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June 24, 2022

VIA ELECTRONIC FILING

Mr. Bernard Logan, Clerk
c/o Document Control Center
State Corporation Commission
Tyler Building – First Floor
1300 East Main Street
Richmond, Virginia 23219

RE: Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia

Case No. PUR-2021-00142

Dear Mr. Logan:

As directed by the Commission's Order Extending Deadline for Post-Hearing Filing of June 7, 2022, please find attached the Post-Hearing Brief and Issues Matrix being filed on behalf of Appalachian Voices ("Environmental Respondent"). This notice is being filed electronically, pursuant to the Commission's Electronic Document Filing system.

As authorized by Rule 140 of the Commission's Rules of Practice and Procedure, Environmental Respondent is providing, and agrees to accept, service of documents in this case exclusively via email unless parties request otherwise. Please let me know if you do not agree to electronic service and would like to receive hard copies of documents.

If you should have any questions regarding this filing, please do not hesitate to contact me at (434) 977-4090.

Regards,

William C. Cleveland

cc: Parties on Service List
Commission Staff

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF VIRGINIA ELECTRIC AND POWER COMPANY For approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 *et seq.*, and § 56-585.1 A 6 of the Code of Virginia	)	Case No. PUR-2021-00142

ENVIRONMENTAL RESPONDENT'S POST HEARING BRIEF

Pursuant to the Commission's Order on Post-Hearing Filings entered in this docket on June 2, 2022, Appalachian Voices submits the following post-hearing brief.

INTRODUCTION

Appalachian Voices (the "Environmental Respondent") supports Dominion's proposed offshore wind project because it will provide useful, reliable, zero-carbon electricity for the Commonwealth in a manner that complements Dominion's solar and energy storage procurement efforts. That being said, Environmental Respondent is equally mindful of the fact that there is not a bottomless fund for Virginia's clean energy transition. As such, whenever utility customers are asked to pay for anything, the Commission should exercise every tool at its disposal to ensure the dollars spent deliver maximum value to captive ratepayers. Some parties have entered into a

Proposed stipulation (the "Proposed Stipulation"),[1] which resolves many issues. The Proposed Stipulation does not, however, provide adequate ratepayer protections, and Environmental Respondent maintains the request it articulated at the hearing that the Commission do everything it can to ensure the project (1) is built on time and on budget and (2) performs as promised.

BACKGROUND

I. STATUTORY FRAMEWORK.

In 2020, the Virginia General Assembly passed the Virginia Clean Economy Act ("VCEA").[2] The VCEA amended existing code and also added new sections:

Code Section	New or Amended	Function
§ 56-585.1	Amended	Ratemaking
§ 585.1:11	New	Development of offshore wind
§ 56-585.5	New	Mandatory Renewable Portfolio Standard ("RPS")

As far as offshore wind is concerned, the changes to § 56-585.1 declared 3,000 MW of offshore wind in the public interest, whereas previously only an offshore wind demonstration project was in the public interest.[3] Section 56-585.1:11 includes multiple provisions concerning Dominion's proposal to acquire up to 5,200 MW of offshore wind. Subsection C 1 of § 56-585.1:11 ("Subsection 1:11 C 1") also specifically includes a declaration that between 2,500 and 3,000 MW of utility-owned and utility-operated offshore wind is in the public interest,[4] and it contains two

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[1] Ex. 3, Proposed Stipulation and Recommendation of the Company, Commission Staff, Nansemond Indian Nation, and the Sierra Club, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (May 11, 2022) ("Proposed Stipulation").

[2] 2020 Va. Acts chs. 1193 and 1994.

[3] *Id.*

[4] Va. Code § 56-585.1:11 C 1.

important provisions concerning cost recovery proceedings. First, Subsection 1:11 C 1 states that in "acting upon any request for cost recovery by a Phase II Utility for costs associated with such a facility, the Commission shall determine the reasonableness and prudence of any such costs . . . ."[5] The second provision creates a rebuttable presumption that the proposed costs are reasonable and prudent if the Commission determines three things:

> (i) the utility has complied with the competitive solicitation and procurement requirements pursuant to subsection E [of § 56-585.1:11];
>
> (ii) the project's projected total levelized cost of energy, including any tax credit, on a cost per megawatt hour basis, inclusive of the costs of transmission and distribution facilities associated with the facility's interconnection, does not exceed 1.4 times the comparable cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating facility as estimated by the U.S. Energy Information Administration in its Annual Energy Outlook 2019; and
>
> (iii) the utility has commenced construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in service prior to January 1, 2028.[6]

Ultimately, although the VCEA added Section 56-585.1:11, the Commission's authority to scrutinize this project remains more or less the same as it was prior to the VCEA. There is, admittedly, a rebuttable presumption that the proposed costs are reasonable and prudent, but – as discussed below – that only attaches if the Commission chooses to make affirmative findings about

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[5] *Id.*

[6] *Id.* For convenience's sake, these three prongs are (1) the competitive solicitation prong, (2) the LCOE prong, and (3) the construction timeline prong.

the three elements of that presumption. Moreover, as has been seen in previous cases, the facts in a case can always rebut such a presumption.[7]

II. PROCEDURAL HISTORY

Dominion filed its application on November 5, 2021, seeking approval of, and cost recovery for, 176 14.7 MW wind turbines and associated transmission infrastructure.[8] Pursuant to the Commission's procedural order, intervening parties submitted pre-filed testimony on March 25, 2022. Commission Staff submitted its pre-filed testimony on April 8, 2022. Dominion submitted its pre-filed rebuttal testimony on April 22, 2022. The Commission convened a public witness hearing on May 16, and the remainder of the evidentiary hearing concluded on May 19. On June 2, 2022, the Commission entered an order directing the parties to file post-hearing briefs that, among other things, specifically addressed four legal questions posed by the Commission.

ARGUMENT

The VCEA clearly articulates Virginia's intention to decarbonize the electricity sector. While this is necessary from a climate change perspective, zero-carbon energy is also independently prudent from a financial perspective. In the last year alone, Dominion's over-reliance on fossil fuel-fired generation has subjected its ratepayers to severe price volatility. On

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[7] *See, e.g.*, Final Order, *Application of Virginia Electric and Power Company for revision of a rate adjustment clause: Rider U, new underground distribution facilities, for the rate year commencing September 1, 2017*, Case No. PUE-2016-00136 (Sept. 1, 2017) at 9 (after having "found these presumptions rebutted, the Commission has also considered the evidence and arguments presented by Dominion and, taking the record as a whole, concludes that the Company's proposed [undergrounding program] is not cost beneficial or just and reasonable.").

