

1 STAFF CONFERENCE

August 2, 2021

2 CHAIR MITCHELL: Let's come to order and go
3 on the record, please. I'm Charlotte Mitchell, Chair
4 of the Utilities Commission. With me this morning are
5 Commissioner Brown-Bland, Commissioner Gray,
6 Commissioner Clodfelter, Commissioner Duffley,
7 Commissioner Hughes and Commissioner McKissick.

8 In compliance with the State Government
9 Ethics Act, I remind members of the Commission of
10 their duty to avoid conflicts of interest, and inquire
11 as to whether any member of the Commission has a known
12 conflict of interest with respect to matters coming
13 before us this morning?

14 (No response)

15 The record will reflect that no conflicts
16 have been identified, so we'll proceed with Public
17 Staff, Electric Item P1.

18 MR. MANESS: Thank you. Good morning, Madam
19 Chair and Commissioners. I am Mike Maness, Director
20 of the Public Staff's Accounting Division. Electric
21 Item P1 concerns the filing in Docket Number E-22, Sub
22 563. On April 13th, 2021, Virginia Electric and Power
23 Company, d/b/a Dominion Energy North Carolina, or
24 DENC, filed an Application for approval of an

NORTH CAROLINA UTILITIES COMMISSION

1 Equipment Sale and Transfer Agreement for the sale by
2 Atlantic Coast Pipeline, LLC, or ACP, of certain
3 telecommunications equipment to DENC. As ACP is an
4 affiliate of DENC, the Agreement and associated
5 purchase are subject to North Carolina General Statute
6 62-153(b) and applicable Regulatory Conditions
7 previously approved by the Commission for DENC.

8 The Virginia State Corporation Commission
9 approved the Agreement on June 2nd, 2021, subject to
10 certain requirements.

11 The Public Staff has reviewed the Agreement
12 filed with the Commission as well as the Order of the
13 Virginia Commission. Pursuant to that review, the
14 Public Staff believes that it is reasonable for the
15 Commission to approve the sale and transfer pursuant
16 to G.S. § 62-153(b) and the Regulatory Conditions,
17 subject to the requirements of the Virginia Commission
18 Order, and the additional conditions set forth in the
19 Public Staff's agenda item and proposed order. As is
20 typically the case with affiliate agreements, the
21 conditions include that for ratemaking purposes the
22 Commission's approval does not constitute approval of
23 any amount paid by DENC under the Agreement, and that
24 the authority granted by the Commission in its

1 approval order shall be without prejudice to the right
2 of any party to take issue with any provision of the
3 Agreement in a future proceeding.

4 The Public Staff's original proposed order
5 was attached to the published agenda as Exhibit Number
6 P-1. The Public staff was subsequently informed that
7 there were some numbering issues in its proposed order
8 and a corrected version has been provided to the
9 Commission staff. Thank you.

10 COMMISSIONER BROWN-BLAND: Move approval of
11 the recommendation.

12 COMMISSIONER GRAY: Second.

13 CHAIR MITCHELL: It's been moved and
14 seconded that the item be approved as recommended by
15 the Public Staff. Are there any questions or
16 discussion on the motion? Commissioner McKissick?

17 COMMISSIONER McKISSICK: Yes, Madam Chair.
18 Thank you.

19 I have a couple of questions and perhaps you
20 can help me with, because I know that this Section
21 62-153(b) deals with what I think of as interested
22 party transactions between affiliates.

23 MR. MANESS: Yes.

24 COMMISSIONER McKISSICK: And I guess the

1 thing I'm trying to understand is that they are using
2 what they consider to be the reasonably depreciated
3 book value of equipment as I guess the cost that
4 Dominion is going to pay.

5 MR. MANESS: That's correct.

6 COMMISSIONER McKISSICK: I guess in my mind
7 wouldn't an appropriate measure be what one would pay
8 who is not an interested party the fair market value
9 of somebody in a non-interested party transaction?

10 MR. MANESS: Yes, and the Public Staff did
11 review that. According to the information we received
12 and discussions with the Company, it was very
13 difficult to find a market for used, to use that term
14 generally, equipment of this type. So the best they
15 could do was look at an estimate of what it would cost
16 to buy the equipment new in the outside market and the
17 depreciated cost was lower than that. And so we felt
18 that that was a reasonable explanation and provided
19 the basis for accepting the Company's proposal to
20 purchase the equipment at a reasonably depreciated
21 original cost.

