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PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2018-00121

For a prudency determination with respect to the
Coastal Virginia Offshore Wind Project pursuant to
Virginia Code § 56-585.1:4 F

FINAL ORDER

On August 3, 2018, Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion" or "Company"), filed a petition ("Petition") with the State Corporation Commission ("Commission") for a prudency determination pursuant to Code § 56-585.1:4 F and for other associated approvals, as needed. The Petition relates to proposed Coastal Virginia Offshore Wind ("CVOW") generation facilities consisting of two 6 megawatt (nominal) wind turbine generators located approximately 27 statute miles (about 24 nautical miles) off the coast of Virginia Beach in federal waters and the related generation and distribution interconnection facilities ("CVOW Interconnect Facilities"), which include a smaller subset of generation interconnection facilities that are located entirely within the Commonwealth of Virginia ("Virginia Interconnect Facilities") (collectively, the wind turbine generators and CVOW Interconnect Facilities, inclusive of the Virginia Interconnect Facilities, comprise the "CVOW Project," "CVOW," or "Project").¹

Dominion's proposed CVOW Project would be located on a research lease site provided by the United States Bureau of Ocean Energy Management and held by the Virginia Department

¹ Ex. 2 (Petition) at 2.

of Mines, Minerals, and Energy.² According to the Petition, the proposed CVOW Project would be interconnected at 34.5 kilovolts ("kV") (*i.e.*, distribution level).³ The proposed CVOW Interconnect Facilities would begin with a 34.5 kV alternating current ("AC") submarine cable that would interconnect the two wind turbine generators to one another, and to an approximately 27-mile long, 34.5 kV AC submarine distribution cable ("Export Cable"), which would connect to an onshore transition point located on Camp Pendleton State Military Reservation at an interface cabinet ("Beach Cabinet") in Virginia Beach, Virginia.⁴ From the Beach Cabinet, a 34.5 kV underground cable ("Onshore Interconnection Cable") would continue onshore for approximately 1.2 miles, terminating at an interconnection station ("Interconnection Station"), where switches, auxiliary equipment, and a metering cabinet would be installed.⁵

The Virginia Interconnect Facilities would comprise, starting from the Virginia jurisdictional line demarcating state-owned submerged lands, approximately 3.6 miles of Export Cable, the Beach Cabinet, the approximately 1.2-mile Onshore Interconnection Cable, and the Interconnection Station.⁶ From the Interconnection Station, the proposed CVOW Project would interconnect with the Company's existing distribution system via a new 34.5 kV underground line, approximately one-quarter mile in length, to a new terminal pole on nearby existing distribution Circuit ("Cir.") 421, which terminates with the Company's existing Birdneck

² *Id.* at 4.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 4-5.

⁶ *Id.* at 5.

Substation.⁷ Dominion proposes to replace relays inside the existing control house at Birdneck Substation to ensure Cir. 421 has proper protection to accept reverse flow from the wind turbine generators onto the Company's system (collectively, "Distribution Grid Facilities").⁸

Dominion asserts that the Virginia Interconnect Facilities and Distribution Grid Facilities are extensions or improvements in the usual course of business under Code § 56-265.2 and, therefore, do not require approval from the Commission.⁹ Moreover, Dominion asserts that while Code § 56-585.1:4 F provides for a prudence determination as to construction of certain wind generation facilities, there is no requirement within Code § 56-585.1:4 directing the utility to seek a certificate of public convenience and necessity ("CPCN") or any other type of approval for electric facilities related to the proposed CVOW Project.¹⁰ Notwithstanding, Dominion states it included information to support approval and certification of the Virginia Interconnect Facilities pursuant to Code § 56-46.1 and §§ 56-265.1 *et seq.* in its Petition.¹¹ The Company also included a description of the route of the Virginia Interconnect Facilities and Distribution Grid Facilities for notice purposes.¹² Dominion asserts that the Commission's duty to ensure that the effects of the Virginia Interconnect Facilities on the environment are minimized under Code

⁷ *Id.* at 5 n.5.

