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April 12, 2021

VIA Electronic Filing

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: Docket No. E-100, Sub 113

Dear Ms. Campbell:

On behalf of Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina, enclosed for filing with the North Carolina Utilities Commission in the above-captioned proceeding are the *Reply Comments of Dominion Energy North Carolina*.

Thank you for your assistance, and please do not hesitate to contact me if you have any questions regarding this filing.

Very truly yours,

/s/Andrea R. Kells

ARK:sjg

Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Request for Declaratory Ruling by	)	**REPLY COMMENTS OF**
Optima MH, LLC, Regarding Directed	)	**DOMINION ENERGY NORTH**
Biogas under N.C.G.S. § 62-133.8	)	**CAROLINA**

NOW COMES Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina ("DENC" or the "Company") and, pursuant to the North Carolina Utilities Commission's ("Commission") Order Granting Motion to Compel, in Part, and Extending Deadline for Filing Reply Comments issued on March 18, 2021, in this docket, submits these Reply Comments in response to the Initial Comments of the Public Staff and the Joint Initial Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC ("Duke") filed in this proceeding on February 5, 2021.

I. INTRODUCTION

On December 7, 2020, Optima MH, LLC ("Optima") filed a petition ("Petition") with the Commission seeking a declaratory ruling that the only attributes of a "directed biogas" resource used to generate electric power that are necessary to produce renewable energy certificates ("RECs") eligible for compliance with the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") are the attributes required for the directed biogas to meet the definition of a "renewable energy resource" as set forth in N.C. Gen. Stat. § 62-133.8(a)(8). Optima contended that

> "[o]ther attributes that may attach to the directed biogas resource by reason of its aggregation, reformation or use, including marketable emission avoidance credits, are not required to be bundled with the gas in order for the directed biogas to be considered a renewable energy resource capacity of generating RECs eligible for

> compliance with the REPS when the directed biogas is used to produce electric power."

Petition at 1. Optima stated that it seeks a ruling that

> "to result in RECs eligible for compliance with the REPS, a directed biogas must be a renewable energy resource used to produce electric power and although the production and use of the directed biogas may, for example, result in a reduction in methane or carbon emissions and thereby earn emission reduction credits, those attributes and credits are not necessary for the directed biogas to be a renewable energy resource as defined in the REPS, nor are they a necessary component of the gas profile transferred to the ultimate user in order for the use of the directed biogas to result in RECs eligible for compliance with the REPS."

Petition at 1-2.

DENC filed a Letter in Lieu of Initial Comments on February 5, 2021, in which the Company stated that it had reviewed the Petition and the Commission's January 12, 2021 Order Requesting Comments on the Petition and did not have any initial comments to submit at that time. DENC also stated that it was not, however, clear to the Company how the accounting for renewable attributes would be accomplished appropriately under Optima's proposal, and that the Company reserved its right to file reply comments on this or other matters in response to the initial comments submitted by other parties in this proceeding. With these Reply Comments and based on its review of the initial comments, DENC expands on its initial concern with Optima's proposal.

II. REPLY COMMENTS

The Company's primary concern with Optima's proposal, and specifically with how the "accounting" for attributes would be appropriately accomplished under that proposal, is focused on the environmental attributes associated with the biogas (which attributes Duke refers to as the voluntary emissions reductions or "VERs"). The VERs associated with a biogas facility's output are essential for the biogas to qualify as a renewable energy resource which, in turn, is necessary to allow for the creation of RECs associated with electricity produced with that biogas. If a sufficient quantity of those biogas-associated environmental attributes or VERs carry over through the electricity generation process, then a REC may be created. But Optima is seeking the ability for it (or any other biogas developer) to strip from the gas itself the VERs associated with the capture of methane gas that occurs with biogas facilities and sell those attributes into another market, such as the Low Carbon Fuel Standard market in California. This potential outcome is specifically contemplated in the Petition[1] and the accompanying affidavit of Mark Maloney.[2] If that is done, there is nothing left with which to create a REC, because the attributes that made the gas renewable are no longer associated with the gas itself. When the biogas-associated environmental attributes are stripped off and sold elsewhere, what is left is just methane. It is no longer biogas, and therefore no longer a renewable energy resource. As a result, any utility claim to RECs associated with electric energy produced with that methane could be called into question because the electric energy was not produced with a renewable energy resource.

Alternatively, allowing Optima to strip environmental attributes from biogas and sell those attributes in other markets means that those attributes could be applied both in North Carolina to the REPS and in the other market. This would amount to double-counting of environmental attributes by some market participants and other state or federal regulators, which also could jeopardize the clear title to RECs that the Company relies on for compliance with the REPS. As the Federal Trade Commission has noted, "the operation of the renewable energy market relies heavily on the expectation of all

[1] Optima Petition, at 12.
[2] Maloney Affidavit, at 3.

market participants that these certificates have not been counted or claimed twice *(i.e.,* double counted)."[3]

Furthermore, under both the North Carolina REPS[4] and the California Low Carbon Fuel Standard,[5] gas must be utilized within these programs' respective states to qualify for the generation of their credits. If Optima's petition is granted, it will not be possible to comply with both the North Carolina and the California requirements, since Optima and other swine waste developers would be permitted to claim environmental attributes associated with the physical delivery of the same gas to different locations. This is not a possible outcome, regardless of DENC's ability to use out of state RECs to meet its REPS requirements.

DENC's compliance with the REPS depends upon the Company's ability to document its purchase and submittal of RECs to the North Carolina Renewable Energy Tracking System ("NC-RETS."). If Optima is permitted to separate the environmental attributes associated with swine fuel that are vital to a swine REC and sell those into another market such as California, the Company's compliance with the REPS could be called into question to the detriment of DENC and its customers for all of the reasons explained above.

Moreover, if Optima and other developers are permitted to separate the biogas-associated environmental attributes or VERs from the gas, the Company's customers would unfairly pay a significant premium for gas that is supposed to be a renewable

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[3] February 5, 2015, Letter of J. Kohm, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, at 3.
[4] Order Accepting Registration of New Renewable Energy Facilities, Docket No. E-7, Subs 1086, 1087 (Mar. 11, 2016) (electric energy produced at facilities located in North Carolina can create in-state RECs for REPS compliance even when the electric energy is produced from directed biogas that originates out of state).
[5] Low Carbon Fuel Standard, California Code of Regulations, Title 17, §§ 95481, 95488 (2021).

energy resource, due to the environmental attributes that are associated with biomethane, but would instead be non-renewable methane.

While Optima's petition does not impact DENC directly, for all of the reasons discussed herein it has created uncertainty that should be resolved by the Commission in a timely and unambiguous manner due to the potential ramifications for the entire biogas sector and the North Carolina electric suppliers.

III. CONCLUSION

WHEREFORE, Dominion Energy North Carolina respectfully requests that the Commission accept these Reply Comments and issue an order rejecting Optima's petition, and making such other determinations as are necessary and proper.

Respectfully submitted,

DOMINION ENERGY NORTH CAROLINA

By: */s/Andrea R. Kells*

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Attorneys for Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina

April 12, 2021

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Reply Comments of Dominion Energy North Carolina*, as filed in Docket No. E-100, Sub 113, were served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 12th day of April, 2021.

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