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February 1, 2021

## VIA ELECTRONIC DELIVERY

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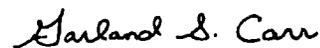
Re: Petition of Old Dominion Electric Cooperative, For a declaratory judgment  
Case No. PUR-2021-00026.

Dear Mr. Logan:

Please find enclosed for filing in the above-captioned proceeding the *Petition of Old Dominion Electric Cooperative, For a declaratory judgment*.

Please contact me with any questions or concerns. Thank you for your assistance in this matter.

Sincerely,



Garland S. Carr

## Enclosures

cc: William H. Chambliss, Esquire  
William F. Stephens  
C. Meade Browder, Jr., Esquire  
Micheal Hern, Esquire  
Pete Gallini



**PETITION OF**  
**OLD DOMINION ELECTRIC COOPERATIVE**

**FOR A DECLARATORY JUDGMENT**  
**CASE NO. PUR-2021-00026**

**Before the Virginia State Corporation Commission**

**Filed: February 1, 2021**

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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

PETITION OF

OLD DOMINION ELECTRIC COOPERATIVE

CASE NO. PUR-2021-00026

For a declaratory judgment

PETITION

Old Dominion Electric Cooperative ("ODEC" or "Cooperative"), by counsel, files this petition pursuant to Rule 100 C<sup>1</sup> of the Rules of Practice and Procedure of the State Corporation Commission ("Commission") for a declaratory judgment that ODEC is not required to obtain a certificate of public convenience and necessity ("Certificate") in connection with two projects for the deployment of battery energy storage systems ("BESS") ("Petition").

In support of its Petition, ODEC respectfully states as follows:

**I. INTRODUCTION**

1. ODEC is a not-for-profit power supply electric cooperative, organized and operating under the laws of Virginia, and subject to Federal Energy Regulatory Commission jurisdiction. ODEC supplies capacity and energy to its eleven electric distribution cooperative members ("Members"),<sup>2</sup> all of which are located within the region-operated PJM<sup>3</sup> control area. ODEC owns electric generation facilities with a total capacity of approximately 2,659 megawatts which it uses to

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<sup>1</sup> 20 VAC 5-20-100 C.

<sup>2</sup> A&N Electric Cooperative ("ANEC"), BARC Electric Cooperative ("BARC"), Community Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative ("PGEC"), Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, Choptank Electric Cooperative, Inc., and Delaware Electric Cooperative, Inc.

<sup>3</sup> PJM Interconnection, L.L.C. ("PJM").

provide wholesale power to its Members located in Virginia, Delaware, and Maryland. ODEC owns and maintains approximately 110 miles of electric transmission facilities which are under the operational control of PJM. ODEC provides generation and transmission electric service (performing the role of a wholesale power supply cooperative responsible for coordinating the power supply of its Members), and the Members provide retail distribution service (relying on ODEC to meet and control the majority of their power supply needs). ODEC's sales to its Members are made pursuant to all-requirements wholesale power contracts between ODEC and each of its Members.

2. ODEC plans to construct two BESS projects in Virginia: (i) an approximately 5 megawatt ("MW") peak output BESS with two hours of storage (ten megawatt-hours ("MWhs")) in BARC's service territory ("BESS-1"); and (ii) an approximately 5 MW peak output with two hours of storage (ten MWhs) in PGEC's service territory ("BESS-2") ("collectively, BESS Projects"). BESS-1 and BESS-2 will be located on land owned by BARC and PGEC, respectively, and both projects will be adjacent to existing substations.