⁸ *Id.*

⁹ *Id.* at 5 n.5, 9-11.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 11-12.

¹² *Id.* at 5 n.5; Ex. 3 (Mitchell Direct) 24 n.7, 27-28, Schedule 13.

§ 56-46.1 is satisfied by the proposed CVOW Project's federal and state approvals regarding the siting, route, placement, installation, and operation of those facilities.¹³

According to the Petition, Dominion executed an engineering, procurement, and construction ("EPC") agreement with Ørsted (formerly Dong Energy) in January 2018.¹⁴ In June 2018, Dominion executed an EPC agreement with L.E. Myers for the onshore portion of the proposed CVOW Project.¹⁵

Dominion's current schedule for the proposed CVOW Project contemplates that the Project would commence operations in December 2020.¹⁶ According to Dominion, the Company must pursue the proposed CVOW Project now if it is to be ready in time to inform on the viability of pursuing a larger offshore wind project in the future.¹⁷ Dominion asserts that the Company could deploy a larger commercial offshore wind project as early as 2024.¹⁸

Dominion estimates the total cost of the proposed CVOW Project, including the CVOW Interconnect Facilities, to be approximately \$300 million, excluding financing costs.¹⁹ According to Dominion, the EPC agreements with Ørsted and L.E. Myers fix approximately 87% of the total \$300 million cost estimate.²⁰

¹³ Ex. 2 (Petition) at 12.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Dominion plans to include the proposed CVOW Project costs in its base rate cost of service for recovery through its rates for generation and distribution services.²¹ Dominion states that, if necessary, the Company may designate the costs for customer credit reinvestment offset pursuant to Code § 56-585.1 A 8.²²

In sum, the Company "respectfully requests that the Commission issue an Order (1) finding that the construction of the Coastal Virginia Offshore Wind Project, including the Virginia Interconnect Facilities, is prudent, (2) granting a CPCN for the Virginia Interconnect Facilities, if required, and (3) granting any such other approvals as deemed appropriate and necessary."²³

On August 7, 2018, the Commission issued an Order for Notice and Hearing that, among other things, established procedures for this matter, permitted interested persons to participate, and scheduled legal briefs, oral argument, and an evidentiary hearing. The following filed notices of participation in this case: Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Virginia Chapter of the Sierra Club ("Environmental Respondent"); Mid-Atlantic Renewable Energy Coalition, Advanced Energy Economy, and Virginia Advanced Energy Economy (collectively, "MAREC"); and Appalachian Power Company ("Appalachian").

On September 12, 2018, the Commission issued an Order specifying issues that should be addressed in the legal briefs. All participants, including the Commission's Staff ("Staff"), filed

²¹ *Id.*

²² *Id.*

²³ *Id.* at 13.

legal briefs. On October 4, 2018, the Commission received oral argument from all participants as scheduled. The evidentiary public hearing in this case was held on October 9-11, 2018, in which the Commission received evidence and argument from Dominion, Consumer Counsel, Environmental Respondent, MAREC, and Staff. The Commission also received testimony and written and electronic comments from public witnesses in this proceeding.

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

Code § 56-585.1:4 F

Dominion filed the instant Petition under Code § 56-585.1:4 F, which was enacted during the 2018 Session of the General Assembly.²⁴ Code § 56-585.1:4 F states as follows (emphases added):

A utility may elect to petition the Commission, outside of a triennial review proceeding conducted pursuant to § 56-585.1, at any time for a *prudency determination* with respect to the construction or purchase by the utility of one or more solar or *wind generation facilities* located in the Commonwealth or *off the Commonwealth's Atlantic Shoreline* or the purchase by the utility of energy, capacity, and environmental attributes from solar or wind facilities owned by persons other than the utility. The Commission's final order regarding any such petition shall be entered by the Commission *not more than three months* after the date of the filing of such petition.

