

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 11, 2024

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2024 APR 11 A 9:37

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2024-00053

and

OSW PROJECT LLC

For approval and authority to enter into affiliate agreements and issue securities under Chapters 3 and 4 of Title 56 of the Code of Virginia

ORDER EXTENDING TIME FOR REVIEW AND INVITING COMMENTS

In Case No. PUR-2021-00142, Virginia Electric and Power Company ("Dominion" or "Company") sought, and received, approval from the State Corporation Commission ("Commission") for: (i) construction of the Coastal Virginia Offshore Wind Commercial Project ("Project" or "CVOW Project"), to be located in a federal lease area beginning approximately 24 nautical miles off the coast of Virginia Beach, Virginia, and its related power export facilities; (ii) a certificate of public convenience and necessity ("CPCN") for electric interconnection and transmission facilities associated with the Project; and (iii) a rate adjustment clause, designated Rider OSW, for the recovery of costs associated with the Project.<sup>1</sup> As part of its approval, the Commission adopted certain consumer protections for the Project and directed Dominion to file annual Rider OSW update proceedings.<sup>2</sup>

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<sup>1</sup> *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, 2022 S.C.C. Ann. Rept. 287, Final Order (Aug. 5, 2022).*

<sup>2</sup> *Id.* At the request of Dominion and six respondents, the Commission subsequently struck the "performance standard" set forth on pages 15-16 of the Final Order and replaced it with alternative requirements. *Application of*

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Thereafter, during its 2023 Session, the Virginia General Assembly enacted Chapter 510 (SB 1477) of the 2023 Virginia Acts of Assembly, which became effective on July 1, 2023 ("Chapter 510"). Among other things, Chapter 510 amended Code § 56-585.1:11 ("Section 1:11") to authorize a Phase II Utility, such as Dominion, to establish an offshore wind affiliate for the purpose of securing a noncontrolling equity financing partner in a qualifying offshore wind project, subject to Commission approval.<sup>3</sup> Chapter 510 also permits an offshore wind affiliate to construct, own, or operate a qualifying offshore wind project, or a portion thereof, and to operate as a public utility in association with the Phase II Utility.<sup>4</sup>

As authorized by Section 1:11, on March 28, 2024, Dominion and OSW Project LLC ("ProjectCo") (collectively, "Petitioners") filed a petition ("Petition") with the Commission in Case No. PUR-2024-00045, pursuant to Chapter 4 of Title 56 of the Code ("Affiliates Act"),<sup>5</sup> Chapter 5 of Title 56 of the Code ("Utility Transfers Act"),<sup>6</sup> Chapter 10.1 of Title 56 of the Code

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*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, 2022 S.C.C. Ann. Rept. 305, 307, Order on Reconsideration (Dec. 15, 2022). The Company has since filed two annual updates to Rider OSW, Case No. PUR-2022-00187, and Case No. PUR-2023-00195, which is currently pending before the Commission. See Application of Virginia Electric and Power Company, For revision of rate adjustment clause: Rider OSW, Coastal Virginia Offshore Wind Commercial Project, for the Rate Year commencing September 1, 2023, Case No. PUR-2022-00187, Doc. Con. Cen. No. 230720087, Final Order (July 7, 2023); Application of Virginia Electric and Power Company, For revision of rate adjustment clause: Rider OSW, Coastal Virginia Offshore Wind Commercial Project, for the Rate Year commencing September 1, 2024, Case No. PUR-2023-00195, Doc. Con. Cen. No. 231110053, Application (Nov. 1, 2023).*

<sup>3</sup> See Code § 56-585.1:11 G.

<sup>4</sup> *Id.* The legislation further provides that the affiliate is entitled to all rights and privileges of a public utility in connection with the qualifying wind project.

<sup>5</sup> Code §§ 56-76 *et seq.*

<sup>6</sup> Code §§ 56-88 *et seq.*

("Utility Facilities Act"),<sup>7</sup> and, to the extent the Commission deems necessary, Chapter 3 of Title 56 of the Code ("Securities Act").<sup>8</sup> In the Petition, the Petitioners seek: (i) approval to enter into proposed affiliate agreements ("Affiliate Agreements") related to the CVOW Project ("Affiliates Act Request");<sup>9</sup> (ii) approval to transfer the CVOW Project's assets from Dominion to ProjectCo, to assign certain permits, leases, contracts, and real estate interests associated with the Project to ProjectCo, and to amend the CPCN issued in Case No. PUR-2021-00142 ("Utility Transfers Act and Utility Facilities Act Requests");<sup>10</sup> (iii) authority for ProjectCo to issue ownership shares to the Company and its noncontrolling equity partner, Dunedin Member LLC ("Stonepeak Member"), should the Commission deem such authority to be necessary ("Securities Act Request");<sup>11</sup> and (iv) a finding that ProjectCo may furnish public utility service in association with Dominion pursuant to the Company's existing CPCN ("Other Requests").<sup>12</sup>