## II. THE ACTION SOUGHT AND THE ACTUAL CONTROVERSY

3. ODEC seeks a declaration from the Commission that Certificates are not required for ODEC's two Virginia BESS Projects. Although ODEC believes it may construct the two BESS Projects without obtaining Certificates under the specific facts and circumstances of this Petition, ODEC is not certain.<sup>4</sup> There is little precedent for the permitting or certification of utility-owned BESS facilities. Although the Commission recently promulgated the Regulations Governing the

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<sup>4</sup> See 5 VAC 5-20-100, *Other proceedings*, C. Declaratory judgments. "Persons having no other adequate remedy may petition the commission for a declaratory judgment. The petition shall meet the requirements of subsection B of this section and, in addition, contain a statement of the basis for concluding that an actual controversy exists. In the proceeding, the commission shall by order provide for the necessary notice, responsive pleadings, and participation by interested parties and the commission staff."

Deployment of Energy Storage ("Energy Storage Rules"),<sup>5</sup> the Energy Storage Rules only apply to investor-owned utilities and non-utility owned storage facilities, and they do not apply to cooperatives.<sup>6</sup> Therefore, as ODEC has planned and designed the two BESS Projects and is nearing the construction phase, an actual controversy exists. A Commission order declaring that ODEC may construct the two BESS Projects without obtaining Certificates would be dispositive of that controversy.

### III. THE COMMISSION'S JURISDICTION

4. The Commission has jurisdiction over the controversy described in this Petition. The Commission has the power and is charged with the "duty of regulating . . . , except as may be otherwise authorized by this Constitution or by general law, the facilities of railroad, telephone, gas, and electric companies."<sup>7</sup> The Utility Facilities Act specifically identifies the Commission "as the body that determines whether a [C]ertificate is required by law, and issues the [C]ertificate if one is required."<sup>8</sup> The Commission is given broad discretionary authority in its determinations regarding Certificates.<sup>9</sup> Accordingly, the controversy described in this Petition is within the Commission's unique jurisdiction, and ODEC has no other adequate remedy but to obtain a Commission decision on the controversy.

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<sup>5</sup> 20 VAC 5-335-10 *et seq.*

<sup>6</sup> See 20 VAC 5-335-10, *Purpose and applicability* ("Electric cooperatives are not subject to this chapter."). Code § 56-585.5 E of the Virginia Clean Economy Act ("VCEA") directed the Commission to promulgate the Energy Storage Rules. The VCEA itself, however, does not apply to electric cooperatives. See Code § 56-585.5 I.

<sup>7</sup> Constitution of Virginia, Article IX, § 2.

<sup>8</sup> *Petition of Columbia Gas of Virginia, Inc., For a declaratory judgment*, Case No. PUE-2009-00077, 2009 S.C.C. Ann. Rept. 522, 523-24, Order (Sept. 18, 2009).

<sup>9</sup> See *VYVX of Virginia, Inc. v. Cassell*, 258 Va. 276, 294 (1999) ("[W]e cannot sit as a board of revision to substitute our judgment for that of the Commission on matters within its province.").

#### IV. STATEMENT OF FACTS

5. BESS-1 will be an approximately 5 MW peak output BESS with two hours of storage (ten MWhs) located in BARC's service territory. BESS-1 will be located on land owned by BARC adjacent to an existing substation. BESS-1 will not be paired with an existing generating facility.

6. BESS-2 will be an approximately 5 MW peak output with two hours of storage (ten MWhs) in PGEC's service territory. BESS-2 will be located on land owned by PGEC and adjacent to an existing substation. BESS-2 will not be paired with an existing generating facility.

7. The BESS Projects will each have 5 MW or less of peak output and will have limited land use implications. The BESS Projects will not produce any emissions. The two distribution cooperatives, together with ODEC, have planned and designed the BESS Projects to enhance distribution system operations and reliability. ODEC anticipates that the BESS Projects will result in more efficient and reliable operation of the distribution systems for BARC and PGEC. By coordinating battery energy storage projects among its members, ODEC anticipates it will gain economies of scale.<sup>10</sup>

#### V. LEGAL BASIS

8. Code § 56-580 D provides that the Commission

shall permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest (emphasis added).