Public Interest

The General Assembly has repeatedly mandated that offshore wind generation facilities such as CVOW are in the "public interest," and that the Commission shall "liberally construe" such provisions (emphases added):

- Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar or *wind generation facilities* located in the

²⁴ 2018 Acts ch. 296, or Senate Bill 966.

Commonwealth or *off the Commonwealth's Atlantic shoreline*, each having a rated capacity of at least one megawatt and having in the aggregate a rated capacity that does not exceed 5,000 megawatts, or (ii) the purchase by a public utility of energy, capacity, and environmental attributes from solar facilities described in clause (i) owned by persons other than a public utility *is in the public interest, and the Commission shall so find if required to make a finding regarding whether such construction or purchase is in the public interest.* Code § 56-585.1:4 A.

- Construction, purchasing, or leasing activities for a test or demonstration project for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived *from offshore wind* with an aggregate capacity of not more than 16 megawatts *are in the public interest.* Code § 56-585.1:4 E.
- The construction or purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, that use energy derived from sunlight or *from wind* and are located in the Commonwealth or *off the Commonwealth's Atlantic shoreline*, regardless of whether any of such facilities are located within or without the utility's service territory, *is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title.* Code § 56-585.1 A 6.
- In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § 56-598, planning and development activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from sunlight or from onshore or *offshore wind* *are in the public interest.* Code § 56-585.1 A 6.
- Construction, purchasing, or leasing activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from sunlight or from wind with an aggregate capacity of 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, together with *a new test or demonstration project for a utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 16 megawatts, are in the public interest.* Code § 56-585.1 A 6.

- The construction or purchase by an investor-owned incumbent utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, that use energy derived from sunlight or *from wind* and are located in the Commonwealth or *off the Commonwealth's Atlantic shoreline*, regardless of whether any of such facilities are located within or without such utility's service territory, *is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this section.* Code § 56-585.1:1 G.

In addition to the multiple public policy declarations cited above, the General Assembly also included the following in Enactment Clause 14 of Senate Bill 966 (2018 Session of the General Assembly), also codified in Code § 56-596.1 (emphases added):

That it is the objective of the General Assembly that the construction and development of new utility-owned and utility-operated generating facilities utilizing energy derived from sunlight *and from wind* with an aggregate capacity of 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, *be placed in service on or before July 1, 2028.*²⁵

Evidence

Evidence in this case relevant to the *factual* question of prudence includes that listed below.

Risk

- Customers bear almost all of the risks of this Project.²⁶
- Customers bear the risk of potential cost overruns.²⁷

²⁵ 2018 Acts ch. 296.

²⁶ *See, e.g.*, Tr. 25-26, 160-161, 177, 296-297, 311, 317; Ex. 22 (Abbott) at 21, 26.

²⁷ *See, e.g.*, Ex. 20 (Myers) at 14-16.

- Customers bear the risk of a lack of Project performance.²⁸
- Other utilities involved in offshore wind have done so through a power purchase agreement ("PPA") model, which generally places all or some of the risk on the developer.²⁹
- The Company, however, proposes a construction model, which places essentially all the risk on Dominion's customers.³⁰
- The Company asserts that it may seek additional cost recovery from customers if the Project exceeds \$300 million.³¹
- Based on Dominion's prior CVOW risk assessments, the contingency amount built into the projected \$300 million appears low.³²
- Dominion's "ratepayers bear almost all the risk of a project design failure except for a limited amount of risk retained by the EPC contractor during the limited warranty period."³³

CVOW cost

- Dominion estimates that the capital cost of the CVOW Project is approximately \$300 million, excluding financing costs.³⁴
- Dominion's customers will pay the costs of this Project.³⁵
- Dominion asserts that the annual and total revenue required from customers, and the impact on customers' bills, is not relevant to the

²⁸ See, e.g., Ex. 22 (Abbott) at 21.

²⁹ Tr. 296-297.

³⁰ See, e.g., Tr. 296-297, 310-311.