[8] Ex. 2, Application, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (Nov. 5, 2021) ("OSW Application") at 7.

May 5, 2022, Dominion notified the Commission of more than $1 billion in unrecovered fossil fuel expenses, caused primarily by escalating natural gas prices.[9] Those prices show no sign of coming back down.[10] As such, and as Dominion Witness Kelly testified in this hearing, "renewables hedge [Dominion's] fuel significantly."[11] In fact, he conceded that Dominion should bring as much zero fuel cost renewable energy onto its system as possible while still maintaining reliability.[12] Offshore wind, like the CVOW project, is an excellent complement to zero-fuel cost solar energy,[13] and construction of offshore wind can significantly reduce the amount of onshore generation and transmission needed.[14]

Offshore wind, then, is a necessary component to Virginia's decarbonized electricity future. That does not mean, however, that this Commission should rubber stamp Dominion's application. CVOW is the largest project Dominion has ever done, and it proposes that its captive ratepayers should bear 100% of its costs and 100% of its risks. Virginia law gives the Commission broad discretion to implement the VCEA, and the Commission should use that discretion here to balance the risks and the costs fairly.

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[9] Application, *Application of Virginia Electric and Power Company to revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia*, Case No. PUR-2022-00064 (May 5, 2022) at 2.

[10] Hearing Transcript, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (May 19, 2022) ("May 19 Hearing Transcript") at 48:8-49:8 (Cross Examination of Company Witness Kelly on Rebuttal).

[11] *Id.* at 49:18-19 (Cross Examination of Company Witness Kelly on Rebuttal).

[12] *Id.* at 49:20-25 (Cross Examination of Company Witness Kelly on Rebuttal).

[13] Hearing Transcript, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (May 17, 2022) ("May 17 Hearing Transcript") at 261:16-20 (Cross Examination of Company Witness Kelly on Direct).

[14] *See id.* at 263:21-264:3 (Cross Examination of Company Witness Kelly on Direct).

III. QUESTIONS PRESENTED BY THE COMMISSION.

A. What are the limits, if any, of the Commission's legal authority to adopt consumer protections in this case, including cost caps or a performance guarantee?

1. Commission authority to impose cost caps.

The Commission's authority to impose cost caps is limited by the utility's right to the opportunity to recover its prudently incurred costs. In this case, the Commission is asked to approve an initial rate year revenue requirement of $78.702 million.[15] As the Proposed Stipulation makes clear, Dominion is not seeking (and the Commission is not approving) recovery of any costs beyond that $78 million. The VCEA states that "[i]n acting upon any request for cost recovery by a Phase II Utility for costs associated with such [CVOW], the Commission shall determine the reasonableness and prudence of any such costs . . . ."[16] That determination of whether costs beyond $78 million are reasonable and prudent must depend upon evidence presented in that future proceeding.[17] The Commission cannot impose a hard cap on recovery of capital costs associated with the CVOW project because such a hard cap would prematurely decide the reasonableness and prudence of those additional costs absent evaluation of an evidentiary record, which is beyond the Commission's discretion.

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[15] Ex. 29, Direct Testimony of Christopher J. Lee, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (Nov. 5, 2021) ("Lee Direct") at 7:4-5.

[16] Va. Code § 56-585.1:11 C 1.

[17] The Proposed Stipulation acknowledges the need for future proceedings to address additional costs. Ex. 3, Proposed Stipulation at 3, para. 5.

2. Commission authority to impose a performance guarantee.

The Commission's authority to impose a performance guarantee, however, is different from a hard cost cap, and it lies in the Commission's inherent regulatory oversight powers. Nothing in Chapter 23 (Va. Code § 56-576 *et seq.*) prior to the VCEA either expressly authorized or expressly prohibited ratepayer protections like performance guarantees, yet the Commission did exactly that in two related dockets: the US-3 and US-4 Solar dockets. In the US-3 Solar docket, the Commission identified certain ratepayer risks associated with solar facilities:

> Solar, however, under the present state of technology is intermittent and non-dispatchable, so the economic risk is significantly related to its performance at generating electrical power. Simply put, as performance falls short, the costs go up.[18]

The Commission went on to observe that "[t]he question in this case, therefore, is . . . whether Dominion has structured the financial and performance risks of this solar project to be reasonable and prudent - and thus *fair* - for its customers."[19] In answering its own question, the Commission found that "under Dominion's proposed self-build model, the Company's customers bear essentially all of the risk that the Projects do not meet the performance targets upon which Dominion has based its projected costs and benefits."[20] Ultimately, the Commission found that "a sufficient performance guarantee is needed in order to find that the Projects are reasonable, prudent, and required by the public convenience and necessity."[21] At the time, Dominion not only

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[18] Order Granting Certificates, *Petition of Virginia Electric & Power Company for approval & certification of the proposed US-3 Solar Projects pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider US-3, under § 56-585.1 A 6 of the Code of Virginia,* Case No. PUR-2018-00101 (Jan. 23, 2019) ("US-3 Order") at 13.

[19] *Id.* at 14 (emphasis in original).

[20] *Id.* at 15.

[21] *Id.* at 17-18.

conceded the Commission had authority to impose a performance guarantee, but Dominion actually proposed one of its own.[22] The following year, in Dominion's US-4 Solar docket, the Commission found that "a sufficient performance guarantee is needed in order to find that the Project is reasonable, prudent, and required by the public convenience and necessity."[23]

Additionally, a performance guarantee is not a hard cap on costs. A hard cap on construction costs would possibly prevent completion of the project. In contrast, a performance guarantee simply requires the facility to perform as well as Dominion has repeatedly assured us it will. If it does, there are no costs to disallow. Nothing in the VCEA alters the Commission's inherent authority to impose a performance guarantee.

B. Address the interplay of Code §§ 56-585.1 A 6, 56-585.1 D, 56-585.l:11, and 56-585.5, particularly § 56-585.5 F.

The Commission identified four sections of Virginia Code and asked for an explanation of how those four sections interrelate with respect to the offshore wind project.