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<sup>10</sup> ODEC plans to construct and purchase similar battery energy storage systems in the future. For example, ODEC plans to construct an approximately 2 MW peak output BESS with two and a half hours of storage (5 MWhs) in ANEC's service territory on Smith Island in Maryland.

It is unclear whether the BESS Projects are "electrical generating facilities" that must be certificated by the Commission as the "generating" of "electric energy means the production of electric energy."<sup>11</sup> Should the BESS Projects qualify as "electrical generating facilities," however, no Certificate should be required pursuant to Code § 56-580 D. The Commission's Generation Rules<sup>12</sup> apply to persons requesting approval of electric generating facilities under Code § 56-580 D and govern the application process for such approval.<sup>13</sup> The Generation Rules provide that "[c]onstruction of electric generating facilities with rated capacities of 5 MW or less may be undertaken without complying with the filing requirements established by this chapter."<sup>14</sup> The Generation Rules specify that, for construction of electric generating facilities with rated capacities of 5 MW or less, the requirement is a letter to the Director of the Division of Energy Regulation and compliance with other applicable laws rather than an application for a Certificate pursuant to Code § 56-580 D.<sup>15</sup> Therefore, should the BESS Projects qualify as "electric generating facilities," ODEC believes that Certificates are not required for the BESS Projects as each project will have a total peak output of 5 MW or less. However, ODEC is not certain whether battery energy storage systems qualify as "electrical generating facilities" such that the BESS Projects fall under the 5 MW exemption in the Generation Rules.

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<sup>11</sup> See Code § 56-576.

<sup>12</sup> 20 VAC 5-302-10 *et seq.*, Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility ("Generation Rules").

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* Persons desiring to construct such facilities shall (i) submit a letter to the Director of the Division of Energy Regulation stating the location, size and fuel type of the facility, and (ii) comply with all other requirements of federal, state and local law. *Id.*

9. Code § 56-265.2 of the Utility Facilities Act<sup>16</sup> provides that it is unlawful for a public utility to construct, enlarge or acquire any facilities for use in public service without first having obtained a Certificate from the Commission, except for "ordinary extensions or improvements in the usual course of business." ODEC believes that Certificates are not required for the BESS Projects pursuant to the Utility Facilities Act because the projects qualify as "ordinary extensions or improvements in the usual course of business."

10. Dominion Energy Virginia<sup>17</sup> recently proposed to deploy three BESS projects in Case No. PUR-2019-00124 ("Dominion Proceeding"). Dominion's BESS-1 and BESS-2 projects will each be 2 MW/8 MWh systems<sup>18</sup> located at existing substations on Dominion-owned property.<sup>19</sup> Dominion's stated objectives for BESS-1 and BESS-2 include improved reliability of electrical transmission or distribution systems.<sup>20</sup> Based on the facts and circumstances in the Dominion Proceeding, the Commission found that Dominion's BESS-1 and BESS-2 projects did not require Certificates because they qualified as "ordinary extensions or improvements in the usual course of business."<sup>21</sup>

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<sup>16</sup> Code § 56-265.1 *et seq.* ("Utility Facilities Act" or "Act").

<sup>17</sup> Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion").

<sup>18</sup> Case No. PUR-2019-00124, Ex. 2 (Application) at 3.

<sup>19</sup> *Id.* at Ex. 2 (Application) at Exhibit 1 page 1 and Exhibit 2 page 1.

<sup>20</sup> *Id.* at Exhibit 1 page 4 and Exhibit 2 page 4.

<sup>21</sup> See *Application of Virginia Electric and Power Company, To participate in the pilot program for electric power storage batteries pursuant to § 56-585.1:6 of the Code of Virginia, and for certification of a proposed battery energy storage system pursuant to § 56-580 D of the Code of Virginia*, Case No. PUR-2019-00124, Doc. Con. Cen. No. 200220170, Final Order (Feb. 14, 2020) at 5 n18 ("Dominion Final Order").