³¹ Although approximately 87% of the estimated cost is fixed, the Company may still seek recovery of any increase in costs over \$300 million. Ex. 29 (Mitchell Rebuttal) at 17-18, 28-29; Ex. 20 (Myers) at 14-16.

³² Ex. 20 (Myers) at 14-16, Myers Appendix B at 64 (Dominion's 2017 Risk Assessment for its Board of Directors). See also Ex. 3 (Mitchell Direct) at Schedule 8.

³³ Ex. 22 (Abbott) at 21.

³⁴ See, e.g., Ex. 2 (Petition) at 6; Ex. 20 (Myers) at 1.

³⁵ See, e.g., Tr. 160-161, 174, 253-254, 269, 276, 470-471; Tr. 11-13, 17-18 (Oral Argument, Oct. 4, 2018).

Commission's prudence review in this case.³⁶

- The proposed Project is not the result of a competitive bidding process.³⁷
- The \$300 million construction cost estimate for the Project is largely based on a negotiated contract with two EPC vendors without competing bids, after two previous attempts by the Company to obtain competitive EPC bids for the Project were unsuccessful.³⁸
- CVOW has by far the highest levelized cost of energy of new resources evaluated in Dominion's Integrated Resource Plan ("IRP").³⁹
- The forecasted levelized cost of energy from the CVOW Project is 78.0¢/kWh.⁴⁰

CVOW cost compared to other offshore wind

- CVOW's energy cost is 9.3 times greater than the average cost of the Vineyard Wind offshore wind project off the coast of Massachusetts, which is 8.4¢/kWh.⁴¹

CVOW cost compared to other resource options

- CVOW's energy cost is 13.8 times greater than the cost of new *solar* facilities, which is 5.6¢/kWh.⁴²
- CVOW's energy cost is 8.3 times greater than the cost of new *onshore wind* facilities, which is 9.4¢/kWh.⁴³

³⁶ Ex. 16 (Norwood) at 5-6. *See also* Ex. 33 (Givens Rebuttal) at 2-3.

³⁷ Ex. 3 (Mitchell Direct) at 5-8; Ex. 16 (Norwood) at 13; Ex. 29 (Mitchell Rebuttal) at 13-14.

³⁸ Ex. 16 (Norwood) at 13.

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 11.

⁴¹ Ex. 23 (Articles on Vineyard Wind).

⁴² Ex. 16 (Norwood) at 11.

⁴³ *Id.*

- CVOW's energy cost is 11.5 times greater than the cost of new 2x1 combined-cycle *natural gas* facilities, which is 6.8¢/kWh.⁴⁴
- CVOW's energy cost is approximately 26 times greater than purchasing energy from the *market*, which is in the 3.0¢/kWh range.⁴⁵

CVOW cost uncertainty

- Dominion admits that it does not have detailed information on construction costs for other recent offshore wind projects to confirm the reasonableness of the CVOW Project cost.⁴⁶
- The Company has not demonstrated the reasonableness of the estimated CVOW Operations and Maintenance ("O&M") costs by comparison to O&M costs of other similar projects.⁴⁷
- The estimated O&M costs for the Project appear to be relatively high and are significantly higher than the Company's total all-in levelized cost for solar generation alternatives.⁴⁸
- Comparing the reported construction cost for the 30 MW Block Island Project (*i.e.*, the only other commercial scale offshore wind project in the United States) to the estimated construction cost of the 12 MW CVOW Project raises questions regarding the reasonableness of the CVOW Project cost estimate that are difficult to answer.⁴⁹
- "[I]t is unusual for a regulator to make a prudence determination for a major generation investment before the investment is made by the utility, and without reliable information to confirm project cost and

⁴⁴ *Id.*

⁴⁵ Tr. 178.

⁴⁶ Ex. 16 (Norwood) at 13-14. *See also* Ex. 29 (Mitchell Rebuttal) at 10-11, 15-16.

