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BY ELECTRONIC DELIVERY

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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 electronic filing in the above-captioned proceeding *Virginia Electric and Power Company's Response to Motion for Ruling on Confidentiality of Information*.

Please do not hesitate to call if you have any questions in regard to the enclosed.

Very truly yours,



Vishwa B. Link

Enclosures

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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF)
)
VIRGINIA ELECTRIC AND POWER COMPANY)
)
For approval and certification of the Coastal Virginia) Case No. PUR-2021-00142
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)

**VIRGINIA ELECTRIC AND POWER COMPANY’S RESPONSE TO
MOTION FOR RULING ON CONFIDENTIALITY OF INFORMATION**

Pursuant to Rule 170 of the Rules of Practice and Procedure of the State Corporation Commission,¹ Ordering Paragraph (7) of the Hearing Examiner’s Protective Ruling and Additional Protective Treatment for Extraordinarily Sensitive Information (“Protective Ruling”) issued on December 13, 2021, and Ordering Paragraph (1) of the May 9, 2022 Hearing Examiner’s Ruling issued in this proceeding, the Company files this response (the “Response”) to the Motion for Ruling on Confidentiality of Information filed by the Office of the Attorney General, Division of Consumer Counsel (“Consumer Counsel”) on April 29, 2022 (the “Motion”).

On November 5, 2021, the Company filed its application and supporting materials in this proceeding, portions of which contained confidential and extraordinarily sensitive (“ES”) information. The Hearing Examiner issued the Protective Ruling on December 13, 2021 without objection, and for six months the parties have exchanged discovery, filed testimony, and otherwise litigated this matter with no challenge to the confidentiality designations in the case. Now, days before the evidentiary hearing and nearly a month after Staff’s testimony was filed,

¹ 5 VAC 5-20-170.

Consumer Counsel raises this challenge to certain designations in the Commission Staff's ("Staff") testimony. Consumer Counsel does not dispute the Company's confidentiality designations; rather, it appears to question Staff's marking of that information in its testimony.² After conferring with Staff, the Company files this Response to provide direction regarding the challenged confidentiality markings in Staff's testimony.

Objection to Lack of Specificity

The Company objects to Consumer Counsel's Motion to the extent it fails to identify the challenged information with requisite specificity. The Protective Ruling provides that a party may "challenge the confidential designation of *particular information*,"³ yet Consumer Counsel's Motion chiefly consists of a list of challenges offered "by way of example and without limitation."⁴ The Company is not able to execute its obligation to "respond to each and every document and all information that is subject to the party's motion" if it must guess about what Consumer Counsel believes may be objectionable "without limitation." Similarly, Consumer Counsel's list contains at various points language that is too broad to identify what specific designations it may be challenging. For example, the Motion appears to dispute confidentiality designations of "levelized cost of energy analysis"—a broad concept—over a range of 13

² "Consumer Counsel does not in this Motion dispute certain contracting and bid information as being withheld from the public as an exception to the general presumption of public disclosure." Motion at 2. Consumer Counsel appears to contest how Staff has taken the Company's confidential/ES information and repackaged it into another analysis, made statements using the confidential/ES information, and then labeled those statements confidential/ES. The Company was not privy to Staff's analysis of the Company's confidential/ES information when it created its testimony, although Staff reached out to the Company before it filed its testimony to ask discrete questions on confidential/ES treatment. Therefore, the Company needed to wait to see Staff's response to Consumer Counsel's Motion before it was able to respond to the Motion. In addition, the Company met with Staff to get the background for Staff's markings in developing this Response. The Company appreciates Staff's cooperation to address the claims made by Consumer Counsel's Motion. In the future, the Company is open to Consumer Counsel reaching out to the Company informally, as Staff and other parties have done, to discuss concerns it may have with confidentiality markings *prior* to filing a Motion with the Commission. The Company commits to working in good faith with Consumer Counsel, Staff, or any party to work out any disputes of this sort prior to bringing motions to the Commission.

³ Protective Ruling at Ordering Paragraph (7) (emphasis added).

⁴ Motion at 3.

identified pages with no line numbers provided.⁵ In fact, the Motion references many pages of referenced testimony containing multiple confidentiality designations with different types of information that are non-public based on different reasons, and yet the Motion provides no line numbers to specifically identify the information it contests. The Company herein made a diligent effort to respond to Consumer Counsel's challenges, but the generality of many of the challenges made it difficult to provide the detailed information required by Ordering Paragraph (7) of the Protective Ruling without significant assumptions. If the Company is to adequately respond to one party's confidentiality challenges in another party's testimony, it must at a minimum have clarity about what information is being challenged. Next, it must be given an opportunity to hear from the other party (*i.e.*, Staff) regarding what judgement calls they made⁶ about how they re-packaged the information or statements in order for the Company to assess whether the re-packaged information can be made public. For this the reason, the Company provided a letter in response to the Motion saying it would work with Staff to create its Response. The Company has now done so in one business day and responds to Consumer Counsel's challenges as best it understands them, but Consumer Counsel has not identified "particular information" as directed by the Protective Ruling. The Company has not addressed Staff's confidentiality designations not specifically noted in the Motion, and such designations should maintain their existing confidential or extraordinarily sensitive status.⁷

⁵ Motion at 4.