Subsection A 6 of § 56-585.1 ("Subsection A 6") is the cost recovery mechanism, allowing Dominion to "petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of" certain generating facilities, including offshore wind.[24] Subsection A 6 further states that "a utility-owned and utility-operated generating

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[22] *See id.* at 17 (noting that Dominion "proposed a seven-year performance guarantee in its rebuttal testimony "to hold customers harmless for performance below a 25% capacity factor . . . which is the level below which the Projects would no longer have a positive NPV to customers."").

[23] Order Granting Certificate, *Petition of Virginia Electric and Power Company for approval and certification of the proposed US-4 Solar Projects pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider US-4, under § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2019-00105 (Jan. 22, 2020) ("US-4 Order") at 12.

[24] Va. Code § 56-585.1 A 6.

facility or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 3,000 megawatts, are in the public interest."[25]

Subsection A 6 does not expressly contain a standard of review by which the Commission must scrutinize proposed generating facility costs, but Subsection D of § 56-585.1 ("Subsection D") preserves the Commission's discretion to scrutinize the reasonableness and prudence of any cost proposed under § 56-585.1, including costs under Subsection A 6.[26]

Subsection C of § 56-585.1:11 ("Subsection 1:11 C") goes beyond Subsection D and actually mandates that the Commission scrutinize the reasonableness and prudence with regard to any proposed offshore wind costs.[27] Subsection 1:11 C further allows, but does not require, the Commission to voluntarily determine whether the evidence satisfies the three prongs of the rebuttable presumption.[28] In other words, the rebuttable presumption only attaches "if the Commission determines that"[29] the three prongs have been met. There is "no such directive in the

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[25] *Id.*

[26] *See* Va. Code § 56-585.1 D (providing that "[t]he Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding.") (emphasis added).

[27] *See* Va. Code 56-585.1:11 C 1 (stating that "[i]n acting upon any request for cost recovery by a Phase II Utility for costs associated with such a facility, the Commission shall determine the reasonableness and prudence of any such costs . . .") (emphasis added).

[28] There is no real dispute here about two of the three prongs. All parties appear to agree that Dominion adequately conducted competitive solicitation and that its construction plans comply with the requisite timeline. On the other hand, there is competing testimony on whether the proposed costs produce an LCOE below the applicable threshold of 1.4 times the comparable cost of a conventional simple cycle combustion turbine ("CC") generating facility ("1.4x LCOE"). Ex. 40, Pre-filed Staff Testimony of Katya Kuleshova, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (Apr. 8, 2022) ("Kuleshova Pre-filed Staff Testimony") at 6:20-25.

[29] Va. Code § 56-585.1:11 C 1 (emphasis added).

statutory plain language"[30] of Subsection 1:11 C requiring the Commission to make that determination.

The General Assembly could have written Subsection 1:11 C to say that the Commission shall determine whether the evidence supports the three prongs of the rebuttable presumption. It did not. And the Virginia Supreme Court has consistently ruled that "[w]here a legislature uses both mandatory and directory verbs in the same statute, section, paragraph, or sentence, it is fair to assume it was aware of the difference and intended each verb to carry its ordinary meaning."[31] That is exactly the case here. One sentence of Subsection 1:11 C says the Commission "shall" do something (*i.e.*, determine the reasonableness and prudence of offshore wind costs), and a different sentence in the same paragraph says the presumption attaches "if" the Commission makes a voluntary determination.

Fortunately, no party contests the reasonableness or prudence of the costs proposed here. Accordingly, the Commission can comply with its mandatory duty in Subsection 1:11 C to determine the reasonableness and prudence without reliance on the presumption and approve the project's costs as reasonable and prudent without determining whether the evidence shows the rebuttable presumption criteria have been established.[32]

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[30] *See* Order on Reconsideration, *Application of Appalachian Power Company for a 2020 triennial review of rates, terms, and conditions pursuant to § 56-585.1 of the Code of Virginia*, Case No. PUR-2020-00015 (March 26, 2021) at 4 (Commission rejecting APCo's claim that "both [Va. Code § 56-585.1] and the Supreme Court of Virginia require the Commission to undertake a going-forward rate case – as part of every historical earnings review – regardless of the utility's earned return during the historical period.").

[31] *Wal-Mart Stores E., LP v. State Corp. Comm'n*, 299 Va. 57, 71 (2020) (citing 3 J.D. Shambie Singer, Sutherland's Statutes and Statutory Construction, § 57:11, at 77 (8th ed. 2020)).

[32] The logical conclusion of this is that in this and in any future cost recovery proceeding, Dominion only benefits from the rebuttable presumption to the extent the Commission voluntarily and affirmatively finds the criteria have been

While Subsection D is normally discretionary, Subsection 1:11 C makes the Commission's determination of reasonableness and prudence of costs mandatory, which means part of Subsection D also becomes mandatory: the Commission must undertake the process of "determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources."[33] As part of such undertaking, the second half of Subsection D also becomes mandatory, requiring the Commission in this and every future cost recovery proceeding regarding offshore wind costs to "consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Clean Energy Policy set forth in § 67-101.1, and . . . also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by customers."[34] Of course, the Commission can "consider" these issues in arriving at its final ruling without expressly ruling on them.

Pursuant to Va. Code § 56-585.5 F, any costs approved under Subsection A 6 become non-bypassable, subject to the exceptions for PIPP eligible utility customers, advanced clean energy buyers, or qualifying large general service customers, as those terms are defined in § 56-585.1:11.

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satisfied. If the Commission declines to make that determination in a future proceeding for any additional costs, there would be no presumption that such costs were reasonable or prudent. The Commission would, of course, still have to rule on whether those additional costs are reasonable and prudent.

[33] Va. Code § 56-585.1 D.

[34] *Id.*

C. Address specifically what amount of cost recovery Virginia Electric and Power Company ("Company") is asking the Commission to approve under Code § 56-585.1 A. When the Company comes in each year to increase the Rider OSW rate adjustment clause, does it have to show reasonableness and prudence under Code § 56-585.1 D? And when the Company comes in each year to increase the Rider OSW rate adjustment clause, does it have to show that the Levelized Cost of Energy standard in Code § 56-585.1: 11 is met?