⁴⁷ Ex. 16 (Norwood) at 15. *See also* Ex. 29 (Mitchell Rebuttal) at 16 ("While it could prove helpful in this case, a comparison of O&M costs to other comparable [offshore wind] projects is hampered by the uniqueness of the CVOW Project as a whole and the public availability of comparable figures, and to the extent available, any such comparison must take into account differing design and locational attributes of the facilities.").

⁴⁸ Ex. 16 (Norwood) at 15-16.

⁴⁹ *Id.* at 14. *See also* Ex. 29 (Mitchell Rebuttal) at 14-16.

performance estimates."⁵⁰

- "This [(i.e., a pre-construction prudence proceeding)] is particularly true in instances involving generating projects, such as the CVOW, that are not selected through a competitive bidding process, and for which project cost and performance estimates are not guaranteed in some manner."⁵¹

Service obligation

- "[I]t is apparent that the Project is not required for Dominion to ensure reliable service to its customers."⁵²
- Dominion does not need CVOW's 12 MWs, which is less than 0.01% of its total capacity requirement, in order to provide reliable service to its customers at just and reasonable rates.⁵³
- Dominion's generation capacity reserve margin "has ranged from 25.79% to 37.9% over the last four years," which exceeds the PJM Interconnection, LLC, reserve margins.⁵⁴
- Dominion's load forecast does not take into account the General Assembly's clear policy directive, set forth in Enactment Clause 15 of Senate Bill 966, that the Company shall propose energy conservation and efficiency programs in a minimum amount of \$870 million over the next decade.⁵⁵
- Although the obvious and intended purpose and effect of the \$870 million of conservation and efficiency programs is to reduce load and Dominion's need for capacity and energy, the Company's forecast does not reflect those load reductions.⁵⁶

⁵⁰ Ex. 16 (Norwood) at 14.

⁵¹ *Id.* at 14-15.

⁵² *Id.* at 9.

⁵³ *Id.* at 9-10.

⁵⁴ Ex. 22 (Abbott) at 9.

⁵⁵ 2018 Acts ch. 296. Tr. 391-392, 394.

⁵⁶ Tr. 391-392, 394.

Large-scale offshore wind

- The Company estimates that the construction cost of the larger scale offshore wind project would be approximately \$1.77 billion, excluding financing costs.⁵⁷
- The cost of energy from large-scale offshore wind is 13.1¢/kWh, which is also significantly costlier than several other conventional and renewable energy alternatives as listed above.⁵⁸
- The costs of solar and onshore wind resources have also been declining in recent years and are forecasted by Dominion and other industry experts to continue to decline in the future.⁵⁹
- "Given these trends, as indicated by Dominion's 2018 IRP analysis, it appears unlikely that the cost of offshore wind facilities will become competitive with solar or onshore wind options in the foreseeable future."⁶⁰
- Dominion's 2018 IRP analysis shows that a larger full-scale offshore wind generation facility, which the CVOW Project is intended to demonstrate, is not expected to be economically competitive with other supply- and demand-side resource options for the next 25 years under any scenario studied in the IRP.⁶¹

CVOW as a demonstration project

- The CVOW Project, and the larger offshore wind resource that the CVOW Project is designed to demonstrate, are not economically competitive with other available conventional and renewable resources or demand-side resources.⁶²

⁵⁷ Ex. 16 (Norwood) at 16.

⁵⁸ *Id.* at 11.

⁵⁹ *Id.* at 18. *See also* Ex. 22 (Abbott) at 14.

⁶⁰ Ex. 16 (Norwood) at 18.

⁶¹ *Id.*

⁶² *Id.* at 11-12.

