

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 8, 2023

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APPLICATION OF

J.W. WHITING CHISMAN, III

CASE NO. PUR-2023-00157

On behalf of himself and all other
licensed Branch Pilots in the
Commonwealth of Virginia who are
members of the Virginia Pilot Association

For approval of a revision of rates
and charges for pilotage

ORDER FOR NOTICE AND HEARING

On August 22, 2023, J. W. Whiting Chisman, III, a licensed branch pilot in the Commonwealth of Virginia ("Commonwealth"), on behalf of himself and all other licensed branch pilots in the Commonwealth who are members of the Virginia Pilot Association ("Applicant" or "Association"), filed with the State Corporation Commission ("Commission") an application for approval of a revision of rates and charges for pilotage ("Application"), pursuant to Chapter 9, Article 5 of Title 56 (§ 54.1-918 *et seq.*) of the Code of Virginia ("Code") and Rule 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure ("Rules of Practice").¹ On August 23, 2023, Applicant filed a Motion for Protective Order.

The Association, among other things, proposes an increase in the Association's annual revenues by 10.35%² to recover increased operating expenses and to fund additional capital improvements and salary and benefit increases.³ The Association also filed, in Appendix C of

¹ Application at 1.

² *Id.* at 5.

³ *Id.* at 6-7.

the Application, a proposed schedule of rates and charges, which are expected to produce the requested increase in annual revenues.⁴ The proposed pilotage rates and charges are based on the gross tonnage formula approved by the Commission in the Association's last rate case, Case No. PUR-2020-00161.⁵

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that this matter should be docketed; the Association should provide public notice of its Application; a public hearing should be scheduled for the purpose of receiving testimony and evidence on the Application as well as public witness testimony; interested persons and the public should have an opportunity to file comments on the Application or participate as respondents in this proceeding; and the Commission Staff ("Staff") should be directed to investigate the Application and file testimony and exhibits containing its findings and recommendations thereon. We further find that a Hearing Examiner should be appointed to conduct further proceedings in this matter on behalf of the Commission, including ruling on the Applicant's Motion for Protective Ruling.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless they contain confidential information, and require electronic service on parties to this proceeding.

⁴ Application at 5 and Appendix C.

⁵ Application at 3. *See also, Application of J.W. Whiting Chisman, III on Behalf of Himself and All Other Licensed Branch Pilots in the Commonwealth of Virginia Who Are Members of the Virginia Pilot Association for Approval of a Revision of Rates and Charges for Pilotage*, Case No. PUR-2020-00161, S.C.C. Ann. Rept. 609, 610, Final Order (Dec. 21, 2020).

Accordingly, IT IS ORDERED THAT:

(1) As provided by § 54.1-918 of the Code, the Association's Application is docketed and assigned Case No. PUR-2023-00157.

(2) All pleadings in this matter shall be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice. Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Rules of Practice, the Commission directs that service on parties and Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) As provided by Code § 12.1-31 and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Rules of Practice, a Hearing Examiner is appointed to conduct further proceedings in this matter on behalf of the Commission, including ruling on the Applicant's Motion for Protective Ruling, and to file a final report. A copy of each filing made with the Commission's Clerk's office in this matter shall also be sent electronically to the Office of the Hearing Examiners.⁶

⁶ Such electronic copies shall be sent to: OHEParalegals@scc.virginia.gov.

(5) The Commission hereby schedules a telephonic portion of the hearing for the receipt of testimony from public witnesses on the Application, as follows:

(a) The portion of the hearing for the receipt of testimony from public witnesses on the Application shall be convened telephonically on January 9, 2024.

(b) To promote fairness for all public witnesses, each witness will be allotted five minutes to provide testimony.

(c) On or before January 3, 2024, any person desiring to offer testimony as a public witness shall provide to the Commission (a) your name, and (b) the telephone number that you wish the Commission to call during the hearing to receive your testimony. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at scc.virginia.gov/pages/Webcasting; (ii) by completing and emailing the PDF version of this form to SCCInfo@scc.virginia.gov; or (iii) by calling (804) 371-9141.

(d) Beginning at 10 a.m. on January 9, 2024, the Hearing Examiner appointed to this case will telephone sequentially each person who has signed up to testify as provided above.

(e) This public witness portion of the hearing will be webcast at scc.virginia.gov/pages/Webcasting.

(6) The evidentiary portion of the hearing shall be convened at 10 a.m., on January 9, 2024, or at the conclusion of the public witness portion of the hearing, whichever is later, in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive testimony and evidence of the Applicant, any respondents, and Staff on the Application.

(7) An electronic copy of the Application may be obtained by submitting a written request to counsel for the Applicant: Eric M. Page, Esq. or Cody T. Murphey, Esq., Eckert Seamans Cherin & Mellott, LLC, 919 East Main Street, Suite 1300, Richmond, Virginia 23219, epage@eckertseamans.com or cmurphey@eckertseamans.com; or Mark T. Coberly, Esq., Woods Rogers Vandeventer Black PLC, 101 West Main Street, Suite 500, World Trade Center,

Norfolk, Virginia 23510, mark.coberly@wrvblaw.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

(8) On or before October 12, 2023, the Association shall cause the following notice to be published as display advertising (not classified) once a week for two (2) consecutive weeks in newspapers of general circulation in the Cities of Norfolk, Portsmouth and Newport News, Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY THE
VIRGINIA PILOT ASSOCIATION TO INCREASE THE RATES
AND CHARGES FOR PILOTAGE
CASE NO. PUR-2023-00157

On August 22, 2023, the Virginia Pilot Association ("Association") filed an Application with the State Corporation Commission ("Commission") for approval to revise the Association's rates and charges for pilotage services to increase the Association's annual revenues by 10.35%. The proposed pilotage rates and charges are based on the gross tonnage formula approved by the Commission in the Association's last rate case, Case No. PUR-2020-00161.

