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September 20, 2022

VIA ELECTRONIC FILING

Bernard Logan, Clerk
c/o Document Control Center
State Corporation Commission
1300 East Main Street
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 et seq., and § 56-585.1 A 6 of the Code of Virginia*

Case No. PUR-2021-00142

Dear Mr. Logan:

On behalf of the Virginia Committee for Fair Utility Rates, enclosed for filing in the above-captioned matter is the *Response of the Virginia Committee for Fair Utility Rates to the Petition for Limited Reconsideration Filed by Virginia Electric and Power Company*.

Thank you for your assistance.

Very truly yours,

/s/ S. Perry Coburn

S. Perry Coburn

Enclosure

cc: Certificate of Service

#2879388

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 *et*
seq., and § 56-585.1 A 6 of the Code of Virginia

Case No. PUR-2021-00142

**RESPONSE OF THE VIRGINIA COMMITTEE FOR FAIR UTILITY RATES
TO THE PETITION FOR LIMITED RECONSIDERATION
FILED BY VIRGINIA ELECTRIC AND POWER COMPANY**

Pursuant to the State Corporation Commission’s (“Commission”) orders issued in this case on August 24, 2022 (the “Order Granting Reconsideration”) and September 13, 2022, the Virginia Committee for Fair Utility Rates (the “Committee”) submits this response to Virginia Electric and Power Company’s (“Dominion” or the “Company”) Petition for Limited Reconsideration dated August 5, 2022 (the “Petition”).

INTRODUCTION

The Committee did not file testimony in this case or otherwise oppose or take a position on Dominion’s application or the performance guarantee that was adopted by the Final Order and is the principal focus of Dominion’s Petition. Accordingly, the scope of this brief is limited to the issue of statutory interpretation presented in the Order Granting Reconsideration—*i.e.*, “the extent to which the presumption in Code § 56-585.1:11 C 1 (‘provided that such costs shall be presumed to be reasonably and prudently incurred’) may be rebutted.”¹

¹ Order Granting Reconsideration at 2, Ordering Paragraph (6).

SUMMARY OF ARGUMENT

Costs proposed for recovery under Code § 56-585.1² generally are subject to Commission review for reasonableness.³ The Commission’s regulatory authority in this regard (its “Subsection D authority”) is broad and is properly construed to apply in this context *unless* the cost at issue is within one of several discrete categories of costs that the legislature clearly intended to be exempted.

Here, the language of Code § 56-585.1:11 (“Section 1:11”) reflects the General Assembly’s intent merely to create a rebuttable presumption of reasonableness in cases where the record evidence is sufficient to establish certain requisite facts. There is no indication, either in Section 1:11 or in Code § 56-585.1 A 6 (addressing Section 1:11 cost recovery), that the General Assembly intended for Section 1:11 to be wholly exempt from the Commission’s Subsection D authority in any circumstance. Indeed, the relevant statutory language suggests the opposite: that the Commission *always* must evaluate the reasonableness of Section 1:11 costs in the context of at least three specific considerations, which analysis and considerations are set forth in the statute in clear, prescriptive language that is not conditional.⁴

Accordingly, the Commission properly may and should review all Section 1:11 costs for reasonableness; and, to the extent it deems necessary or appropriate for the protection of customers from unreasonable costs or financial risk, the Commission should condition its

² The Rider OSW costs at issue in this case were proposed for recovery under Va. Code §§ 56-585.1 A 6 (relating to generation plant and other costs) and 56-585.1:11 (relating to offshore wind project costs).

³ *See generally* Va. Code § 56-585.1 D.

⁴ Va. Code § 56-585.1:11(1) (providing, sequentially, a description of the factual showings necessary to trigger the at-issue presumption reasonableness; reiterating the need to disallow costs “otherwise [shown to be] unreasonably and imprudently incurred;” and identifying three considerations bearing on reasonableness the Commission must take into account when conducting “its review” of the record evidence).

approval of any such costs upon whatever cost caps, performance guarantees, or other conditions and consumer protections may be appropriate under the circumstances.

DISCUSSION

The Commission has broad authority under Code § 56-585.1 D (“Subsection D”) to review for reasonableness a large majority of the various categories of costs that an electric utility may propose for recovery under Code § 56-585.1. In this context, and given the breadth of the language used to describe the Commission’s authority under Subsection D, only those discrete categories of costs that the legislature expressly exempt from the Commission’s regulatory authority may properly be approved without first being reviewed for reasonableness.

Legislative intent to exempt a given cost from the Commission’s review and authority under Subsection D has been found in two circumstances: (1) where the relevant statutory language “deems” the cost at issue to be reasonable and prudent, or is otherwise explicit in exempting the subject cost’s exemption from regulatory review under Subsection D;⁵ and (2) where the relevant statutory language that, although it omits explicit language specifically exempting the costs at issue, otherwise makes it “obvious” that the General Assembly intended for the cost to evade such review in the approval process.⁶

Here, there is no indication that the legislature intended for Section 1:11 costs to evade Commission review for reasonableness in any circumstance—regardless of whether the record

⁵ See, e.g., Va. Code § 56-585.1 A 4 (“The following costs incurred by the utility *shall be deemed reasonable and prudent*:” (emphases added)).

⁶ *Appalachian Power Co. v. State Corp. Comm’n*, 876 S.E.2d 349, 360 n.7 (Va. 2022) (explaining that Code § 56-585.1 A 8’s accounting provisions supplied an “obvious” reason why the General Assembly “thought it unnecessary” to explicitly exclude certain asset-impairment costs from regulatory review for reasonableness because, by “its plain terms, subsection A(8) wholly supplants the [Commission’s] regulatory discretion authorized by [S]ubsection D. . . .”).

evidence is sufficient to trigger the presumption of reasonableness conditionally provided for by that statute. Accordingly, it is clear that the presumption of reasonableness in Section 1:11 properly *may* be rebutted and overcome by countervailing evidence, which the Commission—in the proper discharge of its regulatory authority under Subsection D—properly may and should consider in Section 1:11 cases filed pursuant to Code § 56-585.1 A 6. In short, the Section 1:11 presumption, when it is duly triggered, is strong enough to make out a *prima facie* showing of reasonableness—but not so strong as to extinguish the Commission’s regulatory authority and duty to consider contrary evidence offered in rebuttal.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Virginia Committee for Fair Utility Rates respectfully requests that the Commission reject any proposed construction of the relevant statutes that would preclude or forbid the Commission from reviewing for reasonableness any Rider OSW-related or other cost presented for recovery under Code §§ 56-585.1 A 6 and 56-585.1:11.

Respectfully submitted,

VIRGINIA COMMITTEE FOR
FAIR UTILITY RATES

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September 20, 2022

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CERTIFICATE OF SERVICE

I certify that on September 20, 2022, a true and accurate copy of the foregoing was

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