- Customers will pay at least \$300 million (plus financing costs) to demonstrate a large-scale project that, based on Dominion's own studies, will not be a competitive option for the next 25 years.⁶³
- The Company has stated its intention to decide in 2019 whether to pursue its potential large-scale offshore wind project, but CVOW will not be completed until December 2020.⁶⁴
- "[T]he value of the proposed CVOW Project as a means to demonstrate feasibility of Dominion's plans to construct a larger scale offshore wind project near the CVOW site is questionable in light of the fact that Dominion indicates that a decision to proceed with a larger offshore wind project ... would need to be made in 2019, nearly two years *before* the CVOW Project would be placed in service."⁶⁵
- "This timeline means that it would be impossible for the CVOW Project to provide actual information on the feasibility of operations or costs of offshore wind projects before the Company plans to make its decision to proceed with the larger scale offshore wind project."⁶⁶
- The CVOW Project is not currently expected to demonstrate potential economic, fuel diversity, emissions reductions, or other advantages over other renewable alternatives.⁶⁷
- "For example, solar and onshore wind alternatives (and to an extent demand-side resources) would offer the same fuel diversity and emission reductions benefits as an offshore wind facility, at a much lower cost and without the potential reliability and maintenance problems that could be experienced at an offshore wind facility...."⁶⁸

⁶³ Tr. 191, 201-204. *See also* Ex. 16 (Norwood) at 10 ("The CVOW Project and the generic large scale offshore wind project option were not selected as the lowest reasonable cost alternatives in any year of any of the scenarios in the Company's 2018 IRP analysis, which covered the 25-year study period 2019-2043.").

⁶⁴ Ex. 22 (Abbott) at 22-24.

⁶⁵ Ex. 16 (Norwood) at 19 (emphasis added).

⁶⁶ *Id.* at 17.

⁶⁷ *Id.* at 12 (typeface and case modified).

⁶⁸ *Id.* at 13. *See also* Ex. 22 (Abbott) 13-14.

Conclusion

The Commission has considered the entire record.⁶⁹ The Commission finds – as a purely factual matter based on this record – that the proposed CVOW Project would not be deemed prudent as that term has been applied by this Commission in its long history of public utility regulation or under any common application of the term. The Commission further finds, however, that as a matter of law the new statutes governing this case subordinate the factual analysis to the legislative intent and public policy clearly set forth in the statutes quoted above and, thus, the instant Petition should be – and is hereby – approved.⁷⁰

The facts militating against a standard finding of prudence in this matter include, among other things and as cited above, the following:⁷¹

- (1) Dominion's customers bear essentially all of the risk of the proposed Project, including cost overruns and lack of performance.
- (2) CVOW has the highest cost of any resource modeled in Dominion's IRP.
- (3) CVOW's cost per kWh is significantly more expensive than other renewable and non-renewable resources, including: (a) onshore wind; (b) solar; (c) natural gas;

⁶⁹ See *Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted). In addition, the motions to strike certain evidence presented during the hearing are hereby denied, and no weight has been given to such evidence unless specifically noted herein.

⁷⁰ That is not to say that a statutorily-designated project at any size, price, or risk would be deemed prudent as a matter of law.

⁷¹ In our Final Order in Case No. PUR-2018-00135, also issued today, the Commission approves Dominion's prudency petition for a solar-powered project ("Solar PPA"), also sought under Code § 56-585.1:4 F. In that case, we found that: (1) the project's developer – not Dominion's customers – bears essentially all of the risk of the proposed project, including cost overruns and lack of performance; (2) the PPA model chosen by the Company, along with the terms and conditions therein, provides significant safeguards for customers; (3) the Solar PPA is the result of an extensive and transparent competitive bidding process; (4) the Solar PPA provides a positive net present value to customers; (5) the Solar PPA is competitive with market prices; and (6) the Project is based on known and proven technology. By contrast, none of those attributes are applicable to the Project that is the subject of the Petition approved herein.

