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April 29, 2022

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VIA ELECTRONIC FILING

Mr. Bernard Logan, Clerk
c/o Document Control Center
State Corporation Commission
1300 E. Main Street
Richmond, Virginia 23219

Re: *Application of Virginia Electric and Power Company, For approval and certification for 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:

Pursuant to Rule 170 of the Commission's Rules of Practice and Procedure and Paragraph 7 of the Hearing Examiner's Protective Ruling on December 9, 2022, in this matter, please accept the following Motion for Ruling on Confidentiality of Information on behalf of the Office of the Attorney General's Division of Consumer Counsel.

Thank you for your assistance in this matter.

Sincerely,

/s/ C. Meade Browder Jr.

C. Meade Browder Jr.
Senior Assistant Attorney General

cc: Service Lis

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2021-00142

For approval and certification for 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

MOTION FOR RULING ON CONFIDENTIALITY OF INFORMATION

On November 5, 2021, Virginia Electric and Power Company (“VEPCO” or “Company”) filed with the State Corporation Commission (“Commission”) an Application for approval and certification of the proposed Coastal Virginia Offshore Wind Commercial Project (“CVOW” or “CVOW Project”) and for approval of a rate adjustment clause, designated Rider Offshore Wind (“Rider OSW”). The Company simultaneously filed a Motion for Protecting Ruling and Additional Protective Treatment for Extraordinarily Sensitive Information (“Motion for Protective Ruling”). The Hearing Examiner’s Protective Ruling and Additional Protective Treatment for Extraordinarily Sensitive Contract & Prices Information was entered on December 13, 2021 (“Protective Ruling”).

Pursuant to Rule 170 of the Commission’s Rules of Practice and Procedure (“Rule 170”) and Paragraph 7 of the Protective Ruling (“Paragraph 7”), Consumer Counsel seeks a ruling by the Commission that certain information presented in Commission Staff pre-filed testimony that is designated as Confidential or Extraordinarily Sensitive (“ES”) shall be public. If the Company determines that any of this information in Staff’s public testimony need not be redacted and that

it may be made public, Consumer Counsel seeks such clarification and confirmation from the Company. In support of its motion, Consumer Counsel states as follows:

1. VEPCO's application seeks the approval of the first United States commercial scale offshore wind electric generation project, to be located in federal waters approximately 27 miles off the coast of Virginia Beach. According to the Company, the construction phase of the project is estimated to cost \$9.8 billion, excluding financing costs, ongoing operations and maintenance (O&M) costs, among other additional costs. To Consumer Counsel's knowledge, this would be by far the largest capital investment in VEPCO's history. The project will be funded by the Company's captive ratepayers, and is touted as providing significant certain economic benefits.

2. The Application was filed in both Public (redacted) and Confidential/ES versions. As noted in the Motion for Protective Order and Additional Protective Treatment filed accompanying the application, the Application and its various subparts contained information the Company deemed to be Confidential or ES, principally "Contracts and Prices Information" and the "RFP or RFI Results."¹ Information provided by the Company through the discovery process has also been designated as Confidential or ES. 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.

2. On March 25, 2022, Consumer Counsel and two other parties intervening in this case filed testimony and exhibits, in public versions only.

3. On April 8, 2022, the Commission's Staff filed comprehensive testimony and exhibits, consisting of four volumes. Each of the four volumes was filed in both a public, redacted version and an ES (Volumes I, II, and IV) or a Confidential (Volume III) version.

¹ Motion for Protective Order at 2.

