Virginia State Corporation Commission
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Case Number (if already assigned)	PUR-2021-00142
Case Name (if known)	Application of Virginia Electric and Power Company For approval and certification of the Coastal Virginia Offshore Wind Commercial Project and Rider Offshore Wind
Document Type	EXBR
Document Description Summary	PUBLIC VERSION Issues Matrix and Post-Hearing Brief of Walmart Inc.
Total Number of Pages	30
Submission ID	25127
eFiling Date Stamp	6/24/2022 3:35:24PM

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June 24, 2022

VIA ELECTRONIC FILING
Mr. Bernard Logan, Clerk
c/o Document Control Center
State Corporation Commission
1300 East Main Street, 1st Floor
Richmond, VA 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:

Please find enclosed for filing with the State Corporation Commission ("Commission") the **PUBLIC VERSION** of the Issues Matrix and Post-Hearing Brief of Walmart Inc. ("Walmart") in the above-referenced case. The Extraordinarily Sensitive Version was sent to the Commission via overnight mail on June 23, 2022.

Walmart will serve parties who have executed the appropriate protective ruling(s) with a copy of this Extraordinarily Sensitive Version and will serve all other parties with a copy of the Public Version of Walmart's Issues Matrix and Post-Hearing Brief, in accordance with the attached Certificate of Service. Pursuant to the Commission's Rules of Practice and Procedure, 5 VAC 5-20-140, and the Commission's *Order Requiring Electronic Service* entered on April 1, 2020, Case No. CLK-2020-00007, Walmart will be providing service of documents to parties in this case via email only unless a party requests otherwise.

Please contact me if you have any questions.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By _____
Carrie H. Grundmann
(VA Bar No. 76817)

Counsel to Walmart Inc.

CMH:sds
Attachments
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Issues Matrix and Post-Hearing Brief upon the following parties to this proceeding.

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Dated: June 24, 2022

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF	)	
	)	
VIRGINIA ELECTRIC AND POWER COMPANY	)	**CASE NO. PUR-2021-00142**
	)	
	)	
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	)	

ISSUES MATRIX AND POST-HEARING BRIEF OF WALMART INC.

PUBLIC VERSION

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Dated this 24th day of June, 2022.

WALMART INC.'S ISSUE MATRIX

CASE NO. PUR-2021-00142

ISSUE	STATEMENT OF WALMART'S POSITION
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?	There are few, if any, limits on the Commission's authority to impose customer protections in this case. While various statutory provisions pronounce offshore wind projects as being in the public interest, these provisions do not prevent the Commission from imposing protections that are consistent with that public interest, including imposition of a performance guarantee. Moreover, the Commission is at all times obligated to ensure that in this and all future Rider OSW proceedings, costs sought for recovery are reasonable and prudent. It would be improper for the Commission to issue a ruling today on a future request by the Company to exceed the $9.65 billion budget proposed in this case. Nothing, however, prevents the Commission from acknowledging in its Final Order in this case that the representations and evidence presented by the Company to support approval of the CVOW Project will be relevant to any future request for cost recovery. Such relevant evidence includes the Company's assurances that a $300 million contingency was adequate despite knowledge of risks related to the project.
Address the interplay of Code §§ 56-585.1 A 6, 56-585.1 D, 56-585.1:11, and 56-585.5, particularly § 56-585.5 F.	Virginia Code § 56-585.1 A 6 authorizes the Company to seek RAC recovery of the CVOW Project, including "projected construction work in progress and allowance for funds used during construction" prior to the project's commercial operation date. Because the Company has opted to pursue recovery under A 6, Virginia Code § 56-585.1 D applies, and gives the Commission discretion "to determine...the reasonableness and prudence of any cost incurred or projected to be incurred...." As part of making this determination, the Commission must evaluate whether a proposed renewable resource will result in an unreasonable increase in the rates paid by customers. *See* Va. Code § 56-585.1 D While Section 56-585.1 D gives the Commission discretion to determine reasonableness and prudence, Virginia Code § 56-585.1:11 makes it mandatory. In making this determination, the Commission should assess -- consistent with Section 56-585.1 D -- whether the CVOW Project will result in an unreasonable increase in customer rates.

ISSUE	STATEMENT OF WALMART'S POSITION
	Finally, Subsection F of the VCEA is the mechanism that authorizes the Company to recover costs of the CVOW Project from certain shopping customers.
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 6. 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?	Walmart expects the Company to claim that it is seeking to "recover" $9.65 billion; however, the Commission should reject this request. At best, the $9.65 billion is an *estimated budget.* Only approximately $70 million is requested for recovery in this case. It would also be improper for the Company to seek cost recovery of $9.65 billion because $300 million represents contingency that will only be recovered if the projects costs exceed the actual budget of approximately $9.35 billion. Regardless, even if the Company claims it is seeking to recover $9.65 billion, the Commission is obligated to make a finding of reasonableness and prudence in every Rider OSW true-up proceeding. According to Virginia Code § 56-585.1:11 C, "[i]n acting upon *any request* for cost recovery…the Commission *shall* determine the reasonableness and prudence of any such costs" (emphasis added). While the Commission must find that costs are reasonable and prudent, there is no similar obligation on the Company or Commission to present evidence or make a finding of the LCOE. The applicable code provision leaves the discretion with the Commission to determine "if" the statutory presumption applies.
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.	The Company has proposed to recover the costs and to reflect the benefits of the CVOW Project through Rider OSW. In doing so, PJM revenues for energy sales associated with CVOW will flow through Rider OSW rather than the fuel factor. Hearing Tr., Day 4, p. 81, lines 8-22. Thus, the fuel factor will go up to the extent it is not offset by the PJM revenues received for CVOW. Similarly, rather than flowing any benefits related to capacity through base rates as was historic practice, the Company will now reflect an avoided capacity purchase within the recovery mechanism of Rider OSW. *Id.*, p. 106, lines 11-18. The precise impact on base rates is unclear due to the Company's recent decision to elect the Fixed Resource Requirement ("FRR") status in lieu of participating in the PJM Capacity Auction. Finally, based on the framework previously approved in Case No. PUR-2020-00134, the Company will effectively sell the RECs produced by the CVOW Project to Rider RPS. *Id.*, p. 93, lines 2-15. Thus, Rider OSW will