- (d) demand-side management; and (e) other offshore wind.
- (4) Unlike other offshore wind projects on the East Coast, the Company did not choose a PPA model for offshore wind, which would have placed all or some of the risk on the Project's developer instead of on Dominion's customers.
 - (5) CVOW is not the result of a competitive bidding process.
 - (6) Dominion failed to prove that CVOW is needed to ensure reliable service to its customers at just and reasonable rates.
 - (7) CVOW requires customers to bear the costs and risks in order to demonstrate the feasibility of a large-scale generating resource that will not be competitive with other resource options for the next 25 years under any scenario in Dominion's IRP.
 - (8) Dominion has stated its intention to decide whether to construct large-scale offshore wind (in 2019) *before* CVOW is operational (currently expected no sooner than December 2020).
 - (9) The economic benefits specific to CVOW are speculative, whereas the risks and excessive costs are definite and will be borne by Dominion's customers.⁷²

The statutory language and multiple public policy declarations by the General Assembly, however, necessarily control the purpose and scope of the new statutory "prudency determination" recently enacted in Code § 56-585.1:4 F. As listed above, the General Assembly declared, in at least six separate locations, that a project such as CVOW is in the public interest. For specific purposes of offshore wind, the General Assembly further mandated that "the Commission shall *liberally construe* the provisions of this section."⁷³ In addition, the General Assembly made the new prudency proceeding in Code § 56-585.1:4 F merely *voluntary*.

⁷² This Commission's rejection of a coal-fired Integrated Gasification Combined Cycle ("IGCC") plant proposed by Appalachian ten years ago, as discussed below, spared Appalachian's Virginia territory from the negative economic impact of billions of dollars in costs, based on the actual costs of similar generating plants built in the same time frame, one by Duke Power at Edwardsport, Indiana, the other by Southern Company at Kemper, Mississippi (now natural gas-only).

⁷³ Code § 56-585.1:1 G (emphasis added). *See also* Code § 56-585.1 A 6 ("the Commission shall liberally construe the provisions of this title").

Dominion acknowledges that it is not required to request a prudency determination under Code § 56-585.1:4 F, and the Company can construct the Project and request cost recovery from customers without the instant proceeding.⁷⁴

Additional new statutory restrictions were also placed on the instant case. The General Assembly limited the entire review under Code § 56-585.1:4 F to three months (including establishment of the case, publication of notice, intervention and due process for interested persons, preparation of and responses to discovery, preparation of testimony and legal briefs, evidentiary hearings and cross-examination, oral argument, and deliberation and final decision). In direct contrast, CPCN proceedings for new generating facilities generally have no time limitation.⁷⁵ As a result, Code § 56-585.1:4 F creates new, explicit restrictions on the extent of the review – if voluntarily requested by the utility – of a proposed new generating resource covered by that statute, clearly contemplating a less than comprehensive factual review.

Accordingly, the scope of the new statutory "prudency determination" contemplated in Code § 56-585.1:4 F must be viewed in light of the express and unprecedented statutes attendant to an offshore wind demonstration project such as the CVOW Project. That is, unlike prior generating facility cases, the Commission's standard analysis of prudency as a purely factual matter must be subordinated in large measure to the public policy established by the General Assembly as a legal matter for determinations required under Code § 56-585.1:4 F.

⁷⁴ See, e.g., Tr. 11 (Oral Argument, Oct. 4, 2018).

⁷⁵ See, e.g., Code § 56-580 D. The Commission notes that certain small renewable energy projects as defined in Code § 10.1-1197 must be decided within nine months. Similarly, pursuant to Code § 56-585.1 A 6, certain solar facility reviews under Code § 56-580 D are limited to six months.

For example, as referenced above, in 2008 the Commission rejected a request to charge customers for a proposed coal-fired IGCC generation facility, because the evidence showed that: (i) the cost of the project was significantly higher than other resource options; (ii) the proposed project was technologically unproven and uncertain; (iii) the cost and performance estimates were likewise uncertain; (iv) the project, and its attendant costs, were not selected through a competitive bidding process; and (v) customers would bear considerable financial and performance risks in order to determine if the new coal technology was viable.⁷⁶ In addition, the General Assembly had not mandated a finding that the IGCC plant was in the public interest.⁷⁷

