  
[bperrow@williamsmullen.com](mailto:bperrow@williamsmullen.com)  
[jwalker@williamsmullen.com](mailto:jwalker@williamsmullen.com)

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