4. On April 22, 2022, the Company filed its rebuttal testimony, in a public version only.

5. There exists a presumption in the Code of Virginia and the Commission’s Rules in favor of public disclosure of information in Commission proceedings.² Mirroring the language of Rule 170, Paragraph 7 provides that, “[u]pon challenge, the information shall be treated as confidential pursuant to the Rules only where the party requesting confidential treatment can demonstrate to the satisfaction of the Commission or Hearing Examiner that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure.” A “presumption . . . operates to shift to the opposing party the burden of producing evidence tending to rebut the presumption.”³ In other words, a legal presumption weighs toward a specific conclusion unless proven otherwise.⁴

6. Volumes I and II of Staff’s April 8, 2022 filing contains the testimony and exhibits of Staff witness Katya Kuleshova, who provides the Staff’s findings and recommendations concerning the statutory Presumption of Reasonableness and Prudence of Costs; Costs and Risk Analysis and Proposed Ratepayer’s Protections; Net Present Value Analysis; and Need. More than 40 percent of the public version of Staff witness Kuleshova’s testimony contains redactions (52 of 129 pages). Consumer Counsel presumes these redactions reflect Company designations of information that is deemed either Confidential or ES. There is material throughout this testimony, however, where the basis for protective treatment is not apparent.

7. By way of example and without limitation, Consumer Counsel questions the following Confidential or ES designations in witness Kuleshova’s testimony:

² Va. Code § 12.1-26 (“The sessions of the Commission for the hearing of any complaint, proceeding, contest, or controversy instituted or pending before it, whether of its own motion or otherwise, shall be made public, and its findings, decisions, and judgments shall be made public forthwith.”)

³ *Martin v. Phillips*, 235 Va. 523, 526, 369 S.E. 2d 397, 399 (1988).

⁴ *Id.*

- At pages 7 and 18, treating as ES the amount and percentage of competitively bid costs compared to total projects costs, while the same information is public on page 19 of Company witness Bennett’s direct testimony and page 50 of the Application’s Generation Appendix.
- At page 8 and 41, treating a Confidential a brief description of a component of the levelized cost of energy to which the levelized cost of energy (“LCOE”) is most sensitive.
- At pages 9 and 10, redacting general, qualitative assessments of the principal risks of the project, including a statement as to the seasons of the year in which the facility is expected to produce the most energy. This same seasonal production information is publicly displayed at page 15 of Company witness Bennett’s rebuttal testimony. Mr. Bennett’s public rebuttal testimony quotes verbatim the information that that is treated as Confidential and redacted at page 77 of Ms. Kuleshova’s public testimony.
- Information about projected seasonal/monthly energy prices is treated as Confidential at page 77 and Attachment KK-30, but Commission has previously ruled that such forward-looking energy price forecasts do not constitute privileged or confidential commercial or financial information posing a significant risk of harm if disclosed publicly.⁵
- At pages 19 and 41, there are redactions of what is simply the source of cited information. In other words, the particular discovery response, or identification of where in VEPCO direct testimony certain information is found, is treated as ES or Confidential.
- Ms. Kuleshova’s public testimony includes redactions to levelized cost of energy analysis at pages 30, 32, 36-44, and 46-47. As an example, Ms. Kulesova’s testimony treats as Confidential the impact on the LCOE analysis that would be reflected if the Company’s cost of equity were increased through a higher approved ROE and a more equity weighted capital structure. But the Company has already treated its LCOE analysis, including identification of what it considered to be key LCOE inputs, as public in the direct testimony of Company witness Bennet. Moreover, Company witness Kelly includes similar LCOE sensitivity analyses in his rebuttal testimony that is treated as public. The Company seems to acknowledge that sensitivity-based adjustments to the LCOE analysis need not be treated as Confidential, as Mr. Kelly’s

⁵ *Commonwealth of Virginia, ex. rel. State Corporation Commission, In re: Virginia Electric and Power Company’s Integrated Resource Plan filing pursuant to § 56-597 et seq. of the Code of Virginia, PUE 2013-00088, Order (June 5, 2014) <https://scc.virginia.gov/docketsearch/DOCS/2xvm01!.PDF> (finding that withholding as confidential “Power Price Forecasts,” among other forecasted data, should be made public notwithstanding an objection by VEPCO.)*

Rebuttal Schedule 1 appears to remove redactions of information in Staff's Interrogatory 4-55.

