

## RESOLUTION 22-06

### AUTHORIZING THE MEMORANDUM OF AGREEMENT BETWEEN VIRGINIA DEPARTMENT OF ENERGY, VIRGINIA PORT AUTHORITY, AND VIRGINIA ELECTRIC AND POWER COMPANY

**WHEREAS**, The Virginia Port Authority (“Authority”), a body corporate and a political subdivision of the Commonwealth of Virginia, has been established pursuant to Chapter 10, Title 62.1 of the Code of Virginia of 1950, as amended (the “Act”); and

**WHEREAS**, Section 62.1-132.3 of the Code of Virginia of 1950 as amended instructs the Authority to perform any act or function that may be useful in developing, improving or increasing the commerce, both foreign and domestic, of all maritime and inland ports of the Commonwealth and related facilities; and

**WHEREAS**, Section 62.1-132.1 of the Code of Virginia of 1950 as amended authorizes the Authority to make and enter into contracts; and

**WHEREAS**, the Authority seeks to power port operations with one-hundred percent clean energy to serve as an economic driver for additional trade and commerce by and through the Commonwealth’s ports; and

**WHEREAS**, the Authority desires to enter into a Memorandum of Agreement (“MOA”) with the Virginia Department of Energy and Virginia Electric and Power Company to reapportion the Commonwealth’s Renewable Energy Product by setting aside and assigning to the Authority ten percent of the Commonwealth’s renewable energy portfolio for exclusive use by the Authority; and

**WHEREAS**, the Authority has prepared an MOA detailing the clean energy set aside and assignment from the Virginia Department of Energy to the Authority and payment terms to Virginia Electric and Power Company, as presented to the Board; and

**WHEREAS**, the Board of Commissioners has duly reviewed and considered the MOA and determined that the purpose of the MOA and the terms contemplated by the MOA are in conformity with the purposes of the Authority set forth in the Act and are in the public interest and otherwise beneficial to the Authority and the Commonwealth of Virginia.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Virginia Port Authority, as follows:

Section 1. Approval of the MOA. The Board approves the MOA and the execution and delivery thereof by the Authority is hereby authorized, and the MOA shall be executed in the manner therein set forth to evidence the acceptance by the Authority of such a MOA, with such changes, insertions, and omissions as may be approved by the

Executive Director, the execution of the MOA by the Executive Director to be conclusive evidence of the Authority's approval of any such changes, insertions and omissions.

Section 2. Ratification; Further Action. The actions previously taken by the officers and staff of the Authority in furtherance of this Resolution are hereby ratified and confirmed. The officers and staff of the Authority, any of whom may act, are hereby authorized to take such actions, and deliver such additional documents and certificates, as they may, in their discretion, deem necessary or proper in connection with the adoption of this Resolution.

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** this 10<sup>th</sup> day of May, 2022.

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John G. Milliken, Chairman

Attest:

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Ryanne A. Shields, Secretary

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT (“Agreement”)** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022 (“**Effective Date**”) by and between the Commonwealth of Virginia (the “**Commonwealth**”) by and through its Virginia Department of Energy, an agency of the Commonwealth (“**Virginia Energy**”), the Virginia Port Authority, a body corporate and political subdivision of the Commonwealth (the “**Port**”), and Virginia Electric and Power Company, a Virginia public service corporation (“**Dominion**”). Virginia Energy, the Port, and Dominion may be referred to individually (“**Party**”) or collectively (“**Parties**”). Any capitalized terms not defined herein shall have the meaning supplied in the Letter Supplement.