11. Also in the Dominion Proceeding, Dominion requested, to the extent needed, the amendment of a Certificate previously issued for the Scott Solar Facility<sup>22</sup> to include the deployment of Dominion's BESS-3, a 2 MW/8 MWh direct current system with a 10 MW/40 MWh alternating current-coupled system.<sup>23</sup> Dominion's BESS-3 project will be located at the Scott Solar Facility on Dominion-leased property.<sup>24</sup> Dominion's stated objectives for BESS-3 included reducing the need for additional generation during times of peak demand.<sup>25</sup> The Commission found it appropriate to amend the Certificate for the Scott Solar Facility to include the BESS-3 project.<sup>26</sup> In the Final Order, the Commission noted that Dominion would classify BESS-3 as a generation asset paired with the Scott Solar Facility.<sup>27</sup>

12. ODEC's BESS Projects are comparable to Dominion's BESS-1 and BESS-2 ordinary extensions or improvements in that they are similar small-scale facilities that will be located adjacent to existing substations on cooperative-owned land. Like Dominion's BESS-1 and BESS-2 projects, ODEC's BESS Projects were designed and planned to improve reliability of the distribution network in the usual course of business. Further, ODEC's BESS Projects are distinguishable from Dominion's certificated BESS-3 project in that they will not be paired with a certificated generation facility. Therefore, as ODEC's BESS Projects are similar to Dominion's

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<sup>22</sup> See *Application of Virginia Electric and Power Company, For approval and certification for the proposed 2016 Solar Projects pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia, and approval of a rate adjustment clause, designated Rider US-2, under § 56-585.1 A 6 of the Code of Virginia*, Case No. PUE-2015-00104, 2016 S.C.C. Ann. Rept. 295, Final Order (June 30, 2016).

<sup>23</sup> Case No. PUR-2019-00124, Ex. 2 (Application) at 6.

<sup>24</sup> *Id.* at Exhibit 3 pages 1 and 4.

<sup>25</sup> *Id.* at Exhibit 3 page 4.

<sup>26</sup> Dominion Final Order at 5.

<sup>27</sup> *Id.*

BESS-1 and BESS-2 non-certificated ordinary extensions or improvements, and distinguishable from Dominion's certificated BESS-3 project, ODEC believes that Certificates are not required for its BESS Projects under the Utility Facilities Act. However, as this appears to be the only precedent regarding certification of utility-owned battery energy storage facilities and "ordinary extensions or improvements in the usual course of business," ODEC is uncertain whether BESS-1 and BESS-2 qualify for this exemption from the Utility Facilities Act.

## **VI. CONCLUSION**

Should ODEC's BESS Projects qualify as "electrical generating facilities" under Code § 56-580 D, ODEC believes Certificates are not required for the BESS Projects as each project will have a peak output of 5 MW or less. ODEC believes Certificates are not required for the BESS Projects pursuant to the Utility Facilities Act because the BESS Projects are "ordinary extensions or improvements in the usual course of business." As the newly promulgated Energy Storage Rules do not apply to cooperatives and there is little precedent for the permitting or certification of utility-owned BESS facilities, however, ODEC cannot be certain Certificates are not required for the BESS Projects. Therefore, ODEC requests a declaratory judgment that ODEC is not required to obtain Certificates for the BESS Projects.

WHEREFORE, under the specific facts and circumstances of this case, ODEC requests the Commission to declare that Certificates are not required for the BESS Projects.

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Respectfully submitted,

**OLD DOMINION ELECTRIC COOPERATIVE**

By:

*Garland S. Carr*

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Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of February 2021, a true copy of the foregoing document was delivered by hand, emailed, or mailed, first-class, postage prepaid, to the following:

William H. Chambliss, General Counsel  
Office of General Counsel, 10th Floor  
State Corporation Commission  
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C. Meade Browder, Jr., Esquire  
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202 N. 9th Street, 8th Floor  
Richmond, Virginia 23219-3424

*Garland S. Carr*

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Garland S. Carr