ISSUE	STATEMENT OF WALMART'S POSITION
Also explain how those recovery mechanisms will be impacted.	receive a credit for a REC (based on the proxy value to be determine in PUR-2021-00156) while Rider RPS will reflect a charge related to the REC based on that same proxy value.
To the extent a party to, or not objecting to, the stipulation objects to a position of a non-stipulating party, you must build your record thereon, including through the Post-hearing Filings.	The Commission should revise Paragraph 4 of the Stipulation to require the Company to seek a finding of reasonableness and prudence of any cost increases or schedule changes in the first annual Rider OSW update immediately after notice provided pursuant to Paragraph 5 of the Stipulation, while reserving the rights of the Commission, Company, Commission Staff, or other party to initiate an earlier proceeding. The Commission should find that any change or issue with the primary contractors or contracts to the CVOW Project constitutes a "material event" pursuant to the Stipulation. For purposes of this provisions, the primary contractors/contracts are: • Turbine Generator and Tower Supply, Installation, and Commissioning Agreement with Siemens Gamesa Renewable Energy, • Balance of Plant Engineering, Procurement, Transportation, and Installation Services with DEME Offshore US, LLC and Prysmian Cables and Systems USA, LLC, • the Offshore Substation Design and Supply with Bladt Industries Offshore Wind, LLC ("Bladt") and SEMCO Maritime Renewables II, LLC, • the Foundation (Monopiles) with EEW Special Pipe Constructions GmbH, • the Foundation (Transition Pieces) with Bladt; and, • the contract with Blue Ocean Energy Marine for use of the *Charybdis*. The Commission should acknowledge that its relied on the representations and evidence presented by the Company, including the known risks and proposed contingency budget, in approving CVOW. To the extent the Company seeks to exceed the $9.65 billion budget in a future proceeding, the Commission should state affirmatively that the evidence presented in this hearing will bear upon the reasonableness and prudence of that future request. Finally, for the life of CVOW's commercial operation and beginning three years after February 4, 2027, the anticipated date for the last turbine installation, the Commission should

ISSUE	STATEMENT OF WALMART'S POSITION
	impose a performance guarantee based on a 42 percent capacity factor as calculated on a three-year rolling average.

Walmart Inc. ("Walmart"), by its attorneys, respectfully submits its Post-Hearing Brief to the Virginia State Corporation Commission ("Commission") and states as follows:

I. INTRODUCTION

To achieve the carbon-free economy envisioned by the Virginia Clean Economy Act ("VCEA"), significant projects like the Coastal Virginia Offshore Wind Commercial Project ("CVOW" or "CVOW Project") proposed by Virginia Electric and Power Company ("Dominion" or "Company") will be needed. Indeed, because Walmart supports offshore wind as a renewable resource that will help realize the goals of the VCEA, it does not oppose approval of CVOW. That said, the CVOW Project, is expensive; it is presently estimated, but not guaranteed, to cost $9.65 billion.[1] Whatever the ultimate cost, customers, shopping and non-shopping alike, will bear these costs and all attendant risks unless the Commission takes steps to protect customers. The Stipulation entered into by the Company, Commission Staff ("Staff"), Sierra Club, and the Nansemond Indian Nation provide some meager customer protections; however, it simply does not go far enough to protect customers. As set forth herein, Walmart identifies additional customer protections that the Commission should adopt as a condition of approving the CVOW Project.

II. FACTUAL BACKGROUND

On November 25, 2021, Dominion filed an application for approval and certification of the CVOW Project and for approval of a rate adjustment clause, designated Rider Offshore Wind ("Rider OSW"), pursuant to §§ 56-585.1:11, 56-46.1, 56-265.1 *et seq.*, and 56-585.1 of the Code

[1] Hearing Exhibit ("Ex.") 3, Proposed Stipulation and Recommendation ("Stipulation"), ¶ 4.

of Virginia ("Application").[2] Dominion filed its Direct Testimony simultaneously with its Petition.[3]

Pursuant to the Commission's Order for Notice and Hearing entered on December 9, 2021, Walmart filed a Notice of Participation on January 25, 2022. In addition to Walmart, Appalachian Voices ("Environmental Respondent"), the Office of the Attorney General's Division of Consumer Counsel ("OAG"), Virginia Committee for Fair Utility Rates ("Committee"), Clean Virginia, Sierra Club, and Nansemond Indian Nation filed Notices of Participation. On March 25, 2022, Sierra Club,[4] Consumer Counsel,[5] Clean Virginia,[6] and Nansemond Indian Nation[7] filed Direct Testimony. Walmart filed a letter in lieu of formal testimony.[8] Staff also participated in the proceeding and filed Direct Testimony.[9] On December 3, 2021, Dominion filed Rebuttal

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[2] Hearing Ex. 2 and 2ES, Application, pp. 1-2.

[3] *See* Hearing Ex. 4 and 4ES, Direct Testimony of Mark D. Mitchell ("Mitchell Direct"), Hearing Ex. 9 and 9ES, Direct Testimony of Joshua Bennett ("Bennett Direct"), Hearing Ex. 10, Direct Testimony of Glenna A. Kelly ("Kelly Direct"), Hearing Ex. 16, Direct Testimony of Grant T. Hollett ("Hollett Direct"), Hearing Ex. 17 and 17ES, Direct Testimony of Lauren V. Adkins ("Adkins Direct"), Hearing Ex. 18, Direct Testimony of Scott Lawton ("Lawton Direct"), Hearing Ex. 19, Direct Testimony of John Larson ("Larson Direct"), Hearing Ex. 20, Direct Testimony of J. Kevin Curtis ("Curtis Direct"), Hearing Ex. 21, Direct Testimony of Peter Nedwick ("Nedwick Direct"), Hearing Ex. 22, Direct Testimony of Sherrill A. Crenshaw ("Crenshaw Direct"), Hearing Ex. 23, Direct Testimony of Shane A. Moulton ("Moulton Direct"), Hearing Ex. 24, Direct Testimony of Thomas A. Dorsey ("Dorsey Direct"), Hearing Ex. 25, Direct Testimony of Lane E. Carr ("Carr Direct"), Hearing Ex. 26, Direct Testimony of Rachel M. Studebaker ("Studebaker Direct"), Hearing Ex. 27, Direct Testimony of Robert E. Richardson ("Richardson Direct"), Hearing Ex. 28, Direct Testimony of Jon M. Berkin ("Berkin Direct"), Hearing Ex. 29, Direct Testimony of Christopher J. Lee ("Lee Direct"), Hearing Ex. 30, Direct Testimony of J. Scott Gaskill ("Gaskill Direct"), Hearing Ex. 31, Direct Testimony of Timothy P. Stuller ("Stuller Direct").