⁶ Staff's letter response states, "In circumstances where Staff included information that was derived from confidential or ES sources, Staff used its judgment in redacting such information if we believed that not doing so would inadvertently reveal the confidential or ES source information. However, should the Company agree, or should the Commission determine, that any of the confidential or ES information contained in Staff's testimony that Consumer Counsel challenged in its Motion should be made public, Staff is certainly willing to update and refile its testimony as needed." Staff Response to Consumer Counsel's Motion at 2.

⁷ If the Company has misinterpreted what the Motion contests, it requests the ability to supplement this Response. For example, the Company does not believe the designations for footnote 78 or footnote 86 in Staff Witness Kuleshova's testimony are in contest.

Response to Motion

After reviewing the challenged designations in Staff's testimony, the Company can confirm that all of the challenged designations fall into one of three categories:

1. *Public Information* – certain designated information in Staff's testimony can be re-classified as public, as described below.
2. *ES Board of Directors Presentations* – challenged information that is contained in or derived solely from presentations made to the Company's Board of Directors should remain designated as extraordinarily sensitive, consistent with ES treatment of that information elsewhere in the filing, and the fact that Consumer Counsel has not challenged the underlying ES treatment.⁸
3. *ES Information Related to Contracts and Prices* – information regarding competitively negotiated contracts and prices should remain designated as extraordinarily sensitive, and the fact that Consumer Counsel has not challenged the underlying ES treatment.⁹

Public Information

After careful review of all of the challenged confidentiality designations in the Motion, the Company has determined that the information listed in the chart below—identified by witness, page, and line number—may be re-classified in the respective Staff testimony as public. The Company has sought and received permission from *Moody's* to release the referenced report as public pursuant to its subscription requirements with *Moody's*, and in some cases revisited some prior designations to re-designate as public consistent with the Commission presumption in favor of public disclosure or corrected inaccurate initial designations.

⁸ See *supra* note 2

⁹ See *supra* note 2.

Witness	Reference
Kuleshova	Page 7, lines 13-15
Kuleshova	Page 8, lines 17-18
Kuleshova	Page 10, lines 23-28 ¹⁰
Kuleshova	Page 19, notes 26, 27, 28, & 29 ¹¹
Kuleshova	Page 30, lines 5-6
Kuleshova	Page 32, lines 8-9
Kuleshova	Page 40, lines 9-11, 17-18, 23-24
Kuleshova	Page 41, note 83 ¹²
Kuleshova	Page 42, line 8
Kuleshova	Page 43, line 2 (entire chart)
Kuleshova	Page 44, line 3 (entire chart)
Kuleshova	Page 46, line 8 (entire chart) ¹³
Kuleshova	Page 47, lines 6-7
Kuleshova	Page 62, line 11 to Page 63, line 7
Kuleshova	Page 63, lines 12-18
Kuleshova	Page 64, lines 1-2 (entire chart) ¹⁴
Kuleshova	Page 64, lines 4-7
Kuleshova	Page 66, lines 12-13 (entire chart), 14-16
Kuleshova	Page 67, lines 3-4 (entire chart) ¹⁵
Kuleshova	Page 68, lines 9-14 ¹⁶
Kuleshova	Page 69, lines 10-11 (entire chart) ¹⁷
Kuleshova	Page 77, lines 5-12 (including chart) ¹⁸
Kuleshova	Page 105, line 5 and note 178
Kuleshova	Page 106, line 4 to Page 107, line 9
Kuleshova	Page 107, line 18
Kuleshova	Attachment KK-27
Kuleshova	Attachment KK-30 ¹⁹
Welsh	Page 4, lines 7, 9
Welsh	Page 6, lines 12, 16, 18

¹⁰ The Company does not believe that any other markings on page 10 are in contest.

¹¹ The Company does not believe that any other markings on page 19 are in contest.

¹² The Company does not believe that any other markings on page 41 are in contest.

¹³ The Company does not believe that any other markings on page 46 are in contest.

¹⁴ The Company revisited this designation because the chart does not state what the underlying contracts terms are, the chart merely references the location of the information and the section of the contract. The Company is not waiving that the underlying contract terms are ES.

¹⁵ As noted below, the Company believes the other information marked extraordinarily sensitive on page 67 should remain extraordinarily sensitive.

¹⁶ As noted below, the Company believes the other information marked extraordinarily sensitive on page 68 should remain extraordinarily sensitive.

¹⁷ As noted below, the Company believes the other information marked extraordinarily sensitive on page 69 should remain extraordinarily sensitive.