22 COMMISSIONER McKISSICK: Okay. Which leads
23 me to a couple of follow-ups and that's simply this.
24 I mean, obviously it would be cheaper than what it

1 would be new, but would you know whether when they
2 bought it new it was competitively bid or whether it
3 was a sole source contract? And do we know if the
4 equipment was actually utilized and if it had
5 warranties attached to it? I mean, I notice in part
6 of the Order they talk about specifying what the
7 equipment is and attaching a value, but why would we
8 not do that now before the transaction is approved as
9 opposed to after the fact?

10 MR. MANESS: Well, with regard to your
11 second question -- well, let me take the first
12 question first because I may need some help with the
13 second one again. The Company will probably have to
14 let us know if it was actually utilized since ACP
15 never went fully commercial. I don't know the answer
16 to whether it was used in the preliminary construction
17 process or not. Perhaps somebody from the Company
18 might be able to answer that question. If not, we can
19 certainly find an answer for you.

20 And could you help me with your second
21 question again?

22 COMMISSIONER McKISSICK: Yeah. And I guess
23 if you could get that information that would be
24 helpful, if it was actually utilized. If it was, you

1 know, brand new, still in a box, I guess was never
2 operationally put into service, because I mean I think
3 that's important. And obviously, even with equipment
4 of this nature, there are liquidation companies to get
5 rid of equipment often. So, I mean, I'm trying to
6 really drill down into what the fair market value of
7 this was if it was not in the interested party
8 transaction.

9 And I guess the -- the thing that I
10 mentioned as part of the second part of the question,
11 it seems like when I was looking at the Order it talks
12 about DENC shall provide within 60 days a schedule of
13 the actual transferred equipment by asset description,
14 quantity, and dollar amount. But I assume that dollar
15 amount is based again upon this depreciated value as
16 opposed to some other value. It seems like some of
17 that information would be relevant now as opposed
18 to -- and approving it as opposed to after the fact.

19 MR. MANESS: In terms of what the fair
20 market value would be?

21 COMMISSIONER McKISSICK: Yeah. I mean,
22 that's relevant today in my mind.

23 MR. MANESS: Yes. Well, as I said, the
24 Public Staff did look at whether a fair market value

1 could be established today just from -- for research
2 purposes. I do not know if the Company contacted any
3 liquidation companies or not but, from our work and
4 our discussions with the Company, we felt satisfied
5 that the book cost appropriately depreciated was
6 favorable to the customers from what the equipment
7 could be bought on the outside market, but we'll be
8 glad to provide more detailed information to the
9 Commission.

10 COMMISSIONER McKISSICK: If you could, that
11 would be very insightful. I mean, I'm trying to drill
12 down to the fair market value of the equipment in a
13 non-interested party transaction. So, I mean, if that
14 could come back to us, in my mind, that would be very
15 valuable. I mean, it may well be that what's proposed
16 is it turns out to be excellent in terms of what truly
17 is fair market value, but I don't think there's enough
18 information here now to make that determination. How
19 sensitive are we time wise with what we have before us
20 today?

21 MS. KELLs: Commissioner McKissick, can I
22 help out a little bit here?

23 COMMISSIONER McKISSICK: Sure.

24 MS. KELLs: Andrea Kells here on behalf of

1 Dominion Energy North Carolina. I'm going to try to
2 remember all your questions. I'll take the last one
3 first. It is time -- there is some time pressure.
4 The Company is looking to go ahead and move the
5 equipment and get it put in service as soon as
6 possible.

7 Going back to one of your earlier questions,
8 this equipment was like geographically placed at
9 locations with ACP and some in storage but was never
10 connected to the system, was never put in service.
11 And then the fair market value the Company used was
12 the price that ACP paid in 2017 and, then as you said,
13 used depreciation and some other adjustments to move
14 that down. We do have data about the price -- support
15 for the price that ACP paid in 2017 for that. I think
16 it was the \$5.5 million. And as for trying to
17 ascertain what the value would be now, the Company
18 reached out to a supplier who was -- who recommended
19 that the Company use the regular IRS depreciation
20 values, and also reached out to at least one other
21 entity that often helps Dominion with negotiations
22 with vendors to get a fair price to see if that entity
23 could help them determine what a current market value
24 would be and that entity was not able to do so,

1 because they don't deal in secondary markets. So,
2 between the communications with the primary vendor and
3 knowing what ACP paid in the beginning and, which
4 would in all likelihood, according to the Company's
5 experts it would be more now and then reducing off the
6 depreciation and some other costs, felt like it was a
7 fair price.