[4] *See* Hearing Ex. 32, Direct Testimony of Dr. Mark Little ("Little Direct").

[5] *See* Hearing Ex. 33, Direct Testimony of D. Scott Norwood ("Norwood Direct").

[6] *See* Hearing Ex. 36 and 36ES, Direct Testimony of Maximilian Change ("Chang Direct").

[7] *See* Hearing Ex. 38, Direct Testimony of Dr. Elizabeth T. Horton ("Horton Direct").

[8] *See* Hearing Ex. 48.

[9] *See* Hearing Ex. 40 and 40ES, Direct Testimony of Katya Kuleshova ("Kuleshova Direct"), Hearing Ex. 41 and 41ES, Direct Testimony of Sean M. Welsh ("Welsh Direct"), Hearing Ex. 42, Direct Testimony of Mark K. Carsley ("Carsley Direct"), Hearing Ex. 43 and 43ES, Direct Testimony of Phillip M. Gereaux ("Gereaux Direct"), Hearing Ex. 44, Direct Testimony of Kelli B. Gravely ("Gravely Direct"), Hearing Ex. 45 and 45C, Direct Testimony of Neil P. Joshipura ("Joshipura Direct").

Testimony.[10] On May 11, 2022, the Company, Staff, Sierra Club, and Nansemond Indian Nation entered into a Stipulation that resolved issues regarding the Company's CVOW Application.[11]

A hearing was held in this matter before Chairman Jehmal T. Hudson and Commissioner Judith Williams Jagdmann on May 16-19, 2022.

III. ARGUMENT

A. The Commission is Empowered to and Should Impose Additional Customer Protections as a Condition of Approving the CVOW Project.

Walmart supports offshore wind and does not oppose approval of CVOW. The CVOW Project comes with substantial, unavoidable risk that is and will be borne entirely by customers. Walmart believes that the Commission should exercise the authority it undoubtedly possesses to adopt additional customer protections to mitigate risk to customers should CVOW encounter construction issues or delays, exceed the $9.65 billion budget, or otherwise fail to perform as the Company represents that it will.

1. 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?

There is nothing prohibiting the Commission from adopting customer protections in this case. The Code of Virginia contains no express prohibition on the Commission's ability to adopt customer protections as a condition of approving CVOW. As the Supreme Court of Virginia has

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[10] *See* Hearing Ex. 46, Rebuttal Testimony of Mark D. Mitchell ("Mitchell Rebuttal"), Hearing Ex. 47, Rebuttal Testimony of Joshua Bennett ("Bennett Rebuttal"), Hearing Ex. 50, Rebuttal Testimony of Glenn A. Kelly ("Kelly Rebuttal"), Hearing Ex. 55, Rebuttal Testimony of John Larson ("Larson Rebuttal"), Hearing Ex. 56, Rebuttal Testimony of Timothy P. Stuller ("Stuller Rebuttal"), Hearing Ex. 57, Rebuttal Testimony of Peter Nedwick ("Nedwick Rebuttal"), Hearing Ex. 58, Rebuttal Testimony of Sherrill A. Crenshaw ("Crenshaw Rebuttal"), Hearing Ex. 59, Rebuttal Testimony of Shane A. Moulton ("Moulton Rebuttal"), Hearing Ex. 60, Rebuttal Testimony of Lane E. Carr ("Carr Rebuttal"), Hearing Ex. 61, Rebuttal Testimony of Rachel M. Studebaker ("Studebaker Rebuttal"), Hearing Ex. 62, Rebuttal Testimony of Robert E. Richardson ("Richardson Rebuttal"), Hearing Ex. 63, Rebuttal Testimony of Matthew Robinson ("Robinson Rebuttal"), Hearing Ex. 64, Rebuttal Testimony of David C. Lennhoff ("Lenhoff Rebuttal"), Hearing Ex. 65, Rebuttal Testimony of Gabor Mezei ("Mezei Rebuttal"), Hearing Ex. 66, Rebuttal Testimony of Jon M. Berkin ("Berkin Rebuttal").

[11] Hearing Ex. 3, Stipulation.

made clear, "where the General Assembly has not placed an express limitation on a statutory grant of authority, it intended for the Commission, as an expert body, to exercise sound discretion."[12]

Rather than limiting Commission authority with respect to customer protections, a number of statutory provisions compel the Commission to ensure that customers are adequately protected from the Company's development of new renewable generation projects, including CVOW. For example, Section 56-585.1 D of the Code of Virginia expressly obligates the Commission to "consider whether the costs of such [renewable energy] resources is likely to result in unreasonable rates paid by customers." Similarly, under Virginia Code § 56-585.1:11 C, the Commission is required to determine the reasonableness and prudence of costs in any proceeding where Dominion seeks cost recovery for CVOW. There can be no doubt that the Commission can, consistent with these legislative directives, impose reasonable customer protections on CVOW.

While the Commission has significant discretion to fashion appropriate customer protections, Walmart has identified two apparent limitations on the Commission's authority relative to CVOW:

i. Due to various statutory pronouncements from the General Assembly, the Commission could not reject CVOW as being contrary to the public interest on the basis it is an offshore wind project.[13]

ii. In light of the rebuttable presumption of reasonableness and prudence of costs set forth in Section 1:11 C, it appears to be improper for the Commission to prejudge the reasonableness and prudence of future requests for cost recovery by imposing a hard cost cap as part of this proceeding.[14]

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[12] *City of Alexandria v. State Corp. Comm'n*, 296 Va. 79, 93-94 (2018) (citations, quotations marks, and internal alterations omitted).

[13] *See* Va. Code §§ 56-585.1 A 6; 56-585.1:4 A; 56-585.1:11 B and C 1; *see also* Hearing Transcript ("Tr."), Day 3, p. 136, line 15 to p. 137, line 16 (Judge Jagdmann confirming that the public interest finding has been "taken away from the Commission").