¹⁸ The chart on page 77 was marked by Staff as confidential and was inaccurately marked in discovery as such by the Company.

¹⁹ The chart on KK-30 was marked by Staff as confidential and was inaccurately marked in discovery as such by the Company.

Welsh	Page 7, line 1 and Chart 2
Welsh	Page 8, Table 2
Welsh	Page 10, lines 12-14 ²⁰
Gereaux	Page 3, lines 2-8, 10-13 ²¹

ES – Board of Directors Presentations

Certain information presented to the Board of Directors was marked as extraordinarily sensitive in Staff's testimony. The Motion does not specifically challenge the designation of Board of Directors materials as extraordinarily sensitive; only whether certain markings should appear in particular portions of Staff's testimony. Indeed, information contained in or derived from Board of Director presentations is marked as extraordinarily sensitive elsewhere in the filing and not challenged by Consumer Counsel in the Motion. As noted above, after careful review, the Company has made public portions of confidentially-designated information challenged by the Motion, but believes that certain Board of Directors materials referenced in Staff's testimony should remain extraordinarily sensitive. This information should be kept extraordinarily sensitive because it is not in the public domain and contains non-public commercial and financial information that, if publicly disclosed, would harm the Board of Directors' ability to perform its deliberative functions. Moreover, disclosure of this information may harm customers as it contains sensitive market data that may impact the Company's ability to effectively contract with various offshore wind vendors, and speaks to competitively negotiated contracts and prices information that is subject to heightened protection.²² The risk of harm to the Board of Director's deliberations is not outweighed by the presumption in favor of

²⁰ The Company does not believe that any other markings on page 10 are in contest.

²¹ The Company does not believe that any other markings on page 3, or the rest of Staff Witness Gereaux's testimony, are in contest.

²² See discussion of Contracts and Prices Information, *infra*.

public disclosure and since Consumer Counsel's Motion is not specific, it is not clear that these designations are even in contest. The challenged extraordinarily sensitive designations with respect to Board of Directors information that should remain marked as extraordinarily sensitive in Staff's testimony are listed below:

- Kuleshova at 9:22-28
- Kuleshova at 10:8-12
- Kuleshova at 36:3-6, 36:11-12, 36:18-39:2²³
- Kuleshova at 67:9-68:4

ES – Contracts and Prices Information

Certain information marked extraordinarily sensitive in Staff's testimony relates to competitively negotiated contracts and prices, a category of information explicitly protected by the Protective Ruling in this case. As noted, while the Company has made an effort to make public the information subject to challenged confidentiality designations where possible, certain terms related to Company contracts and sensitive pricing information should remain extraordinarily sensitive.

The protected Contracts and Prices Information includes information related to offered or negotiated contracts, terms, and prices, and information derived therefrom, with vendors, customers, and other market participants, including capital costs and operations and maintenance. The Contracts and Prices Information is extraordinarily sensitive because of the market sensitive nature of this information. If known by potential generation developers, other market participants, or vendors engaged in the business of providing services related to the development, manufacturing, construction, operation, or installation of renewable projects, energy project supply, project bidding, or electric generating business development, this information would give them market intelligence that they could use to their competitive

²³ The Company does not believe that any other markings on page 39 are in contest.

advantage to the detriment of the Company and its customers, and access to this information would give them an advantage over other vendors or developers through their knowledge of the prices, terms, conditions, and inputs by which the Company has or is willing to accept for such equipment in the future. Disclosure would hinder the Company's ability to obtain future bids and access to equipment and services at competitively negotiated prices, terms, conditions, and inputs.²⁴ The risk of harm of the disclosure of these contract terms is not outweighed by the presumption in favor of public disclosure and since Consumer Counsel's Motion is not specific, it is not clear that these designations are even in contest. Accordingly, the following challenged portions of Staff's testimony should retain their extraordinarily sensitive protection:

- Kuleshova at 65:3-5
- Kuleshova at 65:16-26
- Kuleshova at 68:18-69:1
- Kuleshova at 69:4-6

WHEREFORE, for the reasons set forth above, the Company respectfully requests that the Commission (1) reject insufficiently specific challenges to confidentiality designations in Consumer Counsel's Motion; (2) take notice of and incorporate the Company's updated confidentiality designations to the extent necessary in the hearing in this matter; (3) permit Staff to amend its testimony as appropriate to reflect the Company's updated confidentiality designations, and (4) grant such other and further relief as the Commission deems just and reasonable.

²⁴ See Motion for Entry of a Protective Ruling and Additional Protective Treatment at 5-7.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY

By: /s/ Vishwa B. Link

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Counsel for Virginia Electric and Power Company

May 10, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May 2022, a true and accurate copy of the foregoing filed in Case No. PUR-2021-00142 was hand delivered, electronically mailed, and/or mailed first class postage pre-paid to the following:

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