

March 17, 2023

**VIA ELECTRONIC FILING**

Ms. A. Shonta Dunston, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

Dear Ms. Dunston:

*Re: Joint Motion to Amend Order Scheduling Hearings  
Docket No. E-22, Sub 658*

Dear Ms. Dunston:

On behalf of Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (the "Company"), enclosed for filing in the above-referenced proceeding is a Joint Motion to Amend Order Scheduling Hearings.

Thank you for your assistance with this matter. Feel free to contact me should you have any questions.

Very truly yours,

/s/Mary Lynne Grigg

MLG/sbc

Enclosure

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-22, SUB 658

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

	)	
Consideration of Certain	)	
Standards for Electric Utilities	)	JOINT MOTION TO AMEND ORDER
Relating to Measures to Promote	)	SCHEDULING HEARINGS
Greater Electrification of the	)	
Transportation Sector Pursuant to	)	
the Infrastructure Investment and	)	
Jobs Act	)	

NOW COMES Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (“DENC” or the “Company”), by and through counsel and jointly with the Public Staff – North Carolina Utilities Commission (“Public Staff” and, together with DENC, the “Movants”), and pursuant to Rule R1-7 of the Rules of Practice and Procedure of the North Carolina Utilities Commission (“Commission”) and N.C. Gen. Stat. § 62-80, and respectfully request that the Commission: 1) allow DENC and other interested parties to file comments regarding measures the Commission could take to promote greater electrification of the transportation sector in lieu of pre-filed expert testimony; 2) extend the time for parties to file initial comments to May 5, 2023; and 3) extend the time for parties to file reply comments to no later than June 5, 2023.

In support of the relief requested in this Motion, the Movants respectfully show the following:

## **I. Background.**

1. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (“IIJA”) into law.<sup>1</sup>

2. Section 40431 of the IIJA amended the Public Utility Regulatory Policies Act of 1978 (“PURPA”)<sup>2</sup> to include a new federal ratemaking standard related to electric vehicle charging programs (“EVCP”) at PURPA Section 111(d)(21).<sup>3</sup>

3. PURPA Section 112 specifically requires state regulatory bodies with ratemaking authority over electric utilities (“Regulatory Authorities”) “to commence consideration under section 111 of PURPA, 16 U.S.C. § 2611, or to set a hearing date for consideration with respect to the standard established by the IIJA in section 111(d)(21) of PURPA . . . within one year of the enactment of the IIJA and to complete the consideration and make the determination with respect to the new electric vehicle charging programs within two years of enactment of the IIJA.”<sup>4</sup>

4. PURPA Section 111 requires Regulatory Authorities to consider and subsequently determine whether it is appropriate to implement the EVCP standard to carry out the purposes of PURPA.<sup>5</sup> The determination must “be made after public notice and hearing.”<sup>6</sup> PURPA Section 111 further requires that the determination be (A) in writing; (B) based upon findings included in the determination and upon the evidence presented at the hearing; and (C) available to the public.<sup>7</sup>

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<sup>1</sup> H.R. 3684, 117th Cong. (2021).

<sup>2</sup> 16 U.S.C. § 2611, *et seq.*

<sup>3</sup> H.R. 3684, 117th Cong. § 40431 (2021); 16 U.S.C. § 1621(d)(21).

<sup>4</sup> 16 U.S.C. § 2622(b)(8)(A).

<sup>5</sup> 16 U.S.C. § 2621(a).

<sup>6</sup> 16 U.S.C. § 2621(b)(1).

<sup>7</sup> *Id.*

5. The Commission issued its November 15, 2022 Order Scheduling Hearings (“Scheduling Order”) to consider measures it could take to promote the EVCP standard.<sup>8</sup> The Scheduling Order created a procedural schedule that:

- a. Required the parties to prefile initial direct expert testimony and exhibits no later than April 25, 2023;
- b. Required rebuttal testimony to be filed no later than May 23, 2023;
- c. Scheduled a hearing for the convenience of public witnesses and for receiving nonexpert public witness testimony on May 31, 2023;
- d. Scheduled an evidentiary hearing for the purpose of receiving expert witness testimony for June 20, 2023; and
- e. Required DENC to publish the Notice of Public Hearing attached to the Scheduling Order in a newspaper having general circulation in the Company’s North Carolina service areas.<sup>9</sup>

6. On March 1, 2023, ChargePoint, Inc., filed a petition seeking to intervene in this proceeding.

**II. Accepting Comments in Lieu of Pre-Filed Direct Expert Testimony is Consistent with PURPA, will Effectively Present the Relevant Issues to the Commission for Consideration, and is in the Interest of Judicial Economy.**

7. Movants respectfully request the Commission amend Ordering Paragraphs 5 and 6 of the Scheduling Order to accept comments submitted on behalf of interested parties in lieu of pre-filing direct expert testimony. More specifically, Movants respectfully request that interested parties’ initial comments be filed no later than May 5, 2023, and that reply comments be filed no later than June 5, 2023.