#### Affiliates Act Request

The Petitioners are seeking approval to enter into proposed Affiliate Agreements.<sup>13</sup> The Affiliate Agreements include a Limited Liability Company Agreement, a Project Management Agreement, a Rider OSW Servicing Agreement, a Renewable Energy Certificate Purchase and

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<sup>7</sup> Code §§ 56-265.1 *et seq.*

<sup>8</sup> Code §§ 56-55 *et seq.*

<sup>9</sup> Petition at 1, 22.

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* The Petitioners have also requested any further relief as deemed necessary and appropriate to authorize the activities and transactions included in the Petition, which would also be considered as part of the Other Requests. *Id.* at 22.

<sup>13</sup> *Id.* at 1, 12.

Sale Agreement, and a North Carolina Revenue Contract.<sup>14</sup> The Affiliate Agreements are contracts that would, among other things, effectuate the transfer of the CVOW Project from Dominion to ProjectCo and facilitate financing of the Project.<sup>15</sup> The Petitioners maintain that approval of the Affiliate Agreements would allow Dominion to maintain strong financial metrics without any incremental cost to customers.<sup>16</sup>

Securities Act Request

If the Petition is approved, ProjectCo would issue ownership shares exclusively to Dominion and Stonepeak Member in a private transaction at the time of closing.<sup>17</sup> As such, to the extent the Commission deems it necessary, the Petitioners seek authority for ProjectCo to issue these ownership shares to Dominion and Stonepeak Member, and to revise the ownership shares from time to time as may be required.<sup>18</sup> The Petitioners state that the issuance of such ownership shares is necessary for ProjectCo to acquire the CVOW Property and carry out its functions under Section 1:11.<sup>19</sup>

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<sup>14</sup> *Id.* at 12. The Petitioners also provided a copy of an executed Equity Capital Contribution Agreement with its Petition, but assert that this agreement does not require Commission approval. *See id.* at 8, n. 7.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 20, Attachment H (Financing Summary), p. 1. Specifically, units would be issued at the time of closing of the Equity Capital Contribution Agreement. *Id.* at Attachment H (Financing Summary), p. 1.

<sup>18</sup> *Id.* at 20. The terms of certain Affiliate Agreements govern how the issuance of future units are to be priced. *Id.* at Attachment H (Financing Summary), p. 1. The terms of such Affiliate Agreements also prohibit the members of ProjectCo from directly transferring their equity interests in ProjectCo to third parties or undertaking any transfer that would result in a change of control of such member of ProjectCo prior to the earlier of (a) the time the CVOW Project commences commercial operations, or (b) the fifth anniversary of closing of the transactions contemplated by the Equity Capital Contribution Agreement, and provides that no member of ProjectCo may consummate either of those actions without obtaining the required governmental approvals, including any required Commission approval. *Id.* at 20-21.

<sup>19</sup> *Id.* at 20.

### Order Bifurcating Case

In an Order Bifurcating Case entered in both Case No. PUR-2024-00045 and the present proceeding, the Commission established separate dockets to consider the relief requested in the Petition. Specifically, the Commission determined that it would evaluate the Affiliates Act Requests and Securities Act Requests in the present docket, while all other matters, including but not limited to the Utility Transfers Act and Utility Facilities Act Requests and the Other Requests, would be evaluated in Case No. PUR-2024-00045. The Commission also noted in its Order Bifurcating Case that subsequent Orders would be filed in each docket providing additional details on future procedures, including opportunities for participation, in the respective cases.

### Motion for Protective Ruling

In conjunction with the filing of its Petition on March 28, 2024, the Petitioners filed a motion for the entry of a protective order and additional protective treatment ("Motion for Protective Ruling") and a proposed protective order that establishes procedures governing the use of confidential and extraordinarily sensitive information.

NOW THE COMMISSION, upon consideration hereof, is of the opinion and finds as follows.