- At pages 62 through 69, and Attachment KK-27, information from a Moody's Investor Service report on operational risks specific to the nascent offshore wind sector is treated as Confidential. Consumer Counsel is aware that Moody's reports, although released through subscription services, not unlike subscription-based news services, are routinely introduced into the public record in rate case proceedings at the Commission where return-on-equity is being considered.
- At pages 105 through 107, the net present value ("NPV") results of the CVOW project from revised PLEXOS model runs are treated as ES. In this discussion, the amount of solar generation displaced by the CVOW Project is treated as public, but the amount of solar generation that is postponed by the CVOW Project is treated as Confidential. Further it is not clear why the key components and observations from the revised PLEXOS model run must be treated as ES while the very same key components and observations of the Company's original PLEXOS model run is treated as public at pages 88-89 of Ms. Kuleshova's testimony.

8. With the breadth and scope of Confidential and ES designation in Staff witness

Kuleshova's testimony, it would appear to be difficult for any meaningful examination of this important testimony to take place in public session.

9. Consumer Counsel questions redacted information that is the subject of Confidential and ES designations in other volumes of Staff's testimony.

10. In Volume IV, the Staff testimony of witness Welsh, at pages 4 through 10, and in attached exhibits, redacts and treats as ES figures on the lifetime revenue requirement of the project. At the same time, Welsh Appendix D at pages 38-43 appears to treat this revenue requirement information as public. In any event, it is not credible to designate annual or lifetime revenue requirements as Confidential or ES. This is a public utility project that will be funded entirely by captive ratepayers with a dollar-for-dollar rate recovery mechanism. Captive ratepayers have the right to know how much of their money is being committed to pay for a project at the time it is being proposed. This would necessarily include the total cost of the project, plus the amount of any benefits that the Company believes it may be able to monetize for

the benefit of customers. This further includes the impact that would accrue through anticipated changes to the capacity factor or capacity value.

11. Also in Volume IV, the testimony and exhibits of Staff witness Gereaux, treats as Confidential and ES information from published reports of ratings agencies Fitch and Moody's. As noted above, although such published reports are typically distributed on a subscription basis, they are routinely introduced in the public record in Commission proceedings, as are reports from other subscription-based news agencies.

12. With the Confidential and ES information in Staff's testimony and exhibits now challenged herein pursuant to Rule 170 or Paragraph 7, the party requesting secrecy has the burden to make an affirmative showing, "to the satisfaction of the Commission," that such information must be shielded from the public based on a risk of harm that outweighs the presumption favoring disclosure.⁶ Otherwise the information must be made public. If VEPCO does not file a response in opposition to this motion bearing this burden, the information shall become public by operation of Rule 170. Rule 170 does not require a movant to provide any justification as to why challenged information should be made public; the burden is on the party objecting to disclosure to demonstrate that the information may not be disclosed due to a specific and compelling risk of harm. If VEPCO does not believe that certain Confidential and ES redactions in Staff's testimony are necessary, it need not respond, and such information will become public by operation of law.

13. Beyond filing this challenge, Consumer Counsel is not obligated under the law or Commission Rules to demonstrate that the questioned information should be made public.

⁶ Rule 170.

Pursuant to the terms of the protective ruling requested by VEPCO in this case, if the Company feels compelled to respond, the Company's response shall:

- (1) describe each document and all information, such description to include the character and contents of each document and all information to the extent reasonably possible without disclosing the Confidential Information;
- (2) explain in detail why the information requires confidential treatment; and
- (3) describe and explain in detail the anticipated harms that might be suffered as a result of the failure of the document to be treated as confidential.⁷

WHEREFORE, Consumer Counsel seeks a ruling by the Commission that information designated as Confidential or ES in the question and answer testimony of Commission Staff witnesses Kuleshova, Welsh, and Gereaux pre-filed testimony (and any related schedules, appendixes, or exhibits) should now be deemed public and refiled accordingly.

Respectfully submitted,

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⁷ Protective Ruling at P (7)(a).

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April 29, 2022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on April 29, 2022, by electronic service to:

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