[14] No party to this proceeding argued in favor of a hard cost cap. *See* Hearing Tr., Day 3, p. 90, lines 2-21 (OAG witness Norwood); Hearing Tr., Day 3, p. 131, lines 8-17 (Clean Virginia witness Chang)

The above may limit certain findings that the Commission might otherwise make in the absence of such legislative pronouncements (*i.e.*, that offshore wind is not in the public interest) or one specific type of customer protection the Commission might employ (a hard cost cap). These limitations do not otherwise restrict the Commission's authority to impose customer protections such as the ones proposed by parties in this case.

a. While the General Assembly has declared offshore wind in the public interest, nothing prohibits the Commission from imposing customer protections that are also consistent with the public interest.

First, while the Commission is obligated to find that an offshore wind project is in the public interest, there is no statutory obligation to find that CVOW is in the public interest. Second, and most importantly, the statutorily mandated public interest finding applicable to an offshore wind project in no way limits the Commission's authority to impose *additional* conditions on CVOW in furtherance of or consistent with the public interest.[15] In fact, the Commission has struck this very balance in prior proceedings by finding a project is in the public interest as required by statute while also imposing customer protections.[16]

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[15] *See Application of Virginia Electric and Power Company For a certificate of public convenience and necessity to construct and operate an electric generating facility in Wise County, Virginia, and for approval of a rate adjustment clause under §§ 56-585.1, 56-580 D, and 56-46.1 of the Code of Virginia* ("VCHEC Case"), Case No. PUE-2007-00066, Final Order (Mar. 31, 2008), p. 7 (stating that the Commission has "no discretion to make a separate public interest determination").

[16] *See Petition of Virginia Electric and Power Company For approval and certification of the proposed US-4 Solar Project 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* ("Rider US-4 Case"), Case No. PUR-2019-00105, Ordering Granting Certificates (Jan. 22, 2020), pp. 12-14; *Petition of Virginia Electric and Power Company For approval and 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* ("Rider US-3 Case"), Case No. PUR-2018-00101, Ordering Granting Certificates (Jan. 24, 2019), pp. 16-19; VCHEC Case, Final Order, pp. 14-15 (requiring Dominion to prove that any cost overruns are reasonable and prudent before it could obtain cost recovery from ratepayers).

The Rider US-3, Rider US-4, and VCHEC Cases[17] establish that the Commission can impose customer protections despite a requirement from the General Assembly that the Commission find a particular type of project in the public interest. The Rider US-3 and Rider US-4 Cases further demonstrate that one such customer protection the Commission can employ is a performance guarantee. In both this case and the Rider US-3 Case, the Company conceded that the Commission could enforce a type of performance guarantee by either proposing one itself or accepting one as part of a Stipulation.[18] Consistent with this prior Commission precedent and as discussed further below, the Commission should exercise its authority to impose a performance guarantee on the CVOW Project to mitigate the risk to customers if CVOW is not built within the timeframe provided by the Company or it does not perform as projected.

b. While the Commission cannot impose a strict hard cap, it can rely on the evidence and representations made by the Company in this case to deny cost increases in future proceedings.

As an initial matter, no party has argued in favor of a hard cost cap in this proceeding. Instead, parties acknowledge that cost increases could occur as the CVOW Project is constructed, and the Company should be entitled to recover its reasonable and prudent costs.[19] When it comes to future cost increases, however, the Commission should acknowledge in its Final Order in this case that the evidence and representations made by Dominion in this case are relevant to the reasonableness and prudence of a future cost increase.

As discussed further below, there is ample record evidence that: (1) the Company is well aware of the potential risks of the CVOW Project; (2) risks are inherent, particularly in a project

[17] *Id.*

[18] *See* Hearing Ex. 3, Stipulation, ¶ 6; Rider US-3 Case, Order Granting Certificates, p. 17.

[19] Hearing Tr., Day 3, p. 131, lines 8-16 (Clean Virginia witness Chang).

of this size[20]; and (3) despite these known risks, the Company only included a $300 million contingency in the total estimated project cost of $9.65 billion.[21] In approving CVOW here, the Commission should make clear to the Company that it is relying on these and other representations to find that the CVOW Project is reasonable and prudent. Future requests for cost recovery that are inconsistent with the evidence and representations presented by the Company in this proceeding should be highly relevant to a future Commission decision regarding whether any requested cost increase is reasonable and prudent.

2. The Commission Should Impose Reasonable Customer Protections.

Walmart recommends the Commission impose necessary and additional customer protections as part of approving CVOW in this proceeding. First, the Commission should revise the Stipulation to clarify when Dominion must make a filing with the Commission to seek a finding of reasonableness and prudence when costs are expected to exceed the $9.65 billion budget. Second, Walmart also supports the Commission requiring the Company to report on its primary contractors as part of the CVOW Project reporting obligations set forth in the Stipulation. Third, the Commission should expressly recognize in its Final Order that it has relied on the representations made by the Company in this proceeding as it relates to the Company's decision to include only a $300 million contingency despite the clear record of risks associated with CVOW. The Commission should affirmatively state that these representations will be a factor in determining whether a future request for cost recovery (if the CVOW Project budget exceeds $9.65 billion) is reasonable and prudent. Finally, as recommended by other parties, the Commission should impose a performance guarantee.

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[20] Hearing Tr., Day 2, p. 196, line 7 to p. 198, line 2 (Company witness Mitchell).

[21] Hearing Tr., Day 3, p. 265, lines 18-25 (Company witness Mitchell) (representing that the CVOW project contains "adequate contingency to deliver this project").

a. The Commission should revise Paragraph 4 of the Stipulation to specify when the Company must seek Commission approval of cost increases on CVOW unless an earlier proceeding is initiated.

During the hearing, there was substantial discussion of the interplay between Paragraphs 4 and 5 of the Stipulation concerning how and when any cost increases or schedule changes reported pursuant to Paragraph 5 would be brought before the Commission to determine the reasonableness and prudence of these items. As Dominion's counsel Mr. Reid explained it:

> [There are] 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.[22]

The issue, as Staff witness Welsh made clear, however, is that if none of these methods are *voluntarily* triggered, the Stipulation provides only that cost overruns and schedule changes will be addressed "in a future proceeding."[23] To address this ambiguity, the Commission should order the Company to seek a finding of reasonableness and prudence of any cost increases or schedule changes in the first annual Rider OSW update immediately after providing the notice of one of these events pursuant to Paragraph 5 of the Stipulation.

Adopting this language would not prohibit the Commission, Staff, or any party from voluntarily pursuing one of the five avenues described by Mr. Reid, but it would provide customers certainty as to the last possible date these cost overruns or schedule changes would come before the Commission for a decision. It is better for ratepayers if the Company is obligated to seek approval of estimated cost overruns close in time to when the Company is aware (and provides notice to the Commission) of such expected overages.[24] Moreover, as OAG witness Norwood

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[22] Hearing Tr., Day 3, p. 197, lines 10-20.