Code § 56-77 A requires the Commission to act on applications filed pursuant to the Affiliates Act within a 60-day period, which may be extended "for an additional period not to exceed thirty days." Similarly, Code § 56-61 provides for a 25-day period for Commission action on a petition filed pursuant to the Securities Act, though this statute authorizes the Commission to extend the original 25-day period for an additional thirty days "unless the Commission shall conclude that fifty-five days is not a sufficient time in which fully to

investigate and determine whether such certificate shall be issued, in which event it shall by written order extend the time for a specified reasonable period, and in such order set forth the reasons for such extension[.]"

Given the complexity of the issues and requests for authority contained in the Petition, the Commission finds that it is appropriate, pursuant to Code § 56-77, to extend the review period for the Affiliates Act Requests by 30 days, through June 26, 2024. For the same reasons, we find that the review period for the Securities Act Requests should be extended for an additional 65 days, to June 26, 2024.<sup>20</sup> The Petitioners state that they do not object to an extension of the statutory period established in the Securities Act to 90 days.<sup>21</sup>

Further, the procedures and findings required under the Affiliates Act and Securities Act are distinct from that of other statutes. Specifically, unlike statutes for approving rates or facilities, for example, neither the Affiliates Act nor the Securities Act direct public notice, a formal hearing, or participation by interested persons.<sup>22</sup> In this regard and as explained below, the Commission is not required to allow interested parties to participate in this proceeding.<sup>23</sup> The issue of third-party participation, as well the procedures for consideration of applications under these statutes, is left to the Commission's discretion. As a result, Affiliates Act and Securities

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<sup>20</sup> We note that the statute could afford the Commission additional time to review the Securities Act Requests beyond 90 days should the Commission conclude that such an extension of time is needed to fully investigate the requests. *See* Code § 56-61.

<sup>21</sup> *Id.* at 21, n.16.

<sup>22</sup> *See, e.g.*, Code §§ 56-235.3 (requiring rate cases to "provide for full and fair participation in such hearings by any interested person") and 56-265.2 A 1 (requiring facility cases to provide "due notice" to interested persons and "opportunity for a hearing").

<sup>23</sup> *See, e.g.*, *Application of Central Virginia Electric Cooperative and Central Virginia Services, Inc., For approval of affiliate arrangements*, Case No. PUR-2018-00113, Doc. Con. Cen. No. 180930038, Order (Sept. 24, 2018); *Joint Application of Mecklenburg Electric Cooperative and Empower Broadband, Inc., For approval of a management services agreement and lease agreement under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUR-2018-00180, Doc. Con. Cen. No. 181220067, Order (Dec. 14, 2018).

Act cases may be decided based on a proceeding comprised of the applicants' request and the Commission's review. Indeed, this is the administrative process – *i.e.*, without a formal hearing and without participation by interested persons – that the Commission typically uses to approve or deny Affiliates Act and Securities Act applications. Given the specific facts and circumstances of this proceeding, however, we find that interested persons should be provided an opportunity to file comments on the Affiliates Act Requests and Securities Act Requests included in the Petition.

We also appoint a Hearing Examiner to rule on any discovery matters that arise in this case on behalf of the Commission, including ruling on the Motion for Protective Ruling.

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

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to Code § 56-61, the period of time for review of the Securities Act-related issues presented in the Petition is extended for an additional 65 days, to June 26, 2024.

(2) Pursuant to Code § 56-77 A, the period of time for review of the Affiliates Act-related issues presented in the Petition is extended for an additional 30 days, to June 26, 2024.

(3) As provided by Code § 12.1-31 and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"),<sup>24</sup> a Hearing Examiner is appointed to rule on any discovery matters that arise in this proceeding,

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<sup>24</sup> 5 VAC 5-20-10 *et seq.*

including ruling on the Motion for Protective Ruling. A copy of each filing relating to discovery matters made with the Office of the Clerk in this matter shall also be sent electronically to the Office of the Hearing Examiners.<sup>25</sup>

(4) An electronic copy of the public version of the Petition may be obtained by submitting a written request to counsel for the Company: Vishwa B. Link, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219, or [vlink@mcguirewoods.com](mailto:vlink@mcguirewoods.com). Interested persons also may download unofficial copies from the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(5) On or before May 3, 2024, the Petitioners shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Dominion's service territory within the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PETITION BY  
VIRGINIA ELECTRIC AND POWER COMPANY AND  
OSW PROJECT LLC FOR APPROVAL AND AUTHORITY TO  
ENTER INTO AFFILIATE AGREEMENTS AND ISSUE  
SECURITIES UNDER CHAPTERS 3 AND 4  
OF TITLE 56 OF THE CODE OF VIRGINIA  
CASE NO. PUR-2024-00053