Although Dominion seeks a finding under Subsection 1:11 C regarding the total project, the only actual cost sought for recovery in this case is the revenue requirement for the initial rate year, totaling $78.702 million according to the Proposed Stipulation.[35] Dominion proposes to recover this amount via a Subsection A 6 rider. Dominion is not requesting that the Commission approve total cost recovery of the entire $9.65 billion.[36] Subsection 1:11 C expressly requires determination of the reasonableness and prudence of costs in any cost recovery proceeding, including an annual true up, which means Dominion must prove that the proposed costs are reasonable and prudent in every true up.

The rebuttable presumption in Subsection 1:11 C will only apply in those future cases if the Commission chooses to make a finding as to whether the project's most recently-projected LCOE is below 1.4 times the cost of a CT, but – as discussed above – the Commission is never required to make any finding on the LCOE issue, even if Dominion asks for one. Moreover, even if the Commission chooses to make a finding about the projected LCOE in this case, that does not mean the Commission must make such a finding in every future proceeding. The only thing the Commission must do under Subsection 1:11 C is determine whether any proposed cost is

[35] Ex. 3, Proposed Stipulation at 4, para. 8.
[36] *Id.* at 2, para. 3.

reasonable and prudent, and the rebuttable presumption does not constrain that analysis unless the Commission first voluntarily decides to rule on the LCOE.

D. Please identify all costs and recovery mechanisms associated with the Coastal Virginia Offshore Wind Commercial Project including, but not limited to, the fuel factor, base rates, and any other recovery mechanism(s). Include a discussion of associated charges from PJM. Also explain how those recovery mechanisms will be impacted

Dominion proposes a Subsection A 6 rate adjustment clause ("RAC"), known as Rider OSW, but Rider OSW's structure is different than previous Subsection A 6 RACs. According to Staff Witness Welsh, a Subsection A 6 RAC normally "recovers the costs of the generating facility and transmission interconnection facilities through the RAC, just as with Rider OSW, but the energy and capacity benefits of those facilities are recovered through the fuel factor and base rates, respectively."[37] In practice, this means that any revenues associated with a facility's energy are booked as a credit to the fuel factor, while any revenues associated with the facility's capacity are booked to base rates.[38]

The VCEA, however, requires that any offshore wind costs proposed for recovery via a Subsection A 6 rider must be "allocated to all customers of the utility in the Commonwealth as a non-bypassable charge, regardless of the generation supplier of any such customer," with three limited exceptions.[39] As such, "the Rider OSW framework includes adjustments for renewable

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[37] Ex. 41, Pre-filed Staff Testimony of Sean M. Welsh, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia,* Case No. PUR-2021-00142 (Apr. 8, 2022) ("Welsh Pre-filed Staff Testimony") at 3:6-9.

[38] In US-4, however, the Commission required Dominion to book capacity revenue against the RAC, not to base rates. *See* US-4 Order at 14.

[39] Va. Code § 56-585.1:11 C 3.

energy credits ("RECs"), energy sales, and avoided capacity charges that serve to reduce the lifetime revenue requirement."[40]

Purchased Power (i.e., energy) Costs

According to Dominion Witness Gaskill, historically, the costs that the Dominion load serving entity ("LSE") incurred to purchase energy from the PJM wholesale market were booked to the fuel factor.[41] Likewise, any revenue that a Dominion-owned facility received for selling energy into the PJM wholesale energy market was also booked as a credit to the fuel factor.[42] Under Rider OSW, however, any revenues received by CVOW for energy sold into the PJM markets will no longer be booked as a credit to the fuel factor; instead, they will be booked as a credit directly against Rider OSW.[43] As a result, the credit Rider OSW directly receives for its energy sales is a function of how much energy CVOW actually produces. The energy revenues CVOW produces no longer reduce the fuel factor costs, but they do reduce the net Rider OSW costs, so - in theory - when looked at holistically, customers should receive the same value for the energy that CVOW sells.

Capacity revenues

Historically, Dominion's allocated costs of PJM's capacity procurement was booked as a base rate expense. Likewise, when a generating asset cleared the capacity market, that revenue was also booked as a base rate credit. This, in theory, kept related costs and revenues in one place. This

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[40] Ex. 41, Welsh Pre-filed Staff Testimony at 3:10-12.
[41] May 19 Hearing Transcript at 79:6-14 (Direct Examination of Company Witness Gaskill).
[42] *Id.* (Direct Examination of Company Witness Gaskill).
[43] *Id.* at 81:13-14 (Direct Examination of Company Witness Gaskill).

theory, however, neglected to address the fact that total base rate revenues greatly exceeded total base rate costs,[44] with Dominion retaining 70 basis points above its authorized return (the "earnings collar") plus 30% of all revenues collected above the collar.[45] As a result, in practice, customers did not receive dollar-for-dollar value for the capacity benefit provided by resources paid for through RACs.

For Rider OSW, Dominion has opted to exit the PJM capacity markets, which means there will be no capacity revenues associated with CVOW.[46] Dominion claims in this case that CVOW still provides ratepayers with capacity value since CVOW will be used to meet Dominion's Fixed Resource Requirement ("FRR") obligations.[47] As such, Dominion proposes to "credit" Rider OSW to reflect the fact that CVOW helps Dominion avoid incurring capacity purchase costs.[48] To calculate that credit value, Dominion proposes to use a proxy based on the avoided costs of procuring new capacity.[49]

RECs

Rider OSW's treatment of renewable energy credits ("RECs") ties into how Rider RPS works. According to Dominion, Rider RPS exists to recover the costs of all RECs procured to

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[44] *See* Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to§ 56-596 B of the Code of Virginia (Sept. 1, 2016) at 6 (Dominion earned between $106.7 and $278 million above its authorized ROE in 2015); Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to § 56-596 B of the Code of Virginia (Sept. 1, 2017) at 6-7 (Dominion earned between $221 and $426 million above its authorized ROE in 2016); Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to§ 56-596 B of the Code of Virginia (Aug. 29, 2018) at 7 (Dominion earned between $302 million and $365 million above its authorized ROE in 2017); Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to§ 56-596 B of the Code of Virginia (Aug. 20, 2019) at 9 (Dominion earned $277.3 million above its authorized ROE in 2018).

[45] Va. Code § 56-585.1 A 8.

[46] May 19 Hearing Transcript at 106:8-10 (Cross Examination of Company Witness Gaskill).

[47] *Id.* at 98:2-7 (Cross Examination of Company Witness Gaskill).

[48] *Id.* at 89:2-7 (Direct Examination of Company Witness Gaskill).