The details of these and other proposals are set forth in the Association's Application. Interested persons are encouraged to review Association's Application, testimony and supporting exhibits for the details of these proposals.

TAKE NOTICE that the Commission may adopt rates, charges and/or terms and conditions that differ from those appearing in Association's Application and supporting documents and may apportion revenues among customer classes and/or design rates in a manner differing from that shown in the Application and supporting documents.

The Commission entered an Order for Notice and Hearing in this proceeding that, among other things, scheduled a public hearing on the Application. On January 9, 2024, at 10 a.m., the Hearing Examiner will hold a telephonic portion of the hearing, for the purpose of receiving the testimony of public witnesses. On or before January 3, 2024, any person desiring to offer testimony as a public witness shall provide to the Commission (a) your name, and (b) the telephone number that you wish the Hearing Examiner to

call during the hearing to receive your testimony. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at scc.virginia.gov/pages/Webcasting; (ii) by completing and emailing the PDF version of this form to SCCInfo@scc.virginia.gov; or (iii) by calling (804) 371-9141. This public witness portion of the hearing will be webcast at scc.virginia.gov/pages/Webcasting.

Beginning at 10 a.m. on January 9, 2023, the Hearing Examiner will telephone sequentially each person who has signed up to testify as provided above.

On January 9, 2024, at 10 a.m., or at the conclusion of the public witness portion of the hearing, whichever is later, in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, the Hearing Examiner will convene a hearing to receive testimony and evidence related to the Application from the Association, any respondents, and the Commission's Staff.

To promote administrative efficiency and timely service of filings upon participants, the Commission has directed the electronic filing of testimony and pleadings, unless they contain confidential information, and has required electronic service on parties to this proceeding.

An electronic copy of the Application may be obtained by submitting a written request to counsel for the Association: Eric M. Page, Esq. or Cody T. Murphey, Esq., Eckert Seamans Cherin & Mellott, LLC, 919 East Main Street, Suite 1300, Richmond, Virginia 23219, epage@eckertseamans.com or cmurphey@eckertseamans.com; or Mark T. Coberly, Esq., Woods Rogers Vandeventer Black PLC, 101 West Main Street, Suite 500, World Trade Center, Norfolk, Virginia 23510, mark.coberly@wrvblaw.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

On or before January 3, 2024, any interested person may submit comments on the Application electronically by following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118,

Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00157.

On or before November 9, 2023, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at: scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may file such notice by U.S. mail to the Clerk of the Commission at the address listed above. Notices of participation shall include the email address of the party or its counsel. The respondent shall serve a copy of the notice of participation on counsel to the Applicant. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2023-00157.

On or before November 17, 2023, each respondent may file electronically with the Clerk of the Commission at scc.virginia.gov/clk/efiling any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable, as a practical matter, to file testimony and exhibits electronically may file such by U.S. mail to the Clerk of the Commission at the address listed above. Each witness's testimony shall include a summary not to exceed one page. All testimony and exhibits shall be served on the Commission's Staff, the Applicant, and all other respondents. In all filings, respondents shall comply with the Commission's Rules of Practice, as modified by the Commission's Order for Notice and Hearing, including, but not limited to: 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2023-00157.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Hearing, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

The Commission's Rules of Practice, the Commission's Order for Notice and Hearing, and the Application and other documents filed in this case may be viewed on the Commission's website at: scc.virginia.gov/pages/Case-Information.

VIRGINIA PILOT ASSOCIATION

(9) On or before November 2, 2023, the Association shall file proof of the notice and service required by Ordering Paragraph (8), with the Clerk of the Commission by filing electronically at scc.virginia.gov/clk/efiling.

(10) On or before January 3, 2024, any interested person may file comments on the Application by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00157.

(11) On or before November 9, 2023, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation at scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may file such notice by U.S. mail to the Clerk of the Commission at the address listed in Ordering Paragraph (10). Such notice of participation shall include the email addresses of such parties or their counsel. The respondent shall serve a copy of the notice of participation on counsel to the Applicant. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by

5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2023-00157.

(12) Within five (5) business days of receipt of a notice of participation as a respondent, the Applicant shall serve upon the respondent a copy of the Application and supporting materials, unless these materials already have been provided to the respondent.

(13) On or before November 17, 2023, each respondent may file, with the Clerk of the Commission at scc.virginia.gov/clk/efiling, any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable, as a practical matter, to file testimony and exhibits electronically may file such by U.S. mail to the Clerk of the Commission at the address listed in Ordering Paragraph (10). Each witness's testimony shall include a summary not to exceed one page. All testimony and exhibits shall be served on the Staff, the Company, and all other respondents simultaneous with its filing. In all filings, respondents shall comply with the Rules of Practice, as modified herein, including, but not limited to: 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2023-00157.

(14) Staff shall investigate the Application. On or before November 30, 2023, Staff shall file with the Clerk of the Commission its testimony and exhibits, and each Staff witness's testimony shall include a summary not to exceed one page. Staff shall serve a copy thereof on counsel to the Applicant and all respondents.

(15) On or before December 22, 2023, the Association shall file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer, and each rebuttal witness' testimony shall include a summary not to exceed one page. The Applicant shall serve a copy of such rebuttal testimony and exhibits on Staff and all respondents.

(16) All documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(17) The Rules of Practice 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.⁷ Except as modified herein, discovery shall be in accordance with Part IV of the Rules of Practice, 5 VAC 5-20-240 *et seq.*

(18) This matter is continued.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

⁷ The assigned Staff attorney is identified on the Commission's website, scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2023-00157, in the appropriate box.