In Case No. PUR-2021-00142, Virginia Electric and Power Company ("Dominion" or "Company") sought, and received, approval from the State Corporation Commission ("Commission") for: (i) construction of the Coastal Virginia Offshore Wind Commercial Project ("Project" or "CVOW Project"), to be located in a federal lease area beginning approximately 24 nautical miles off the coast of Virginia Beach, Virginia, and its related power export facilities; (ii) a certificate of public convenience and necessity ("CPCN") for electric interconnection and transmission facilities associated with the Project; and (iii) a rate adjustment clause, designated Rider OSW, for the recovery of costs associated with the Project. As part of its approval, the Commission adopted certain consumer protections for the Project and directed Dominion to file annual Rider OSW update proceedings.

<sup>25</sup> Such electronic copies shall be sent to [OHEParalegals@scc.virginia.gov](mailto:OHEParalegals@scc.virginia.gov).

Thereafter, during its 2023 Session, the Virginia General Assembly enacted Chapter 510 (SB 1477) of the 2023 Virginia Acts of Assembly, which became effective on July 1, 2023 ("Chapter 510"). Among other things, Chapter 510 amended Code § 56-585.1:11 ("Section 1:11") to authorize a Phase II Utility, such as Dominion, to establish an offshore wind affiliate for the purpose of securing a noncontrolling equity financing partner in a qualifying offshore wind project, subject to Commission approval. Chapter 510 also permits an offshore wind affiliate to construct, own, or operate a qualifying offshore wind project, or a portion thereof, and to operate as a public utility in association with the Phase II Utility.

As authorized by Section 1:11, on March 28, 2024, Dominion and OSW Project LLC ("ProjectCo") (collectively, "Petitioners") filed a petition ("Petition") with the Commission in Case No. PUR-2024-00045, pursuant to Chapter 4 of Title 56 of the Code ("Affiliates Act"), Chapter 5 of Title 56 of the Code ("Utility Transfers Act"), Chapter 10.1 of Title 56 of the Code ("Utility Facilities Act"), and, to the extent the Commission deems necessary, Chapter 3 of Title 56 of the Code ("Securities Act"). In the Petition, the Petitioners seek: (i) approval to enter into proposed affiliate agreements ("Affiliate Agreements") related to the CVOW Project ("Affiliates Act Request"); (ii) approval to transfer the CVOW Project's assets from Dominion to ProjectCo, to assign certain permits, leases, contracts, and real estate interests associated with the Project to ProjectCo, and to amend the CPCN issued in Case No. PUR-2021-00142 ("Utility Transfers Act and Utility Facilities Act Requests"); (iii) authority for ProjectCo to issue ownership shares to the Company and its noncontrolling equity partner, Dunedin Member LLC ("Stonepeak Member"), should the Commission deem such authority to be necessary ("Securities Act Request"); and (iv) a finding that ProjectCo may furnish public utility service in association with Dominion pursuant to the Company's existing CPCN ("Other Requests").

Affiliates Act Request

The Petitioners are seeking approval to enter into proposed Affiliate Agreements. The Affiliate Agreements include a Limited Liability Company Agreement, a Project Management Agreement, a Rider OSW Servicing Agreement, a Renewable Energy Certificate Purchase and Sale Agreement, and a North Carolina Revenue Contract. The Affiliate Agreements are contracts that would, among other things, effectuate the transfer of the CVOW

Project from Dominion to ProjectCo and facilitate financing of the Project. The Petitioners maintain that approval of the Affiliate Agreements would allow Dominion to maintain strong financial metrics without any incremental cost to customers.

Securities Act Request

If the Petition is approved, ProjectCo would issue ownership shares exclusively to Dominion and Stonepeak Member in a private transaction at the time of closing. As such, to the extent the Commission deems it necessary, the Petitioners seek authority for ProjectCo to issue these ownership shares to Dominion and Stonepeak Member, and to revise the ownership shares from time to time as may be required. The Petitioners state that the issuance of such ownership shares is necessary for ProjectCo to acquire the CVOW Property and carry out its functions under Section 1:11.