[23] *Id.*, p. 192, line 19 to p. 193, line 21; p. 194, lines 7-13.

[24] *See id.*, p. 58, line 19 to p. 62, line 5 (OAG witness Norwood).

noted, deciding these issues sooner rather than later is particularly important for a project of this size because as the project progresses, it becomes increasingly difficult to disallow incremental cost increases.[25] Nor can the Company claim that it is opposed to such a revision. At the hearing, Mr. Reid expressed a willingness to include such a provision were it to encourage Walmart or Environmental Respondents to join the Stipulation.[26]

b. The Commission should find that any change or issue with the primary contractors and contracts constitutes a "material event" pursuant to Paragraph 5 of the Stipulation.

There are a number of highly critical contracts and contractors upon which the $9.65 billion cost estimate proposed in this case rely, including:

- Siemens Gamesa Renewable Energy ("SGRE") – Turbine Generator and Tower Supply, Installation, and Commissioning ("TSA")
- DEME Offshore US, LLC and Prysmian Cables and Systems USA, LLC (collectively, "DEME-PRY") – Balance of Plant Engineering, Procurement, Transportation, and Installation Services ("BOP")
- Bladt Industries Offshore Wind, LLC ("Bladt") and SEMCO Maritime Renewables II, LLC ("SEMCO") – Offshore Substation Design and Supply
- EEW Special Pipe Constructions GmbH – Foundation (Monopiles)
- Bladt – Foundation (Transition Pieces)[27]
- Blue Ocean Energy Marine ("BOEM") – Use of the *Charybdis*[28]

Should anything happen with these contracts or contractors, it could have a substantial and material impact on the CVOW Project. With the exception of BOEM, each of these contractors were selected through a competitive bid process,[29] thus, it is not clear that it would be possible to obtain a replacement contractor with the same skillset, let alone the ability to offer the same bid price or perform on the same timeline should an issue arise with any of these contractors. Similarly, there

[25] Hearing Tr., Day 3, p. 62, line 6 to p. 63, line 16.

[26] *See id.*, p. 197, line 23 to p. 198, line 4; *see also id.*, p. 272, lines 8-17.

[27] Mitchell Direct, pp. 20-21, Table 3.

[28] *Id.*, p. 27.

[29] *Id.*, pp. 20-21, Table 3.

is no Jones Act compliant vessel other than the *Charybdis*,[30] and, installation of the wind turbines cannot occur without it. Any issues or changes with any of these contracts or contractors is likely to negatively impact customers. Indeed, the Company has conceded that if a "major equipment supplier or project partner became insolvent" Dominion would consider that to be material within the meaning of Paragraph 5 of the Stipulation.[31]

The notion that there would be issues with a contractor is not only likely, but it is occurring as we speak. For example, Siemens Energy, who at the time of the hearing in this case, was a two-thirds owner of SGRE, reported Second Quarter losses of $250 million stemming from problems at SGRE, the entity with whom Dominion contracted for the turbines for the CVOW Project.[32] Since the hearing, Siemens Energy made a cash tender offer to purchase all outstanding shares of SGRE.[33] While this hopefully shores up the issues with SGRE, it is abundantly clear that this development is highly relevant to the CVOW Project. Should similar issues of this nature arise in the future with SGRE or another primary contractor, it is important that there is timely reporting of these issues.

The Company has admitted that in the absence of specific project reporting requirements, the Company decides whether something is material for purposes of Paragraph 5 of the Stipulation.[34] To avoid any misunderstanding, and because of the importance of the above-named contractors and contracts, Walmart requests that the Commission amend the "Project Reporting"

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[30] Mitchell Direct, p. 27.

[31] Hearing Tr., Day 2, p. 108, lines 5-16.

[32] *Id.*, p. 147, line 16 to p. 148, line 7 (Company witness Mitchell); *see also* Hearing Ex. 8, News Release; Hearing Tr., Day 2, p. 211, line 13 to p. 214, line 11 (Company witness Mitchell).

[33] *See* Press Release, Siemens Energy AG Announces a Voluntary Cash Tender Offer for All Outstanding Shares in Siemens Gamesa Renewable Energy, S.A. with Intention to Delist and Integrate the Business (21 May 2022), *https://press.siemens-energy.com/global/en/pressrelease/siemens-energy-ag-announces-voluntary-cash-tender-offer-all-outstanding-shares-siemens* (last visited June 17, 2022).

[34] Hearing Tr., Day 3, p. 287, lines 1-19 (Company witness Mitchell).

requirements of Paragraph 5 of the Stipulation to specifically require the Company to provide a report within thirty (30) calendar days if, in addition to the other reasons listed in the Stipulation, the Company learns that one of the above contractors expects to or has defaulted under the contract, is or has indicated that it is insolvent or intends to file for bankruptcy, or any other material issue that would impact the contractor's ability to perform under the contract.

c. The Commission should state affirmatively that the Company's evidence and representations made in this case are relevant to any future request for cost recovery based on cost overruns above the $9.65 billion cost estimate.

No party to this proceeding has raised an objection to the $9.65 billion cost estimate. In fact, parties, including Walmart, are supportive of the CVOW Project, particularly if it comes online within the timeframe projected by the Company and for the projected $9.65 billion budget. Concerns were raised, however, about the likelihood the CVOW Project would come in on-time and on-budget, including:

- Orsted, the largest wind developer in the world, experienced delays in a recent project in Europe where the offshore wind market is far more mature than in the United States.[35] Orsted also experienced multi-year delays on two projects in Maryland.[36]

- In contrast to Orsted, the Company's singular experience with offshore wind is the pilot project,[37] which had a budget of $300 million.[38]

- This is the single largest known project undertaken by Dominion or any of its affiliates.[39] The only other project of arguably similar size, the Atlantic Coast Pipeline, was abandoned after the original budget of $5 billion had grown to $8 billion in the face of significant hurdles to the pipeline's construction.[40]

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[35] Hearing Tr., Day 3, p. 119, line 25 to p. 120, line 25 (Clean Virginia witness Chang).

[36] *Id.*, p. 121, line 1 to p. 122, line 4 (Clean Virginia witness Change).

[37] Hearing Tr., Day 2, p. 152, lines 11-25 (Company witness Mitchell).