In contrast, and as detailed above, the statutory "prudency determination" in Code § 56-585.1:4 F represents a different review as a matter of law than that in the *IGCC Case*. While we rule as a matter of law that the statutory language subordinates certain findings of fact in a prudency review under Code § 56-585.1:4 F, we do not agree with MAREC that a factual record regarding comparative costs, reliability needs, or other potential issues is not only irrelevant, but not even "appropriate."⁷⁸ While we agree with the Sierra Club that, "the General Assembly wants this project,"⁷⁹ we do not believe that the General Assembly has directed that facts regarding cost, need or other serious issues pertinent to a prudency petition should not even be developed or included in the factual record, if only for purposes of transparency. Nor do we

⁷⁶ *Application of Appalachian Power Company, For a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia*, Case No. PUE-2007-00068, 2008 S.C.C. Ann. Rept. 405, 410, Final Order (April 14, 2008) ("*IGCC Case*") ("We cannot ask Virginia ratepayers to bear the enormous risks – and potential huge costs – of these uncertainties in the context of the specific Application before us.").

⁷⁷ See, e.g., *Tvardek v. Powhatan Vill. Homeowners Ass'n*, 291 Va. 269, 279-280 (2016) ("the legislature, not the judiciary, is the sole author of public policy") (internal quotation marks and citations omitted).

⁷⁸ Tr. 492-494.

⁷⁹ Tr. 52 (Oral Argument, Oct. 4, 2018).

rule herein as a matter of law that there can never be a set of facts regarding prudence that could overcome the multiple mandated public interest findings in the statutes. There may be, but we need not speculate on which hypothetical factual record would be sufficient to overcome the governing statutes and require disapproval of the petition.

Finally, the Commission finds that: (a) the approval herein of Dominion's prudence Petition is limited to the amount requested in the Petition, *i.e.*, \$300 million (excluding financing costs) for construction of the CVOW Project as described in the Petition; and (b) given the statutory framework described *supra*, a CPCN, which no party opposed, is herein granted for the Virginia Interconnect Facilities.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is approved as set forth herein.
- (2) The Company's request for a certificate of public convenience and necessity to construct and operate the Virginia Interconnect Facilities is granted.
- (3) Pursuant to the Utility Facilities Act, § 56-265.1 *et seq.* of the Code, the Commission issues Certificate No. ET-95y, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate certificated transmission lines and facilities in the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach, all as shown on the map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUR-2018-00121, cancels Certificate No. ET-95x, issued to Virginia Electric and Power Company in Case No. PUE-2016-00003 on June 6, 2016.
- (4) Within thirty (30) days from the date of this Final Order, the Company shall provide to the Commission's Division of Public Utility Regulation three (3) copies of an appropriate map

that shows the routing of the facilities approved herein, in addition to the facilities shown on the map for the cancelled Certificate.

(5) Upon receiving the map directed in Ordering Paragraph (4), the Commission's Division of Public Utility Regulation forthwith shall provide the Company copies of the certificates of public convenience and necessity issued herein with the map attached.

(6) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Lisa S. Booth, Esquire, and David J. DePippo, Esquire, Dominion Energy Services, Inc., Law Department, Riverside 2, 120 Tredegar Street, Richmond, Virginia 23219; Vishwa B. Link, Esquire, Jennifer D. Valaika, Esquire, and Lisa R. Crabtree, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219; Noelle J. Coates, Esquire, American Electric Power Service Corporation, 3 James Center, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219; James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215; William Cleveland, Esquire, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902; Timothy E. Biller, Esquire, Hunton Andrews Kurth LLP, 951 East Byrd Street, Richmond, Virginia 23219; Bruce H. Burcat, Executive Director, Mid-Atlantic Renewable Energy Coalition, 29 North State Street, Suite 300, Dover, Delaware 19901; John A. Pirko, Esquire, LeClairRyan, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; and C. Meade Browder, Jr., Senior Assistant Attorney General, C. Mitch Burton, Jr., Assistant Attorney General, and Katherine C. Creef, Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A copy also shall be delivered to the Commission's Office of General Counsel and the Divisions of Public Utility Regulation and Utility Accounting and Finance.