Order Bifurcating Case

In an Order Bifurcating Case entered in both Case No. PUR-2024-00045 and the present proceeding, the Commission established separate dockets to consider the relief requested in the Petition. Specifically, the Commission determined that it would evaluate the Affiliates Act Requests and Securities Act Requests in the present docket, while all other matters, including but not limited to the Utility Transfers Act and Utility Facilities Act Requests and the Other Requests, would be evaluated in Case No. PUR-2024-00045. The Commission also noted in its Order Bifurcating Case that subsequent Orders would be filed in each docket providing additional details on future procedures, including opportunities for participation, in the respective cases.

Interested persons are encouraged to review Dominion's Petition and supporting documents in full for details about these and other proposals. Interested persons are also encouraged to review the information in Case No. PUR-2024-00045 for more information on other matters related to the Petition.

The Commission entered an Order Extending Time for Review and Inviting Comments that, among other things, directed the Petitioners to provide notice to the public and provided interested persons an opportunity to comment on the Petition. The Commission extended the review period for the Securities Act Requests and Affiliates Act Requests until June 26, 2024.

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 required electronic service on parties to this proceeding. In accordance therewith, all pleadings, briefs, or other documents required to be served 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 and Procedure ("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.

Electronic copies of the public version of the Petition may be obtained by submitting a written request to counsel for the Petitioners, Vishwa B. Link, Esquire, McGuire Woods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219, or [vlink@mcguirewoods.com](mailto:vlink@mcguirewoods.com). Interested persons also may download unofficial copies of the public version of the Petition and other documents filed in this case from the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

On or before May 29, 2024, any interested person may submit comments on the Petition by following the instructions found on the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://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 such comments shall refer to Case No. PUR-2024-00053.

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 Comment, 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 Petition and other documents filed in this case, the Commission's Rules of Practice, and the Commission's Order for

Notice and Comment may be viewed on the Commission's website at: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

VIRGINIA ELECTRIC AND POWER COMPANY AND  
OSW PROJECT LLC

(6) On or before May 3, 2024, the Company shall serve a copy of this Order Extending Time for Review and Inviting Comments on the following local officials, to the extent the position exists, in each county, city, and town in which the Company provides service in the Commonwealth of Virginia: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent official) of every city and town; and the county, city, or town attorney. Service shall be made electronically where possible; if electronic service is not possible, service shall be made by either personal delivery or first-class mail to the customary place of business or residence of the person served.

(7) On or before May 17, 2024, the Company shall file proof of the notice and service required by Ordering Paragraphs (5) and (6), including the name, title, address, and electronic mail address (if applicable) of each official served, with the Clerk of the Commission, at [scc.virginia.gov/clk/efiling](http://scc.virginia.gov/clk/efiling).

(8) On or before May 29, 2024, any interested person may submit written comments on the Securities Act-related and Affiliates Act-related aspects of the Petition in this proceeding by following the instructions found on the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://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-2024-00053.

(9) In lieu of an action brief, on or before June 5, 2024, the Commission Staff ("Staff") shall file a report ("Staff Report") containing Staff's findings and recommendations.

(10) On or before June 12, 2024, the Petitioners shall file a reply to any comments that are filed and the Staff Report.

(11) All documents 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 document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(12) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Rules of Practice, the Commission directs that service in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the 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.

(13) Dominion's responses and objections to Staff data requests shall be served within four (4) business days after receipt of the same.

(14) This case is continued.

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.

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, APRIL 10, 2024

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PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2024-00045

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OSW PROJECT LLC

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Rider OSW, for the recovery of costs associated with the Project.<sup>1</sup> As part of its approval, the Commission adopted certain consumer protections for the Project and directed Dominion to file annual Rider OSW update proceedings.<sup>2</sup>

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<sup>2</sup> *Id.* At the request of Dominion and six respondents, the Commission subsequently struck the "performance standard" set forth on pages 15-16 of the Final Order and replaced it with alternative requirements. *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*, 2022 S.C.C. Ann. Rept. 305, 307, Order on Reconsideration (Dec. 15, 2022). The Company has since filed two annual updates to Rider OSW, Case No. PUR-2022-00187, and Case No. PUR-2023-00195, which is currently pending before the Commission. *See Application of Virginia Electric and Power Company, For revision of rate adjustment clause: Rider OSW, Coastal Virginia Offshore Wind Commercial Project, for the Rate Year commencing September 1, 2023*, Case No. PUR-2022-00187, Doc. Con. Cen. No. 230720087, Final Order (July 7, 2023); *Application of Virginia Electric and Power Company, For revision of rate adjustment clause: Rider OSW, Coastal Virginia Offshore Wind Commercial Project, for the Rate Year commencing September 1, 2024*, Case No. PUR-2023-00195, Doc. Con. Cen. No. 231110053, Application (Nov. 1, 2023).