[38] *Id.*, p. 153, line 24 to p. 154, line 11 (Company witness Mitchell).

[39] *Id.*, p. 144, line 12 to p. 145, line 1 (Company witness Mitchell).

[40] *Id.*, p. 140, line 17 to p. 142, line 6 (Company witness Mitchell).

- Although the Company touts the fact that "80.2% of Project costs are fixed"[41] this is not entirely accurate. Even these allegedly "fixed price" contracts provide for the submission of change orders, which the Company admits can increase costs from those set forth in the contract.[42]

- The SGRE turbine being used for CVOW has never been deployed in an offshore wind project. There is a single prototype turbine on land in Denmark.[43]

- The designs for the various components, including the monopile and the transition pieces, have yet to be finalized.[44]

- Dominion has recently experienced delays and cost overruns on two recent transmission projects.[45] Transmission will be a significant component of CVOW.

- The *Charybdis*, the only required Jones Act compliant vessel in the United States, is scheduled to be in use on two projects prior to being available for CVOW,[46] which could delay its use on the CVOW Project.

The Company is well aware of these and other **[BEGIN EXTRAORDINARILY SENSITIVE]** [redacted] **[END EXTRAORDINARILY SENSITIVE]**

The record further indicates that in **[BEGIN EXTRAORDINARILY SENSITIVE]** [redacted] **[END**

[41] Bennett Rebuttal, p. 7, lines 17-21.

[42] Hearing Tr., Day 2, p. 137, line 17 to p. 139, line 10 (Company witness Mitchell).

[43] *Id.*, p. 247, line 6 to p. 248, line 5 (Company witness Bennett).

[44] *Id.*, p. 246, line 3 to p. 248, line 5 (Company witness Bennett).

[45] *Id.* p. 204, line 2 to p. 208, line 16 (Company witness Mitchell); *see also* Hearing Ex. 6, OAG-PE-20, Commission Order in PUR-2019-00040, and Hearing Ex. 7, OAG-PE-25, Commission Order in PUR-2017-00143).

[46] Hearing Tr., Day 3, p. 118, lines 2-8 (Clean Virginia witness Chang).

[47] *See* Schedule 46.b.1.vi.

[48] *Id.*; Kuleshova Direct, p. 9, lines 22-29; ES Hearing Tr., Day 3, p. 17, line 3 to p. 20, line 15 (Staff witness Kuleshova).

EXTRAORDINARILY SENSITIVE] the Company failed to ensure that customers were adequately protected. For example, **[BEGIN EXTRAORDINARILY SENSITIVE]** [redacted] **[END EXTRAORDINARILY SENSITIVE]** leaving customers to pick up any overages.[51]

Despite these known risks, the Company has only included a $300 million contingency in the total estimated project cost of $9.65 billion, or approximately three to four percent of total project costs.[52] Numerous parties questioned the wisdom of such a small contingency, particularly on a project of this size. Staff witness Kuleshova recommended a 10 percent contingency, and expressed concern that the Company's $300 million contingency was optimistic.[53] Clean Virginia witness Chang similarly testified that higher contingencies are better than lower levels of contingency from a planning perspective,[54] and, in his experience, projects of this nature start with a higher level of contingency and reduce the level of contingency as the project progresses.[55] Mr.

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[49] ES Hearing Tr., Day 4, p. 18, lines 4-11; p. 19, lines 10-15 (Company witness Bennett).

[50] *Id.*, p. 20, line 2 to p. 21, line 5 (Company witness Bennett) (the Company acknowledges that the **[BEGIN EXTRAORDINARILY SENSITIVE]** [redacted] **[END EXTRAORDINARILY SENSITIVE]**).

[51] Hearing Tr., Day 2, p. 162, line 20 to p. 163, line 16 (Company witness Mitchell)

[52] Bennett Rebuttal p. 8, lines 8-10.

[53] Hearing Tr., Day 3, p. 153, line 1 to p. 154, line 9; Kuleshova Direct, p. 53, lines 13-16.

[54] *Id.*, p. 124, line 24 to p. 126, line 17.

[55] Hearing Tr., Day 3, p. 125, line 18 to p. 126, line 8.

Chang further recognized that 20 percent of projects are not fixed, and 20 percent of $9.3 billion is $1.8 billion, far in excess of the Company's $300 million contingency.[56]

At every turn, the Company has rejected these criticisms and doubled down on its $300 million contingency, stating that the contingency in this case is "adequate contingency to deliver this project."[57] In response to Staff witness Kuleshova's recommendation of a 10 percent contingency, Company witness Bennett said "[t]here is no basis presented for using an additional 10% contingency in this case on the total Project costs."[58] Company witness Mitchell further stated:

> You know, I would say, you know, based on a lot of prior history that use similar contracts, and based on our estimates, based on our strong development, based on all the work we do to even get to today that **you can count on the total estimate that we provided for the project**.[59]

The Company is fully in control of determining the level of contingency included in the CVOW Project budget.[60] The fact that despite knowledge of the substantial risks, the Company has not only maintained its 3 percent contingency, but has repeatedly assured this Commission that it was sufficient. Thus, in a future proceeding, a request to exceed the $9.65 billion budget should be scrutinized based on the representations made by the Company in this proceeding, especially in light of the known risks, including **[BEGIN EXTRAORDINARILY SENSITIVE]** [redacted] **[END EXTRAORDINARILY SENSITIVE]**.[61] The Company should not be permitted to recover cost overages in the future that

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[56] *Id.*, p. 114, lines 2-18.

[57] *Id.*, p. 265, lines 18-25 (Company witness Mitchell).

[58] Bennett Rebuttal, p. 9, lines 13-18.

[59] Hearing Tr., Day 2, p. 139, lines 11-23 (emphasis added).

[60] Hearing Tr., Day 3, p. 44, line 3 to p. 45, line 11 (OAG witness Norwood).

[61] *See* Hearing Ex. 2ES, Application, Sch. 46.b.1.v.

it should have anticipated and budgeted for when negotiating the contracts and seeking initial approval of the CVOW Project.

d. The Commission should impose a performance guarantee.