[49] *Id.* (Direct Examination of Company Witness Gaskill).

comply with the RPS in Va. Code § 56-585.5 C. Historically, according to Dominion, when a renewable energy facility generated a REC, Dominion would sell that REC and credit the proceeds against the facility's rider.[50] Now, Dominion will no longer sell those RECs in a real market; it will retire them. Functionally, for Rider OSW, Dominion proposes to effectively simulate the sale of CVOW's RECs by recording a credit to Rider OSW using a REC proxy value.[51] Dominion then proposes to record in Rider RPS a synthetic REC purchase of CVOW's RECs, which are then considered RPS compliance costs recoverable from all customers who pay Rider RPS.[52] Of course, if Dominion optimizes RECs as the VCEA allows (*i.e.*, actually sells CVOW RECs and replaces them with lower-cost RPS-eligible RECs), then the actual revenue associated with selling the CVOW RECs would be credited to Rider OSW, and the lower cost of the RPS-eligible replacement REC would be booked to Rider RPS.[53] As Dominion Witness Gaskill notes, this creates some imbalances because the customers who pay Rider OSW (and the cost allocation factors used) are not necessarily the same as they are for Rider RPS.[54] The specific impact that accelerated renewable energy buyers and shopping customers have on this process is not completely fleshed out due to other pending cases before the Commission.[55]

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[50] *Id.* at 92:18-22 (Direct Examination of Company Witness Gaskill).
[51] *Id.* at 92:4-16 (Direct Examination of Company Witness Gaskill).
[52] *See id.* (Direct Examination of Company Witness Gaskill).
[53] *Id.* at 99:1-21 (Cross Examination of Company Witness Gaskill).
[54] *Id.* at 94:14-17 (Direct Examination of Company Witness Gaskill).
[55] *Id.* at 101:25-104:7 (Cross Examination of Company Witness Gaskill).

IV. THE PROPOSED STIPULATION FAILS TO PROVIDE ADEQUATE RATEPAYER PROTECTION.

The Proposed Stipulation fails to provide adequate ratepayer protection in two key ways: (1) ensuring the project is completed on-time and on-budget and (2) ensuring the project performs as promised once it becomes operational.

A. The Proposed Stipulation is too vague regarding when Dominion must seek approval of cost over-runs, and the Commission should impose an express deadline by which Dominion must seek approval of additional costs.

The Proposed Stipulation concedes that any cost over-runs must receive Commission approval before Dominion can recover them from its captive ratepayers, but the Proposed Stipulation is silent as to when such a cost recovery proceeding *must* occur, which Commission Staff Witness Welsh confirmed:

> Q. [Y]ou agree with me that the stipulation is silent as to dictating when reasonableness and prudence will be decided other than to state that it will happen in a future proceeding?
>
> A. Yes, that's correct.[56]

During the hearing, Dominion counsel stated:

> [W]e have identified now five ways that the issue of cost overruns or schedule delays can get before this Commission. The Company can voluntarily come in. The Commission can call the Company in. Staff can file a motion. Another party can file a motion. Nine months out of the year we are going to be involved in an update proceeding where the issue can be raised. So like Mr. Ochsenhirt, I cannot

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[56] Hearing Transcript, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (May 18, 2022) ("May 18 Hearing Transcript") at 193:7-12 (Cross Examination of Staff Witness Welsh).

> conceive that a material issue that needs to be decided by this Commission will not get before this Commission.[57]

Oddly, while Dominion counsel "cannot conceive" that such an important issue would not come before the Commission in an expeditious manner, Dominion repeatedly opposed any provision requiring expeditious review of cost overruns and delays. This is clearly an unreasonable opposition to a reasonable request because Dominion counsel actually conceded that mandatory and expeditious review of cost overruns would be palatable – provided Dominion got something in return:

> [I]f Ms. Grundmann on behalf of Walmart wants to propose an amendment to the stipulation to say no later than the next annual update proceeding and is willing to join the stipulation if that amendment is made, we'd be happy to talk to her on behalf of the stipulating participants.[58]

Dominion counsel again stated the substance of the issue (that Dominion be required to seek cost recovery of cost overruns in the next true up) could be acceptable, but Dominion repeated its unreasonable opposition absent receiving a *quid pro quo*:

> I'd make the same offer to Mr. Cleveland that he can join the stipulation and we'll talk about the language.[59]

Fortunately, this Commission and Dominion do not engage in *quid pro quos*, and the Commission need not give Dominion anything it does not deserve. Instead, the Commission can simply order Dominion to seek express approval of any cost overruns or delays no later than the next rider true up proceeding.

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[57] *Id.* at 196:12-23 (Cross Examination of Staff Witness Welsh).
[58] *Id.* at 196:23—197:4 (Cross Examination of Staff Witness Welsh).
[59] *Id.* at 272:9-12 (Statement of Company Counsel).

This is not a meaningless request. If Dominion notifies the Commission the project will run over budget or behind schedule, it must notify the Commission. If the cost overrun or delay is so significant that denial of those excess costs would cause Dominion to abandon the project before completion, it is imperative for ratepayers that the Commission act on those cost overruns as quickly as possible. Because Dominion will have the right to recover any money spent between notifying the Commission of cost overruns and when the Commission denies recovery, the longer the lag time, the greater the ratepayer expense, especially in a scenario where the cost overruns are denied as unreasonable and Dominion abandons the project.

The V.C. Summer nuclear debacle is a cautionary tale. There, even after South Carolina Electric & Gas ("SCE&G") abandoned the project, it still claimed it could charge its customers about $3.33 billion in unrecovered construction costs.[60] Even after Dominion sweetened the pot with various adjustments, South Carolinians are still paying roughly $2.77 billion for a project that will never deliver them a single kilowatt of electricity.[61] Had the South Carolina Commission forced SCE&G into abandoning the project earlier (by denying recovery of unreasonable cost overruns), it could have saved ratepayers billions of dollars. Ratepayers deserve mandatory, rapid review of cost overruns, which Dominion refuses to give them in this case.

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[60] *See*, Darren Sweeney, *Dominion again ups offer to cut rates in SCANA deal*, S&P Global Market Intelligence (Nov. 21, 2018), https://www.spglobal.com/marketintelligence/en/news-insights/trending/lhzo5xdxx_g4xux9pg_2rg2.