<sup>3</sup> *See* Code § 56-585.1:11 G.

<sup>4</sup> *Id.* The legislation further provides that the affiliate is entitled to all rights and privileges of a public utility in connection with the qualifying wind project.

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<sup>5</sup> Code §§ 56-76 *et seq.*

<sup>6</sup> Code §§ 56-88 *et seq.*

<sup>7</sup> Code §§ 56-265.1 *et seq.*

<sup>8</sup> Code §§ 56-55 *et seq.*

<sup>9</sup> Petition at 1, 22.

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

## Overview of the Proposed Transaction

The Petitioners are seeking approval to establish ProjectCo as an offshore wind affiliate and to transfer the CVOW Project from Dominion to ProjectCo.<sup>13</sup> Thus, if the Petition is approved, ProjectCo, a direct subsidiary of Dominion, would own the offshore wind facilities that comprise the CVOW Project, including its 176 wind turbine generators, related power export facilities, and onshore transmission infrastructure connecting the Project to the electric grid.<sup>14</sup> Dominion would transfer the Project's assets to ProjectCo, assign certain permits, leases, contracts, and real estate interests associated with the Project to ProjectCo, and amend the CPCN issued in Case No. PUR-2021-00142 to allow ProjectCo to construct and operate all electric interconnection and transmission facilities associated with the Project on the generation side of the PJM Interconnection, L.L.C. ("PJM") point of interconnection to the transmission grid (collectively, "CVOW Property").<sup>15</sup> As set forth in the Petition, Dominion would transfer all CVOW Property to ProjectCo at cost/net book value without a premium or discount.<sup>16</sup> Dominion would continue to develop and operate the Project and would act as the project manager in procurement, development, construction, operation, management, maintenance and

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at Attachment A (Transaction Summary), p. 1.

<sup>15</sup> *Id.* at 1, Attachment A (Transaction Summary), p. 2. ProjectCo would sell the energy output from the CVOW Project into PJM, and associated energy revenues would be credited against the costs of the Project just as if the Company sold the energy into the market. *Id.* at 19.

<sup>16</sup> *Id.* at Attachment A (Transaction Summary), p. 2.

decommissioning.<sup>17</sup> Dominion would also maintain control of the governance of ProjectCo, subject to certain customary minority rights of Stonepeak Member.<sup>18</sup>

According to the Petitioners, the arrangement would be seamless to Dominion's customers, as Dominion would continue to be the load serving entity for all Virginia retail customers, customers would not experience a change in the way they are billed for CVOW Project-related costs, and cost recovery would not materially change<sup>19</sup> as a result of the transfer of the CVOW Project from Dominion to ProjectCo.<sup>20</sup>

As part of and through this proposed arrangement, Dominion has agreed to sell a 50% interest in the CVOW Project to Stonepeak Member.<sup>21</sup> Stonepeak Member is a company that was formed for the sole purpose of investing in ProjectCo.<sup>22</sup> If the Petition is approved, Stonepeak Member would fund 50% of the projected capital costs of the CVOW Project.<sup>23</sup> As such, Stonepeak would initially contribute one-half of the approximately \$6.4 billion invested

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<sup>17</sup> *Id.* at 14, Attachment A (Transaction Summary), p. 2. In doing so, the Company would provide certain project management services to ProjectCo, as ProjectCo would not have any employees or officers. *Id.*

<sup>18</sup> *Id.* at 9, Attachment A (Transaction Summary), p. 2.

<sup>19</sup> The Petitioners state there would be two minor changes to Rider OSW, with both changes being cost-neutral for customers. The Petitioners propose to include operations and maintenance expense charges for Project-related direct labor and Project-related uncollectible expenses in Rider OSW. Inclusion of those charges in Rider OSW would be offset by a corresponding reduction to the cost of service in base rates. *Id.* at 11.