Customers, shopping and non-shopping customers alike, will foot the bill for the CVOW Project. As part of its evidence, the Company has put forward evidence that the CVOW Project will operate at an average 42 percent capacity factor based on a 25-year useful life.[62] As further support for the likely capacity factor of CVOW, the Company reported that the Pilot Program reported a one-year capacity factor of 47 percent, leading Company witness Bennett to express a "high [level of] confidence that [Dominion] will attain the 42 percent."[63] These representations by the Company should be more than words on paper, but a promised level of future performance that customers can rely upon. A performance guarantee provides that promise to customers, and it helps mitigate the risks of both construction and ultimate project performance.[64] Accordingly, for the life of CVOW's commercial operation and beginning three years after February 4, 2027, the anticipated date for the last turbine installation, the Commission should impose a performance guarantee based on a 42 percent capacity factor as calculated on a three-year rolling average.[65] Should the CVOW Project fail to meet this minimum standard, the Commission should impose appropriate performance penalties.

There is precedent in Virginia and elsewhere for the use of performance guarantees. The Commission imposed performance guarantees in the Company's Rider US-3 and Rider US-4

[62] Hearing Tr., Day 2, p. 237, lines 13-24 (Company witness Bennett); Kuleshova Direct, p. 83, line 16 to p. 84, line 1 and Att. KK-33; Bennett Rebuttal, p. 12, line 21 to p. 13, line 12; *see also* Hearing Tr., Day 3, p. 26, line 6 to p. 27, line 3 (OAG witness Norwood).

[63] Hearing Tr., Day 4, p. 27, lines 4-11.

[64] Hearing Tr., Day 3, p. 103, line 19 to p. 104, line 9.

[65] Norwood Direct, p. 27, lines 1-5.

Cases.[66] Similarly, in a "mega" onshore wind project in the mid-West, it included performance guarantees as a customer protection.[67] The onshore wind project in the mid-West was significantly less risky than the CVOW Project; not only was the asset procured via Asset Purchase Agreement ("APA") such that customers were not charged until the project was operational, but the total project cost was known, was 20 percent the cost of CVOW, and it utilized a more established technology.[68] Customers in Virginia deserve at least the level of protections put in place in prior, less risky ventures.

Under the performance guarantees provided in testimony by Staff and OAG, the penalties for failing to meet the proposed performance metrics[69] would not prevent the Company from collecting the actual costs of the CVOW project.[70] As the Company acknowledges, it will recover all of its costs for CVOW through Rider OSW regardless of the output of CVOW.[71] While the Company will recover its costs regardless, customers are not guaranteed to receive what they pay for without the imposition of a performance guarantee or other comparable customer protection.

Nothing in the Code of Virginia prohibits the Commission from imposing a performance guarantee on CVOW. While Section 1:11 C presumes that certain categories of costs related to offshore wind are reasonable and prudent under certain circumstances, there is no presumption of reasonableness and prudence of costs that are incurred if CVOW does not get built or perform as expected.[72] In fact, such costs are entirely unrelated to the CVOW Project's capital costs. The

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[66] *See infra*, pp. 5-6; *see also* Kuleshova Direct, p. 82, lines 1-15.

[67] *See* Hearing Ex. 35, NCEF Settlements.

[68] Hearing Tr., Day 3, p. 67, line 15 to p. 68, line 13.

[69] *Id.*, p. 164, line 21 to p. 165, line 25 (Staff witness Kuleshova).

[70] *Id.*, p. 166, lines 1-11.

[71] *Id.*, p. 277, line 23 to p. 278, line 6; p. 279, lines 6-15 (Company witness Mitchell).

[72] *See* Va. Code § 56-585.1:11 C; *see also* Hearing Tr., Day 3, p. 166, line 17 to p. 168, line 22.

Commission should protect customers, as it did in the Rider US-3 and Rider US-4 Cases, and impose a performance guarantee for the useful life of the project based on a 42 percent capacity factor calculated on a three-year rolling average.[73]

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

Statute	Statutory Requirements
Va. Code § 56-585.1 A 6 ("Section A 6")	This statutory provision authorizes Dominion to recover the costs of CVOW through a rate adjustment clause ("RAC"). Specifically Section A 6(ii) authorizes Dominion to seek a RAC to recover the costs of "one or more other generation facilities...." Under a Section A 6 RAC, only the "projected construction work in progress and allowance for funds used during construction" ("AFUDC") may be recovered prior to CVOW's Commercial Operation Date.
Va. Code § 56-585.1 D	Authorizes, but not does not require, the Commission to determine the reasonableness and prudence of costs proposed or projected for recovery under Section A 6. Specifically, the statute states that the "Commission *may* determine...the reasonableness and prudence of any cost incurred or projected to be incurred...." In determining the reasonableness and prudence of the utility providing energy and capacity to its customers from renewable energy resources, the Commission is required to consider whether the resources will result in an unreasonable increase in the rates paid by customers.
Va. Code § 56-585.1:11 C ("Section 1:11 C")	Section 1:11 C obligates the Commission to determine the reasonableness and prudence of any costs proposed for cost recovery related to CVOW in this case and every future cost recovery proceeding regarding offshore wind costs, including all Rider OSW annual true-up proceedings. The Commission obligation to make this finding is mandatory. The applicable language states: "[i]n acting upon *any request* for cost recovery...the Commission *shall* determine the reasonableness and prudence of any such costs" (emphasis added).

[73] At this time, the Commission need not determine how such performance penalties would be allocated to customers. It is Walmart's position that such costs should be allocated to all customers responsible for funding the costs of CVOW, however, it is not necessary to make a decision on this issue until a future proceeding in the event performance penalties are imposed.

	Because the obligation to make a finding of reasonableness and prudence under Section 1:11 C is mandatory, the Commission will also need to determine whether the CVOW costs "will result in an unreasonable increase in the rates paid by customers" pursuant to Va. Code § 56-585.1 D.
Va. Code § 56-585.1:11 C	Section 1:11 C permits, but does not require, the Commission to decide "if" the costs proposed for recovery are presumptively reasonable and prudent pursuant to the three-part test set forth in this Code section.[74] Specifically, the relevant language states only that the "such shall be presumed to be reasonably and prudently incurred *if* the Commission determines that..." (emphasis added). Thus, the Commission has discretion to decide whether the rebuttable presumption need even be applied. In a case where CVOW remains on time and on budget, it seems unnecessary to devote resources to establishing whether the rebuttable presumption has been met. Approval of CVOW based on a $9.65 billion projected budget in this proceeding suggests that a future request for cost recovery where the budget remains $9.65 billion appears reasonable and prudent on its face without the need to consider the applicability of the rebuttal presumption.
Va. Code § 56-585.5 F	In general, this provision makes the costs of CVOW non-bypassable and recoverable from both shopping and non-shopping customers, subject to the exceptions for PIPP eligible utility customers or an advanced clean energy buyer or qualifying large general service customer, as those terms are defined in Va. Code § 56-585.1:11. If the Commission were to impose a performance guarantee, the Commission would need to determine the costs, net of benefits (the performance guarantee) that should be recovered from shopping customers who helped fund the costs of CVOW. This should include how to flow the "benefit" of any performance penalties to shopping customers should such penalties be assessed.