[61] *Id.*

Hopefully Dominion can keep its promise to deliver CVOW on time and on budget, but there are undeniable risks here,[62] and the Commission should do everything it can to ensure the project is on time and on budget.

B. The Proposed Stipulation does not adequately ensure the project will perform as proposed, and the Commission should impose a performance guarantee to protect ratepayers.

As discussed above, the Commission's inherent authority to protect ratepayers remains unchanged by the VCEA, and the Commission should impose a performance guarantee in this case consistent with what Staff Witness Kuleshova recommended in her prefiled testimony.[63] The performance guarantee is designed to hold customers harmless in the event CVOW does not perform as Dominion assures us it will, and Ms. Kuleshova testified at the hearing that the performance guarantee would insulate ratepayer from two types of costs: (1) replacement energy and (2) replacement RECs.[64]

From an evidentiary standpoint, the facts the Commission found relevant in the US-3 case in deciding to impose a performance guarantee are equally present here:

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[62] For example, Dominion is not using an engineering, procurement, and construction ("EPC") contractor on this project, which is a significant departure from how it managed construction of prior generation facilities. May 17 Hearing Transcript at 158:6-159:25 (Cross Examination of Company Witness Mitchell on Direct).

[63] Ex. 40, Kuleshova Pre-filed Staff Testimony at 83:16-85:18.

[64] May 18 Hearing Transcript at 164:20-25 (Cross Examination of Staff Witness Kuleshova).

Factors supporting imposition of a performance guarantee	US-3 Solar	CVOW
Zero fuel-cost risk	X[65]	X[66]
Zero carbon-cost risk	X[67]	X[68]
Intermittent & non-dispatchable	X[69]	X[70]
Customers will be required to pay for the costs plus a return for the entire life of the RAC	X[71]	X[72]
The General Assembly has declared projects of this type in the public interest	X[73]	X[74]
Dominion chose a self-build option instead of a PPA	X[75]	X[76]
Risk of underperformance at utility-owned facility lies on ratepayers	X[77]	X[78]

Given the overlapping facts, the only question is whether there is any legal impediment to a performance guarantee that was not present in the US-3 and US-4 Solar dockets. As discussed above, there is not. Moreover, contrary to Dominion witnesses' concerns, a performance guarantee has no bearing on whether Dominion will recover the approved construction costs of CVOW itself, as Staff Witness Kuleshova confirmed:

> Q. So there's nothing in your recommendation that threatens the Company's recovery of its actual construction costs of CVOW, is there?
>
> A. No.[79]

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[65] US-3 Order at 13.
[66] May 18 Hearing Transcript at 171:7-9 (Cross Examination of Staff Witness Kuleshova).
[67] US-3 Order at 13.
[68] May 18 Hearing Transcript at 171:13-18 (Cross Examination of Staff Witness Kuleshova).
[69] US-3 Order at 13.
[70] May 18 Hearing Transcript at 171:18-22 (Cross Examination of Staff Witness Kuleshova).
[71] US-3 Order at 13.
[72] May 18 Hearing Transcript at 202:23-203:2 (Cross Examination of Staff Witness Welsh).
[73] US-3 Order at 14.
[74] May 18 Hearing Transcript at 172:11-15 (Cross Examination of Staff Witness Kuleshova).
[75] US-3 Order at 14.
[76] May 18 Hearing Transcript at 172:21-23 (Cross Examination of Staff Witness Kuleshova).
[77] US-3 Order at 14-15.
[78] May 18 Hearing Transcript at 173:9-18 (Cross Examination of Staff Witness Kuleshova).
[79] *Id.* at 165:7-10 (Cross Examination of Staff Witness Kuleshova).

Staff Witness Kuleshova further testified that the costs of replacement energy and replacement RECs are not costs of "generating facilities" nor are they costs of "electrical transmission or distribution facilities associated with" electrical generating facilities, so they are not entitled to Subsection 1:11 C's presumption of reasonableness and prudence.[80] In other words, the VCEA's introduction of Subsection 1:11 C into the Commission's review of offshore wind made no change in the Commission's inherent authority to impose a performance guarantee in this case.[81] The Commission can and should adopt a performance guarantee consistent with Staff Witness Kuleshova's recommendations.

CONCLUSION

For the reasons described above, Environmental Respondent respectfully requests the Commission enter an order that:

- Approves the CVOW project;
- Requires Dominion to seek Commission of any cost over-runs, at the latest, in the Rider OSW true-up proceeding immediately following Dominion's notice to the Commission of such over-runs;
- Imposes a performance guarantee consistent with Staff Witness Kuleshova's recommendations.

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[80] *Id.* at 167:18-168:3 (Cross Examination of Staff Witness Kuleshova).

[81] *See Wal-Mart*, 299 Va. at 72 (the court stating "we 'presume that where the General Assembly has not placed an express limitation in a statutory grant of authority, it intended for the Commission, as an expert body, to exercise sound discretion.'") (citing *City of Alexandria v. State Corp. Comm'n*, 296 Va. 79, 94 (2018)).

ENVIRONMENTAL RESPONDENT'S ISSUES MATRIX

Issue	Response
The CVOW Project and Offshore Wind Generally	
Should the Commission approve the CVOW project?	Yes
Are offshore wind generating resources below 3,000 MW in the aggregate in the public interest?	Yes[82]
Does the fact that a generic offshore wind resources is in the public interest mean that the costs of a specific offshore wind resource (like CVOW) are automatically reasonable and prudent?	No[83]
Commission authority concerning ratepayer protections	
Does the Commission have authority in this docket to impose an absolute cost cap on the entire project?	No
Does the Commission have authority in this docket to impose a performance guarantee?	Yes
Is Subsection A 6 of § 56-585.1 ("Subsection A 6") the cost recovery mechanism at play in this case?	Yes
Does Subsection D of § 56-585.1 ("Subsection D") give the Commission discretion to scrutinize the reasonableness and prudence of any cost proposed under Subsection A 6?	Yes[84]
Does Subsection D require the Commission to scrutinize the reasonableness and prudence of any cost proposed under Subsection A 6?	No

[82] *See, e.g.*, Va. Code § 56-585.1 A 6.

[83] *See* Va. Code § 56-585.1:11 C 1 ("the Commission shall determine the reasonableness and prudence of any [offshore wind] costs . . .").

[84] *See* Va. Code § 56-585.1 D ("The Commission **may** determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding.") (emphasis added).