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<sup>8</sup> *Order Scheduling Hearings*, Docket No. E-22, Sub 658 (November 15, 2022).

<sup>9</sup> *Id.* at 3-4.

8. Accepting comments in lieu of direct expert testimony on Movants' proposed schedule will likely better draw the relative positions of the interested parties into focus for consideration by the Commission. Without having the benefit of first seeing the Company's filing, the Public Staff's and other parties' initial direct expert testimony (as currently contemplated by the Scheduling Order) may be overbroad and unrelated to issues germane to the Commission's determination. Providing the other parties with DENC's position before they file comments will more efficiently and effectively highlight any disagreements between the parties for the Commission. To be clear, the procedural schedule proposed by this Motion would allow any party prepared to file comments by May 5, 2023, to do so, but would also give parties the choice to forego an initial filing and subsequently file comments that directly reply to DENC's initial comments. Due to the more efficient identification and presentation of issues, Movants' requested relief will also benefit judicial economy and efficiency.<sup>10</sup>

9. In addition, DENC notes that it will be filing its biennial integrated resource plan ("IRP") with the Commission on May 1, 2023. The May 1, 2023 IRP will include the Company's most recent EV forecast data. This information is highly relevant to the present proceeding. Extending the date for the Company to file comments in this proceeding, if comments are ultimately allowed by the Commission, to more closely align with the date the IRP is filed will allow the Company to provide the most up-to-date information in its comments.

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<sup>10</sup> Movants also note that the fact that DENC published the Notice of Public Hearing that contained the expert testimony filing deadlines should not present an imposition to the Commission granting the relief sought herein. The date of the Public Hearing remains unchanged, and filing deadlines frequently change in proceedings after notice has been transmitted to the public.

10. Moreover, the Scheduling Order recognized that Duke Energy Progress, LLC (“DEP”), and Duke Energy Carolinas, LLC (“DEC” and together with DEP “Duke Energy”), are exempted from consideration of the EVCP standard pursuant to PURPA Section 112(h) in light of the fact that Duke Energy has engaged in a number of pilot programs related to electric vehicles (“EV”) and has engaged stakeholders to develop EV programs through its Electric Transportation (ET) Pilot.<sup>11</sup> Notably, in Duke Energy’s ET Pilot, the Commission requested interested parties to file comments – not testimony – which is precisely what Movants seek in this proceeding.<sup>12, 13</sup>

11. Finally, the Public Utilities Act provides the Commission with discretion to alter or amend its prior orders or decisions at any time upon notice to the public utility and to the other parties of record affected, and after providing an opportunity to be heard as provided in the case of complaints.<sup>14</sup>

12. DENC discussed this Motion with ChargePoint, Inc., which expressed that it has no objection to the Motion and that it consents to a grant of the relief sought herein.

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<sup>11</sup> See Docket Nos. E-2, Sub 1197, and E-7, Sub 1195.

<sup>12</sup> See Order Approving Electric Transportation Pilot, in Part, issued in Docket Nos. E-2, Sub 1197, and E-7, Sub 1195 (November 24, 2020), at 2, 15.

<sup>13</sup> The Public Utilities Commission of Ohio has also invited parties and interested persons to “offer their perspectives either at [a] public hearing or through filing written comments,” but did not require that testimony be filed by expert witnesses. See the Public Utilities Commission of Ohio’s Entry issued on November 14, 2022, in Case No. 22-1024-AU-COI.

<sup>14</sup> See N.C.G.S. § 62-80; *State ex rel. Utils. Comm’n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). The Commission cannot alter or amend an order arbitrarily or capriciously. *State ex rel. Utils. Comm’n v. N.C. Gas. Serv.*, 128 N.C. App. 288, 293, 494 S.E.2d 621, 625 (1998). “Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter or amend a prior order.” See e.g., *Order Deciding Motions for Reconsideration and Clarification, and Requiring Implementation of New Rates*, Docket No. E-22, Subs 562 and 566 at 4 (July 28, 2020) (citing *State ex rel. Utils. Comm’n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-4, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998)).

WHEREFORE, Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina and the Public Staff jointly respectfully request that the Commission grant this Motion and provide the following relief:

- 1) Amend Ordering Paragraph 5 of its November 15, 2022 Scheduling Order to require interested parties to file initial comments regarding measures the Commission could take to promote greater electrification of the transportation sector no later than May 5, 2023; and
- 2) Amend Ordering Paragraph 6 of its November 15, 2022 Scheduling Order to require interested parties to file reply comments no later than June 5, 2023.

/s/Mary Lynne Grigg

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion to Amend Order Scheduling Hearings, as filed in Docket No. E-22, Sub 658 was served electronically or via U.S. Mail, first-class postage prepaid, upon all parties of record.

This the 17<sup>th</sup> day of March, 2023.

/s/ Mary Lynne Grigg

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