

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

**STAFF CONFERENCE AGENDA
January 3, 2023
Commission Hearing Room 2115, 10:00 a.m.**

ELECTRIC

AFFILIATE AGREEMENT

Dominion Energy North Carolina

1. Docket No. E-22, Sub 633 – Application for approval to enter into affiliate agreement with Blue Ocean Energy Marine, LLC (Meda/Boswell/Lucas/Little)

NATURAL GAS

TARIFF MODIFICATION

Public Service Company of North Carolina, Inc.

2. Docket No. G-5, Sub 655 – Motion to amend Transportation Pooling Agreement (*Nader/Holt*)

The Public Staff recommends approval of the preceding agenda items as described above and reflected in proposed orders provided to the Commission Staff

DUKE ENERGY BRIEFING

Duke Energy's Briefing on Rolling Outages

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-22, SUB 633

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition by Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina for Approval of Affiliate Agreement)	ORDER APPROVING AFFILIATE AGREEMENT SUBJECT TO CONDITIONS

BY THE COMMISSION: On April 19, 2022, Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC or the Company) filed, pursuant to N.C. Gen. Stat. § 62-153(b) and Regulatory Condition 3.1(a) as approved by the Commission’s Order Approving Merger Subject to Regulatory Conditions and Code of Conduct (Code of Conduct) issued November 19, 2018, in Docket Nos. E-22, Sub 551 and G-5, Sub 585 (Merger Order), an application for approval of an affiliate agreement (Charter Party) pursuant to which the Company will charter from Blue Ocean Energy Marine, LLC (Blue Ocean) the use of the *Charybdis* Wind Turbine Installation Vessel (WTIV) to transport and install the wind turbine generators (WTGs) for the Coastal Virginia Offshore Wind (CVOW) Commercial Project (the Application).

DENC is an operating subsidiary of Dominion Energy, Inc. (DEI). Blue Ocean is a Virginia limited liability company and indirect subsidiary of DEI that was formed to engage in the provision of wind turbine transportation and installation services via a WTIV. Accordingly, Blue Ocean is an “affiliate” of DENC, as that term is defined by the Code of Conduct and N.C.G.S. § 62-153.

In its Application, the Company states that is proposing to construct 2,587 megawatts (nominal alternating current) of offshore wind capacity 27 statute miles (approximately 24 nautical miles)¹ off the coast of Virginia Beach (the Project). The Company is pursuing the Project to develop a significant amount of renewable resources in Virginia to meet requirements of the Virginia Clean Economy Act (VCEA), which requires that DENC install 5.2 gigawatts of offshore wind energy capacity by 2035. To that end, on November 5, 2021, the Company filed with the State Corporation Commission of Virginia (VSCC) an application for approval of the Project, as required, and its related power export facilities, for approval and certification of electric interconnection and transmission facilities, comprising transmission facilities required to reliably interconnect the offshore wind generation facilities component of the Project with the Company’s transmission system, and for approval of a rate adjustment clause, designated Rider Offshore Wind, for the recovery of costs incurred to construct, own, and

¹ Hereinafter, all miles will be noted as approximate statute miles, unless otherwise indicated.

operate the Project. Subsequent to the Company's filing of the Application in this docket, the VSCC approved the Project by order issued August 5, 2022.²

The Company states that it needs the services of a WTIV to transport and install the towers, turbines, and blades (with each combined tower, turbine, and three blades constituting a wind turbine generator or WTG) for the Project onto the WTG foundations. Each turbine weighs approximately 650 tons, and each blade is approximately 108 meters long and weighs approximately 55 tons.

The Company further states, for the most efficient, safest, and risk-mitigating means of installation, the WTIV needs to be U.S. Jones Act (Jones Act) compliant.³ The Jones Act prohibits transportation of passengers or merchandise between points in the United States (U.S.), including locations within the territorial sea such as the Project locations,⁴ on any vessel other than a "coastwise-qualified vessel" (*i.e.*, a vessel that is built in the U.S., owned by a U.S. citizen, and carries a U.S. flag and crew). In addition, the vessel must be at least 75% U.S.-owned, and the president or CEO, chairman of the board, and a majority of a quorum of the board must all be U.S. citizens. The Blue Ocean WTIV will be the first Jones Act-qualified offshore WTIV; it will therefore be a specialty vessel with unique capabilities that no other vessel can provide.