Does Subsection C 1 of § 56-585.1:11 ("Subsection 1:11 C") require the Commission to scrutinize the reasonableness and prudence of any offshore wind costs?	Yes[85]
If the Commission scrutinizes the reasonableness and prudence of offshore wind costs, is the Commission also required to also "consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and . . . also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by customers[?]"	Yes
Subsection 1:11 C	
Does Subsection 1:11 C mandate that the Commission determine whether CVOW's proposed costs are reasonable and prudent?	Yes[86]
Does Subsection 1:11 C articulate a rebuttable presumption that the costs of offshore wind are reasonable and prudent if the Commission finds that three criteria are met?	Yes
Prong 1	
Does Prong 1 of the rebuttable presumption test whether Dominion has complied with certain competitive solicitation and procurement requirements?	Yes[87]
Does the record contain evidence regarding Dominion's compliance with certain competitive solicitation and procurement requirements?	Yes[88]

[85] *See* Va. Code § 56-585.1:11 C 1 ("the Commission ***shall*** determine the reasonableness and prudence of any [offshore wind] costs . . .") (emphasis added).

[86] *See Id.* ("the Commission ***shall*** determine the reasonableness and prudence of any [offshore wind] costs . . .") (emphasis added).

[87] *Id.*

[88] Ex. 40, Pre-filed Staff Testimony of Katya Kuleshova, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (Apr. 8, 2022) ("Kuleshova Pre-filed Staff Testimony") at16.

Does Subsection 1:11 C ***require*** the Commission to make a finding as to whether the evidence satisfies Prong 1?	No[89]
Prong 2	
Does prong 2 of the rebuttable presumption test whether the levelized cost of energy ("LCOE") of the project is equal to or less than 1.4 times the comparable cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating facility as estimated by the U.S. Energy Information Administration in its Annual Energy Outlook 2019?	Yes[90]
Does the evidence suggest that 1.4 times the comparable cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating facility as estimated by the U.S. Energy Information Administration in its Annual Energy Outlook 2019 is equivalent to $125/MWh in 2018 dollars?	Yes[91]
Does the record contain some evidence showing that – based on certain assumptions – CVOW's estimated LCOE is ***below*** $125/MWh in 2018 dollars?	Yes[92]
Does the record contain some evidence showing that – based on certain assumptions – CVOW's estimated LCOE is ***above*** $125/MWh in 2018 dollars?	Yes[93]
Does Subsection 1:11 C ***require*** the Commission to make a finding as to whether the evidence proves that CVOW's LCOE is above or below $125/MWh in 2018 dollars?	No[94]
Prong 3	

[89] *See* Va. Code § 56-585.1:11 C 1 (the rebuttable presumption only attaches *if* the Commission elects to make certain determinations).

[90] *Id.*

[91] *See, e.g.*, Ex. 40, Kuleshova Pre-filed Staff Testimony at 26.

[92] *See id.*

[93] *Id.*

[94] *See* Va. Code § 56-585.1:11 C 1 (the rebuttable presumption only attaches *if* the Commission elects to make certain determinations).

Does prong 3 of the rebuttable presumption test whether Dominion has commenced construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in service prior to January 1, 2028?	Yes[95]
Does the record contain some evidence suggesting that Dominion has commenced construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in service prior to January 1, 2028?	Yes[96]
Does Subsection 1:11 C ***require*** the Commission to make a finding that Dominion has commenced construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in service prior to January 1, 2028?	No[97]
Can the Commission satisfy its mandatory statutory obligation to determine whether CVOW's proposed costs are reasonable and prudent without making express findings about Subsection 1:11 C's rebuttable presumption?	Yes
Should the Commission in this case expressly reserve its right in this and all future cost recovery cases to ***not*** make express finding about Subsection 1:11 C's rebuttable presumption?	Yes
Cost recovery	
Must the Commission scrutinize the reasonableness and prudence of proposed costs in every future CVOW proceeding, including annual true-ups of Rider OSW?	Yes[98]

[95] *Id.*

[96] Ex. 40, Kuleshova Pre-filed Staff Testimony at 49.

[97] *See* Va. Code § 56-585.1:11 C 1 (the rebuttable presumption only attaches ***if*** the Commission elects to make certain determinations).

[98] *See id.* ("the Commission ***shall*** determine the reasonableness and prudence of any [offshore wind] costs . . .") (emphasis added).

Does Subsection D mandate that scrutiny?	No[99]
Does Subsection 1:11 C mandate that scrutiny?	Yes[100]
Does Rider OSW recover the construction costs of CVOW?	Yes
Energy value	
Are revenues associated with selling CVOW's energy output in the PJM wholesale market credited to Rider OSW as opposed to the traditional method of crediting such revenues to the fuel factor?	Yes[101]
Capacity value	
Are revenues associated with selling CVOW's capacity in the PJM wholesale market credited to Rider OSW as opposed to the traditional method of crediting such revenues to base rates?	No[102]
Has Dominion gone Fixed Resource Requirement ("FRR") within the PJM markets?	Yes[103]
Will Dominion receive any revenues with selling CVOW's capacity in the PJM wholesale market as long as Dominion remains FRR?	No[104]
Does Dominion still propose to "credit" ratepayers in Rider OSW for the capacity value CVOW provides?	Yes[105]

[99] *See* Va. Code § 56-585.1 D ("The Commission ***may*** determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding.") (emphasis added).

[100] *See* Va. Code § 56-585.1:11 C 1 ("the Commission ***shall*** determine the reasonableness and prudence of any [offshore wind] costs . . .") (emphasis added).

[101] May 19 Hearing Transcript at 81:13-14 (Direct Examination of Company Witness Gaskill).

[102] May 19 Hearing Transcript at 106:8-10 (Cross Examination of Company Witness Gaskill).

[103] *Id.* at 106:8-10 (Cross Examination of Company Witness Gaskill).

[104] *Id.* (Cross Examination of Company Witness Gaskill).

[105] *Id.* at 89:2-7 (Direct Examination of Company Witness Gaskill).