[74] In this case, because no party contests the reasonableness and prudence of the $9.65 billion as set forth in Stipulation.

C. **Address specifically what amount of cost recovery the Company is asking the Commission to approve under Code § 56- 585.1 A 6. 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?**

1. **The cost recovery sought for approval in this case is limited to the $78.702 million revenue requirement requested for the rate year beginning September 1, 2022.**

The only costs sought for recovery in this case are the $78.702 million revenue requirement requested for the rate year beginning September 1, 2022.[75] While the Company may claim that it is seeking "cost recovery" of the $9.65 billion, that cannot possibly be the case. The Company concedes that the $9.65 billion is merely the "Company's *estimated* total capital costs of construction of the Project,"[76] and the Company could not reasonably claim that it is seeking to recover these amounts in this proceeding. Of the $9.65 billion, $300 million is allocated solely for contingency, thus, it is not spent unless necessary. It makes little sense to infer that the Company is seeking to recover contingency costs that may never be incurred. At best, the Company is seeking a Commission finding that the $9.65 billion estimated budget for CVOW is reasonable and prudent.[77]

[75] Lee Direct, p. 6, line 22 to p. 7, line 7.

[76] Hearing Ex. 3, Stipulation, ¶ 4 (emphasis added).

[77] *Id.* In Company witness Bennett's Direct Testimony, he claimed that Dominion is "requesting to recover a total cost of $9.8 [reduced to $9.65 billion as per the Stipulation] over the course of 30 years." Bennett Direct, p. 28, lines 10-13.

2. Section 1:11 C obligates the Commission to make a finding of reasonableness and prudence in each and every Rider OSW true-up proceeding while Code § 56-585.1 D permits the Commission to consider reasonableness and prudence.

Section 1:11 C clearly states that in "acting upon *any* request for cost recovery," the Commission *"shall* determine the reasonableness and prudence of any such costs." (emphasis added). Each annual Rider OSW proceeding is a proceeding to recover costs, including a true-up of costs from the prior calendar year and projected financial and construction costs anticipated to be incurred in the subsequent year.[78] Thus, the Commission is statutorily obligated to make a reasonableness and prudence finding in each Rider OSW case. Even if the absence of Section 1:11 C, Va. Code § 56-585.1 D authorizes the Commission to consider the reasonableness and prudence of not only any cost incurred, but also any cost projected to be incurred "during *any* proceeding authorized or required" by Section 56-585.1 of the Code of Virginia.

Consistent with the above statutory grants of authority, the Commission should reject the Company's claim that the Commission should not be able to later deem the "entire Project and all associated costs" as imprudent "based on changes in Project schedule or costs" because it would render a "finding of prudence in this proceeding meaningless."[79] Indeed, the Commission could later determine that the project -- even at the current $9.65 billion budget -- is not reasonable and prudent if facts or circumstances should warrant such a finding. Contrary to Dominion's assertion, ongoing assessment of the reasonableness and prudence of CVOW is precisely what the General Assembly intended when it enacted Section 1:11 C. Customers deserve such increased oversight of the single largest project ever undertaken by Dominion, its parent, or any affiliate.[80]

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[78] Bennett Direct, p. 2, line 17 to p. 3, line 9; *see also* Lee Direct, p. 3, lines 1-18.

[79] Bennett Rebuttal, p. 20, lines 8-13.

[80] Hearing Tr., Day 2, p. 144, line 12 to p. 145, line 23 (Company witness Mitchell); Hearing Tr., Day 3, p. 269, lines 13-15 (Company witness Mitchell).

While the Commission will need to make a finding of reasonableness and prudence in every Rider OSW proceeding, there is a material difference between what the Commission is *legally* obligated to do, and how the Commission will comply with that obligation in future Rider OSW update proceedings. Where there have been no issues reported and the Company's filing indicates that CVOW is on time and on budget, it should not be difficult for the Commission to conclude that the costs sought for recovery are reasonable and prudent. A protracted proceeding simply is not necessary, provided approval is granted in this proceeding. Only when there are material changes to the CVOW Project should a more fulsome review, including potential consideration of the rebuttable presumption in Section 1:11 C, be necessary.

3. The Company is not obligated to present evidence of LCOE, and nothing obligates the Commission to make any finding on LCOE.

Section 1:11 C states that the Commission *shall* make a finding of reasonableness and prudence in future Rider OSW proceedings, but it does not similarly obligate the Commission to address LCOE or the rebuttable presumption. Under Section 1:11 C, the relevant language states:

> 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, provided that such costs shall be presumed to be reasonably and prudently incurred *if* the Commission determines that....[81]

There is nothing in Section 1:11 C obligating or requiring the Commission to make a finding on LCOE or the other elements of the rebuttable presumption. The Supreme Court has previously made clear that permissive language (*e.g.*, "may"), particularly when closely juxtaposed with the mandatory language implied by "shall," constitutes a broader grant of discretionary authority to the Commission.[82] Quite simply, the Commission has the discretion to determine whether and *if* it

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

[82] *See Wal-Mart Stores East, LP, et. al. v. State Corporation Commission, et al.*, Record Nos. 191159 and 191160, Order (July 9, 2020), pp. 10-11.

will make findings on the applicability of the rebuttable presumption, including the LCOE calculation, in Section 1:11 C in future Rider OSW proceedings.

Similarly, nothing obligates the Company to put forward evidence in support of the rebuttable presumption in future Rider OSW proceedings. If the project remains on-time and on-budget, it seem unnecessary to litigate the rebuttable presumption where the facts remain largely unchanged from this case, provided the Commission approves the CVOW Project in this case.

IV. CONCLUSION

For all the reasons set forth above, Walmart Inc. respectfully requests that this Commission impose additional customer protections as a condition of approving the CVOW Project.

Respectfully submitted,

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Dated this 24th day of June, 2022.