The Company indicates it has no current arrangements for obtaining the WTIV services provided for in the Charter Party. The Company also states it is unable to provide these services internally; this is a first-of-its-kind project in the U.S. and currently no U.S.-flagged and Jones Act-compliant vessel exists that can install the turbines. There are foreign vessels that are equipped to do this work, but U.S. law (*i.e.*, the Jones Act) prohibits those ships from conducting this work efficiently and in a risk-mitigating manner.

The Application states that Blue Ocean selected Keppel AmFELS, a wholly owned U.S. subsidiary of Keppel Offshore & Marine Ltd., based in Brownsville, Texas, for the engineering, procurement, and construction of the *Charybdis* WTIV (the Vessel). Construction of the Vessel is underway with delivery contracted to occur in the fourth quarter of 2023. The Vessel is designed to carry current turbine technologies such as that used for the Project as well as next generation turbine sizes and will also be capable of installing turbine foundations. Once completed, the Vessel will be owned by BA Leasing BSC, LLC (BA Leasing), a subsidiary of Bank of America, pursuant to an affiliate financing

² *Application of Virginia Electric and Power Co. 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*, Final Order, Case No. PUR-2021-00142 (Aug. 5, 2022); Order on Reconsideration (Dec. 15, 2022) (striking performance standard ordered in Final Order and replacing with Second Proposed Stipulation and not modifying approvals granted in Final Order).

³ See Chapter 27 of the Merchant Marine Act of 1920, 46 U.S.C. § 55102.

⁴ For the purposes of the Project, all wind turbine sites on the Outer Continental Shelf (OCS) will be considered coastwise points subject to the Jones Act. The National Defense Authorization Act of 2021, enacted on January 1, 2021, included the "Garamendi Amendment," which clarified and confirmed that all federal law, including the Jones Act, applies to all offshore energy development on the OCS, including wind energy. P.L. 116-283 § 9503.

arrangement between DEI and BA Leasing. BA Leasing and Blue Ocean have entered into a “bareboat charter” arrangement, under which Blue Ocean will act as the owner of the Vessel and will in turn “time charter” the Vessel to the Company for the Company’s use in constructing the Project.

The Company expects to utilize the Vessel’s services beginning in approximately the third quarter of 2025.

Pursuant to the Charter Party, the Company will pay Blue Ocean a daily rate for use of the Vessel (the Charter Hire) for a total of approximately \$240 million for the initial Charter Party term. The Charter Party also provides for potential limited extensions for periods of off-hire when the vessel is not capable to perform as warranted.

In addition, the Charter Party contemplates the provision of certain other goods and services, including fuel, food, and accommodations related to the Vessel charter by Blue Ocean to the Company, as further detailed in the Transaction Summary, the Charter Party Appendix, and the Charter Party. These other goods and services are proposed to be provided at Blue Ocean’s cost, plus a reasonable return of no more than the Company’s pre-tax weighted average cost of capital (WACC). The Company filed a letter of clarification in this docket on December 14, 2022, clarifying that, except for certain reimbursement obligations for damages and costs actually incurred, at its option the Company may obtain these other services and commodities either from Blue Ocean or from another provider.

The Virginia State Corporation Commission (VSCC) approved the Charter Party on March 18, 2022, subject to certain conditions.

The Public Staff has reviewed the Charter Party filed with the Commission and the VSCC, as well as the order of the VSCC and the clarification letter filed by DENC on December 14, 2022.