Do ratepayers receive value for CVOW's capacity as an avoided cost benefit in Rider OSW?	Yes[106]
REC value	
Will CVOW generate renewable energy credits ("RECs")?	Yes
Can Dominion use CVOW's RECs to comply with the mandatory renewable portfolio standard ("RPS") in Va. Code § 56-585.5 C?	Yes[107]
If Dominion uses CVOW's RECs for RPS compliance, can Dominion also sell those RECs to other users?	No[108]
Does the RPS allow Dominion to optimize CVOW's RECs and comply with lower-cost, RPS-eligible RECs instead?	Yes[109]
If Dominion retires CVOW's RECs for RPS compliance, will Rider OSW receive a "credit" to reflect the simulated sale of those RECs for RPS compliance?	Yes[110]
Will the synthetic sale credit be calculated using a REC proxy value?	Yes[111]
If Dominion retires CVOW's RECs for RPS compliance, will ratepayers incur a "cost" in Rider RPS to reflect the synthetic purchase of CVOW's RECs?	Yes[112]
If Dominion optimizes CVOW's RECs, will Rider OSW receive a credit to reflect the actual sales price?	Yes[113]

[106] *Id.* (Direct Examination of Company Witness Gaskill).

[107] Va. Code § 56-585.5 C.

[108] May 19 Hearing Transcript at 93:17-23 (Direct Examination of Company Witness Gaskill).

[109] Va. Code § 56-585.5 C.

[110] May 19 Hearing Transcript at 92:4-16 (Direct Examination of Company Witness Gaskill).

[111] *Id.* (Direct Examination of Company Witness Gaskill).

[112] *See id.* (Direct Examination of Company Witness Gaskill).

[113] May 19 Hearing Transcript at 99:1-21 (Cross Examination of Company Witness Gaskill).

Are the customers and allocation factors used in Rider OSW and Rider RPS the same?	No[114]
Are other related dockets still outstanding that would fully clarify the issue of which customers pay which riders and how costs are allocated?	Yes[115]
Deficiencies in Proposed Stipulation	
Provisions to ensure on-time on on-budget construction	
Does the Proposed Stipulation mandate that Dominion provide notice if it estimates CVOW will go over budget or behind schedule?	Yes[116]
Does the Proposed Stipulation provide that Dominion must seek approval from the Commission for any costs over-budget?	Yes[117]
Does the Proposed Stipulation mandate any specific time by which Dominion must make a formal request for recovery of cost overruns?	No[118]
Does the potential lag between notice of cost over-runs and an actual petition for recovery of cost-overruns impose risk on customers?	Yes
Does Dominion oppose a mandatory petition deadline?	Yes[119]
Has Dominion provided adequate reasoning to oppose a mandatory cost recovery petition deadline?	No

[114] *Id.* at 94:14-17 (Direct Examination of Company Witness Gaskill).

[115] *Id.* at 101:25-104:7 (Cross Examination of Company Witness Gaskill).

[116] Proposed Stipulation and Recommendation of the Company, Commission Staff, Nansemond Indian Nation, and the Sierra Club, *Application of Virginia Electric and Power Company for approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind, pursuant to § 56-585.1:11, § 56-46.1, § 56-265.1 et seq., and § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2021-00142 (May 11, 2022) ("Proposed Stipulation") at ¶ 5.

[117] Proposed Stipulation at ¶ 4.

[118] May 18 Hearing Transcript at 193:7-12 (Cross Examination of Staff Witness Welsh).

[119] *Id.* at 196:10-197:4. (Objection by Dominion Counsel).

Did Dominion signal its opposition to a mandatory petition deadline was simply a litigation posture rather than a reasonable opposition by indicating twice during the hearing that it would agree to a mandatory petition deadline ***if*** it received a concession from either Wal-Mart or Appalachian Voices to join the Stipulation?	Yes[120]
Should the Commission disregard Dominion's unreasonable opposition and mitigate ratepayer risk by requiring Dominion to petition for recovery of additional costs no later than the next Rider OSW true-up that occurs after Dominion provides notice of cost overruns?	Yes
Performance guarantee	
Does offshore wind impose any fuel or carbon regulation cost on ratepayers?	No[121]
Does offshore wind help insulate ratepayers from fossil fuel price volatility?	Yes[122]
Does offshore wind act as a beneficial load compliment to solar?	Yes[123]
Did Dominion voluntarily elect a self-build option instead of a power purchase agreement ("PPA") structure?	Yes[124]
Are the facts that the Commission found relevant in imposing a performance guarantee in US-3 largely the same as in this case?	Yes[125]

[120] *Id.* at 272:9-12 (Objection by Dominion Counsel).

[121] May 18 Hearing Transcript at 171:7-9 (Cross Examination of Staff Witness Kuleshova).

[122] May 19 Hearing Transcript at 49:18-19 (Cross Examination of Company Witness Kelly on Rebuttal).

[123] May 17 Hearing Transcript at 261:16-20 (Cross Examination of Company Witness Kelly on Direct).

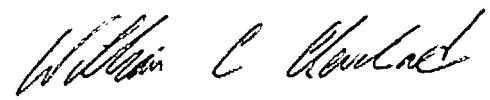
[124] May 18 Hearing Transcript at 172:21-23 (Cross Examination of Staff Witness Kuleshova).

[125] *See*, Order Granting Certificates, *Petition of Virginia Electric & Power Company for approval & certification of the proposed US-3 Solar Projects pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider US-3, under § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2018-00101 (Jan. 23, 2019) ("US-3 Order") at 13-15.

Does anything in the VCEA or any other legislation alter the Commission's inherent authority to impose performance guarantees?	No[126]
Does a performance guarantee in any way jeopardize Dominion's recovery of its approved CVOW construction costs?	No[127]
Would a performance guarantee hold Dominion ratepayers harmless if CVOW does not generate as much energy or as many RECs are Dominion claims in this case it will?	Yes[128]
Should the Commission approve the Proposed Stipulation without any additional ratepayer protections?	No.

June 24, 2022

Respectfully submitted,



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[126] *Wal-Mart Stores E., LP v. State Corp. Comm'n*, 299 Va. 57, 72 ("we 'presume that where the General Assembly has not placed an express limitation in a statutory grant of authority, it intended for the Commission, as an expert body, to exercise sound discretion.'") (citing *City of Alexandria v. State Corp. Comm'n*, 296 Va. 79, 94 (2018)).

[127] May 18 Hearing Transcript at 165:7-10 (Cross Examination of Staff Witness Kuleshova).

[128] *Id.* at 164:20-25 (Cross Examination of Staff Witness Kuleshova).

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I hereby certify that the following have been served with a true and accurate copy of the foregoing via electronic mail:

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