<sup>20</sup> *Id.* at 9-10, 19. ProjectCo would be compensated for the CVOW Project and its service to customers through the existing Rider OSW. Going forward, the Petitioners anticipate that Dominion and ProjectCo would file Rider OSW as co-applicants, with the Company acting as the billing agent for ProjectCo. The Petitioners further assert that the partnership would not alter any aspect of the pending Rider OSW application in Case No. PUR-2023-00195. *Id.* at 10.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at Attachment A (Transaction Summary) at 1. Stonepeak Member is indirectly controlled by Stonepeak GP Investors Holdings Manager LLC ("Stonepeak Parent"). Collectively, Stonepeak Member and Stonepeak Parent, together with the entities (other than portfolio companies), investment funds, and investment vehicles, directly or indirectly owned, managed, or controlled by Stonepeak Parent, will be referred to herein as "Stonepeak." *See id.*

<sup>23</sup> *Id.* at Attachment A (Transaction Summary), p. 2.

capital (rate base) of the Project, or approximately \$3.2 billion, to ProjectCo, which would then be distributed from ProjectCo to Dominion as reimbursement for Stonepeak Member's 50% interest in the Project.<sup>24</sup> Following this initial contribution, Dominion and Stonepeak Member would contribute capital throughout the construction period to fund the CVOW Project's completion on a 50/50 basis.<sup>25</sup> According to the Petitioners, in the event the Project exceeds its currently projected construction cost estimate, the Affiliate Agreements establish robust cost sharing arrangements, including meaningful protection for Dominion and its customers from any unforeseen Project cost increases.<sup>26</sup> Thus, the Petitioners assert that the partnership with Stonepeak Member would reduce the financial burdens and risks associated with the Project's development and operation.<sup>27</sup>

Significantly, the Petitioners state that Dominion has agreed to sell a 50% *noncontrolling* interest in the Project to Stonepeak Member.<sup>28</sup> In other words, while Stonepeak Member would have a 50% ownership share in ProjectCo, it would not have control over management of ProjectCo from a governance perspective. Such controlling interest would instead be maintained by Dominion.<sup>29</sup>

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<sup>24</sup> *Id.* The anticipated total cost of the CVOW Project is \$9.8 billion. The Company anticipates that it will have spent approximately \$6.4 billion on the Project as of the time the transaction is expected to close. *Id.* at 19.

<sup>25</sup> *Id.* at 10.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 12.

### Affiliates Act Request

As discussed above, the Petitioners seek approval to enter into proposed Affiliate Agreements.<sup>30</sup> The Affiliate Agreements include a Limited Liability Company Agreement, a Project Management Agreement, a Rider OSW Servicing Agreement, a Renewable Energy Certificate Purchase and Sale Agreement, and a North Carolina Revenue Contract.<sup>31</sup> The Affiliate Agreements are contracts that would, among other things, effectuate the transfer of the CVOW Project from Dominion to ProjectCo and facilitate financing of the Project.<sup>32</sup> The Petitioners maintain that approval of the Affiliate Agreements would allow Dominion to maintain strong financial metrics without any incremental cost to customers.<sup>33</sup>

### Utility Transfers Act and Utility Facilities Act Requests

Through the Petition, the Petitioners seek approval to transfer the CVOW Project's assets from Dominion to ProjectCo.<sup>34</sup> This would be accomplished through the transfer of the assets, permits, leases, contracts, and real estate interests that comprise the CVOW Property, including the amendment of the CPCN issued in Case No. PUR-2021-00142 pursuant to the Utility Facilities Act.<sup>35</sup> The Petitioners assert that approval of the proposed transfer would preserve the customer protections adopted by the Commission in Case No. PUR-2021-00142, maintain the

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* The Petitioners also provided an executed Equity Capital Contribution Agreement with its Petition but assert that the agreement does not require Commission approval. *See id.* at 8, n.7.

<sup>32</sup> *Id.* at 12.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 8.

<sup>35</sup> *Id.* at 1-2, Attachment A (Transaction Summary), p. 2.

Commission's ongoing regulatory authority to ensure Project costs are reasonable and prudent, and in no way impair or jeopardize adequate service to the public at just and reasonable rates.<sup>36</sup>

#### Securities Act Request

If the Petition is approved, ProjectCo would issue ownership shares exclusively to Dominion and Stonepeak Member in a private transaction at the time of closing.<sup>37</sup> As such, to the extent the Commission deems it necessary, the Petitioners seek authority for ProjectCo to issue these ownership shares to Dominion and Stonepeak Member, and to revise the ownership shares from time to time as may be required.<sup>38</sup> The Petitioners state that the issuance of such ownership shares is necessary for ProjectCo to acquire the CVOW Property and carry out its functions under Section 1:11.<sup>39</sup>

#### Other Requests

The Petitioners state that, given the provisions of Section 1:11, they do not believe that ProjectCo's activities require the issuance of an independent CPCN to ProjectCo to furnish public utility service pursuant to Code § 56-265.3.<sup>40</sup> As such, the Petitioners are seeking a finding that ProjectCo may operate "in association with" Dominion pursuant to the Company's

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<sup>36</sup> *Id.* at 19-20.