The Public Staff presented this item at the Commission’s Regular Staff Conference on January 3, 2023. The Public Staff stated that it had completed its review of the Charter Party and the order of VSCC and agreed with the opinion of the VSCC pertaining to the conditions for approval of the Charter Party. The Public Staff notes that in purchasing any goods or services, the Company will be held to the lower of cost or market standard. In light of its review, the Public Staff recommended that the Commission approve the Charter Party between DENC and Blue Ocean, subject to the following conditions.

- (1) The Company shall keep the Commission apprised of: (1) the *Charybdis* construction timetable; (2) the North East Charter Party timetable; and (3) the DENC Charter Party timetable, through semi-annual notifications submitted to the Commission in this docket that report (a) whether the construction and charters are on schedule; (b) any delays that have occurred; and (c) the effect, in time and dollars, that the delays may have on the Charter Party and the CVOW Project.

- (2) The Commission approves the Charter Party for its defined term and extensions. If DENC wishes to charter the *Charybdis* beyond the defined term and extensions of the Charter Party, separate approval shall be required;
- (3) The Commission's approval of the Charter Party shall have no accounting or ratemaking implications;
- (4) The Commission's approval shall be limited to the specific activities and transactions described in the Charter Party. If DENC wishes to take part in activities or transactions not specifically identified and described in the Charter Party, separate approval shall be required;
- (5) Separate Commission approval shall be required for DENC take part in activities and transactions under the Charter Party that involve the engagement of any affiliated third parties;
- (6) The Company shall be required to maintain records demonstrating that the services received from Blue Ocean under the proposed Charter Party are cost beneficial to North Carolina customers. For any good or service that DENC receives from Blue Ocean where a market may exist, DENC shall investigate whether there are alternative sources from which DENC could attain such goods or services, including providing the good or service itself. If an alternative source exists, DENC shall compare the market price to its cost under the Charter Party and pay the lower of cost or market. Records of such investigations and comparisons shall be available for the Commission Staff and the Public Staff review upon request. DENC shall bear the burden of proving, in any rate proceeding, that the Company paid the lower of cost or market for any good or service received under the Charter Party;
- (7) Separate Commission approval shall be required for any changes in the terms and conditions of the Charter Party;
- (8) The Commission reserves the right to examine the books and records of any affiliate in connection with the Charter Party, whether or not such affiliate is regulated by this Commission;
- (9) DENC shall file with the Commission a signed and executed copy of the Charter Party approved in this case within 30 days of the effective date of the Order in this case;
- (10) DENC shall include all transactions associated with the approved Charter Party in its Annual Report of Affiliate Transactions (ARAT);
- (11) The Commission's approval of the Charter Party shall not be deemed, in connection with any future proceeding before the Commission, to determine and establish DENC's retail rates or for any other purpose, or to constitute

Commission approval of any level of charges directly charged, assigned, or allocated to DENC under the Charter Party;

- (12) For ratemaking purposes, the Commission's approval of the Charter Party does not constitute approval of any amount paid by DENC under the Charter Party; and
- (13) The authority granted by the Commission in its Order shall be without prejudice to the right of any party to take issue with any provision of the agreement in question in a future proceeding.

Based on the foregoing and the record, the Commission concludes that pursuant to N.C.G.S. § 62-153(b), the Charter Party should be approved, subject to the conditions recommended by the Public Staff, as set forth above.

IT IS, THEREFORE, ORDERED as follows:

That the Charter Party is approved, subject to the conditions recommended by the Public Staff, as enumerated in the body of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the _____ day of January, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

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The Public Staff presented this matter to the Commission at its Regular Staff Conference on January 3, 2023. The Public Staff stated that it had reviewed the Petition and recommends approval.

Based on its review of the filing and the recommendation of the Public Staff, the Commission concludes that PSNC's request to amend its tariff should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That PSNC is authorized to amend the Form Transportation Pooling Agreement of its Tariff as described in the body of this Order.
2. That PSNC shall file its amended Form Transportation Pooling Agreement as authorized in Paragraph 1 of this Order.
3. That PSNC shall notify all of its transportation customers and poolers of the changes authorized in this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the _____ day of January, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

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