8 And the Regulatory Condition 4.2 of the --
9 that Dominion is subject to requires that in
10 purchasing goods or services from an affiliate, and
11 this is an affiliate transaction, they are to pay the,
12 you know, I think it's the lowest reasonable -- I'm
13 blanking on the exact words, but you know lowest
14 reasonable cost. So the Company feels like it's shown
15 that. But we can certainly provide the additional
16 data behind the Nokia purchase in 2017, if that sounds
17 like something that you would like to see.

18 COMMISSIONER McKISSICK: If you could
19 provide that that would be, as I say, helpful and
20 insightful to see what that would have been then. And
21 I don't know how quickly this equipment becomes
22 obsolete. You know so much when it comes to high
23 technology it becomes obsolete relatively quickly.
24 So, just the passage of a couple of years might render

1 its value marginal --

2 MS. KELLS: Yeah.

3 COMMISSIONER McKISSICK: -- as opposed to
4 what the depreciated value might be and what it would
5 be if you were selling to a third party that's an
6 uninterested party, you know, an independent
7 arms-length transaction. So, I mean, that's what I'm
8 just trying to feel comfortable about.

9 MS. KELLS: Certainly. And we can provide
10 that information. And just -- you know, the context
11 is that the Company's currently used equipment is
12 becoming obsolete which is why Dominion was going to
13 be replacing this equipment anyway. The equipment
14 that is being purchased will be hopefully purchased
15 from ACP. It is currently supported in the market, is
16 currently used in the market, is up-to-date equipment,
17 and there will be an annual warranty on it. So, all
18 of that is it in place to support it going forward.

19 COMMISSIONER McKISSICK: Okay. Madam Chair,
20 is it possible to just put this back on for next week
21 and let them bring in that information or is that
22 problematic in some respect?

23 CHAIR MITCHELL: Why don't we do this,
24 Commissioner Brown-Bland, I believe you made the

1 motion. I'm hearing Commissioner McKissick request
2 that the motion be tabled for the time being.

3 COMMISSIONER BROWN-BLAND: Out of respect
4 for my colleague, I will agree to it.

5 CHAIR MITCHELL: Okay. Ms. Kells, you've
6 heard the Commissioner's request for additional
7 information. Please have the Company submit that to
8 the Commission as soon as possible and we will review
9 accordingly.

10 MS. KELLS: And I should submit it in the
11 docket?

12 CHAIR MITCHELL: Please do. Please file in
13 the docket.

14 MS. KELLS: Yes, ma'am.

15 CHAIR MITCHELL: Just make it part of the
16 record.

17 COMMISSIONER BROWN-BLAND: And we will vote
18 on it next Monday; next time we have a decision-making
19 conference.

20 CHAIR MITCHELL: Yeah. We'll vote on it
21 next time we have a decision-making conference.

22 MS. KELLS: Okay. Thank you.

23 COMMISSIONER McKISSICK: Thank you very
24 much.

1 MS. KELLS: You're welcome.

2 MR. MANESS: Madam Chair and Commissioner
3 McKissick, if I can just add the -- one of the
4 requirements that we usually look at in these types of
5 transactions is also the Code of Conduct which
6 generally requires that in purchases of this type you
7 look at the lower of cost or market. And I will just
8 say that based on the original market price of
9 \$5.5 million that the Public Staff felt that was
10 highly likely that the cost that they're going to be
11 paying of two, about \$2.1 million will be lower than
12 the current market price.

13 COMMISSIONER McKISSICK: Thank you.

14 CHAIR MITCHELL: Thank you for the follow
15 up, Mr. Maness.

16 Thank you, Ms. Kells. Thank you,
17 Mr. Maness.

18 The Commission has before it its minutes of
19 July 26 Staff Conference for approval.

20 COMMISSIONER GRAY: Move approval.

21 COMMISSIONER DUFFLEY: Second.

22 CHAIR MITCHELL: Any questions or comments
23 on the minutes?

24 (No response)

1 All in favor indicate with an aye.

2 (All Commissioners say aye)

3 CHAIR MITCHELL: Any opposed?

4 (No response)

5 The minutes of July 26th are approved. Any
6 additional business for the Commission this morning?

7 (No response)

8 Hearing none, we will be adjourned. Let's
9 go off the record, please, ma'am.

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11 WHEREUPON, this conference is adjourned.

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C E R T I F I C A T E

I, KIM T. MITCHELL, DO HEREBY CERTIFY that
the Proceedings in the above-captioned matter were
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription
to the best of my ability.

Kim T. Mitchell

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