<sup>37</sup> *Id.* at 20, Attachment H (Financing Summary), p. 1. Specifically, units would be issued at the time of closing of the Equity Capital Contribution Agreement. *Id.* at Attachment H (Financing Summary), p. 1.

<sup>38</sup> *Id.* at 20. The terms of certain Affiliate Agreements govern how the issuance of future units are to be priced. *Id.* at Attachment H (Financing Summary), p. 1. The terms of such Affiliate Agreements also prohibit the members of ProjectCo from directly transferring their equity interests in ProjectCo to third parties or undertaking any transfer that would result in a change of control of such member of ProjectCo prior to the earlier of (a) the time the CVOW Project commences commercial operations, or (b) the fifth anniversary of closing of the transactions contemplated by the Equity Capital Contribution Agreement, and provides that no member of ProjectCo may consummate either of those actions without obtaining the required governmental approvals, including any required Commission approval. *Id.* at 20-21.

<sup>39</sup> *Id.* at 20.

<sup>40</sup> *Id.* at 11.

existing CPCN.<sup>41</sup> The Petitioners have also requested any further relief as deemed necessary and appropriate to authorize the activities and transactions included in the Petition, which would also be considered as part of the Other Requests.<sup>42</sup>

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that separate dockets should be established for reviewing the relief requested in the Petition.

In their Petition, the Petitioners seek, among other things, approval pursuant to the Securities Act, the Affiliates Act, the Utility Transfers Act, and the Utility Facilities Act, to establish ProjectCo as an offshore wind affiliate and to transfer the CVOW Project to ProjectCo.<sup>43</sup> The Petitioners request a ruling on all issues presented in the Petition within 90 days of its filing.<sup>44</sup> As the Petitioners acknowledge, 90 days is the maximum statutory timeframe for a decision under the Affiliates Act.<sup>45</sup>

Certain requests in the Petition, including the proposed transfer from Dominion to ProjectCo of the assets, permits, leases, contracts, and real estate interests that comprise the CVOW Property, present complex and novel issues for the Commission's consideration. The Commission find that these matters, which, unlike the Securities Act Requests and Affiliates Act Requests, do not have a statutorily prescribed period for Commission action, require additional time to allow for the meaningful participation by interested parties and the development of a full

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 22.

<sup>43</sup> *Id.* at 8.

<sup>44</sup> *Id.* at 21.

<sup>45</sup> *Id.*; Code § 56-77 A.

and complete record. The Petitioners request for a ruling on these issues within 90 days is therefore denied.

Accordingly, the Commission will establish separate dockets to consider the relief requested in the Petition. The Commission will evaluate the Affiliates Act Requests and Securities Act Requests in Case No. PUR-2024-00053. All other matters, including but not limited to the Utility Transfers Act and Utility Facilities Act Requests and the Other Requests, will be evaluated in Case No. PUR-2024-00045.<sup>46</sup>

Accordingly, IT IS ORDERED THAT:

(1) The Commission hereby establishes and docket Case No. PUR-2024-00053 to evaluate the Petitioners' proposed Affiliates Act Requests and Securities Act Requests.

(2) The Commission hereby establishes and docket Case No. PUR-2024-00045 to evaluate all requests in the Petition excluding the Affiliates Act Requests and Securities Act Requests, which will be considered in Case No. PUR-2024-00053.

(3) The Commission's Document Control Center is directed to file in Case No. PUR-2024-00053 a copy of the Petition and the Motion of Virginia Electric and Power Company and OSW Project LLC for Entry of a Protective Order and Additional Protective Treatment. No internal or external distribution is required of the documents directed to be filed in Case No. PUR-2024-00053. A copy of all papers previously filed in Case No. PUR-2024-00045 shall also remain in that docket.

(4) These matters are continued.

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<sup>46</sup> Subsequent Orders will be filed in each docket providing additional details on future procedures, including opportunities for participation, in the respective cases.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service Lists in these matters. The Service Lists are available from the Clerk of the Commission.