### RECITALS

**WHEREAS**, the Commonwealth, as a non-jurisdictional customer of Dominion, entered into that certain “Amended and Restated Agreement for the Provision of Electric Service Restricted to Agencies of the Commonwealth of Virginia,” effective July 14, 2003 (the “**Combined Agreement**”);

**WHEREAS**, the Commonwealth and Dominion entered into that certain Letter Supplement for the Purchase of Electric Energy from Renewable Energy Facilities, dated September 22, 2019 (the “**Letter Supplement**”);

**WHEREAS**, the Letter Supplement provides the terms underlying Dominion’s procurement of renewable energy and Environmental Attributes from an estimated 345 megawatts of generation capacity including Belcher Solar (88MW), Bedford Solar (70MW), Pumpkinseed Solar (60MW), and Bookers Mill Solar (127MW) (collectively, the “**Facilities**”);

**WHEREAS**, pursuant to the Letter Supplement, the Commonwealth purchases and owns all of the Net Electric Energy Output and Environmental Attributes generated by the Facilities (collectively, the “**Renewable Energy Product**”),

**WHEREAS**, pursuant to the Letter Supplement, the Commonwealth currently holds the Renewable Energy Product for the benefit of those Customer accounts identified by the Commonwealth pro rata based on kWh energy use;

**WHEREAS**, the Port’s pro rata share of the Renewable Energy Product is not sufficient, and not expected to become sufficient, to meet the Port’s goal of 100% renewable energy from grid electricity;

**WHEREAS**, the Commonwealth supports the Port’s mission of 100% renewable energy as a potential economic driver for additional trade and commerce by and through the Commonwealth’s ports;

**WHEREAS**, the Letter Supplement allows the Commonwealth to specify the Customer accounts that will be obligated under Rider REF and reapportion the Renewable Energy Product within the Commonwealth’s accounts;

**WHEREAS**, the Commonwealth and the Port wish to reapportion the Commonwealth’s Renewable Energy Product by setting aside and assigning to the Port ten percent (10%) of all of the Commonwealth’s Renewable Energy Product received under the Letter Supplement from the Effective Date until the expiration of the Letter Supplement Term, along with all of the corresponding rights and obligations arising therefrom, including (1) the pro rata portion of Rider REF and (2) all obligations and rights arising during the Deferral Period prior to Rider REF. Such ten percent (10%) share of the Renewable Energy Product, and any rights and obligations with respect thereto, whether under REF or otherwise, from the Effective Date hereof until the expiration or earlier termination of the Letter Supplement, shall be referred to hereinafter as the “**Set Aside Assets**.”

**WHEREAS**, notwithstanding the assignment of the Set Aside Assets to the Port, the Commonwealth and the Port further wish that the Commonwealth assign to the Port the Port's pro rata share (based on percentage of the Commonwealth's electric energy usage under the Combined Agreement) of the remaining amount of Renewable Energy Product, as first reduced by the Locality Option in the event of the exercise of the Locality Option pursuant to Section I.D of the Letter Supplement, or if not so reduced by such exercise then the pro rata share of the remaining ninety percent (90%) of Renewable Product and REF Obligation. Such pro rata share of the remaining Renewable Energy Product (whether reduced or not), and any rights and obligations with respect thereto, whether under REF or otherwise, from the Effective Date hereof until the expiration or earlier termination of the Letter Supplement shall be referred to hereinafter as the "**Pro Rata Assets.**" The Set Aside Assets and the Pro Rata Assets shall be collectively referred to hereinafter as the "**Assigned Assets.**"

**WHEREAS**, pursuant to Va. Code § 62.1-128 the Port is created as a body corporate and as a political subdivision of the Commonwealth, and pursuant to Va. Code § 62.1-132.1 is vested with the power to make contracts; and

**WHEREAS**, the Parties wish to enter into an arms' length, binding agreement wherein the Commonwealth assigns the Assigned Assets to the Port, and the Port assumes and accepts the Assigned Assets and all corresponding liabilities, in accordance with the terms and conditions provided herein.

### **AGREEMENT**

**NOW, THEREFORE**, because of the above recitals (which are incorporated herein) and in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration including the significant monetary risk associated with the Assigned Assets, the receipt and adequacy of such consideration being acknowledged, the Parties hereby agree as follows and take the following actions:

1. Transfer and Conveyance. Effective as of the Effective Date, the Commonwealth hereby sells, assigns, transfers, conveys and delivers to the Port, and the Port hereby accepts from the Commonwealth, all of the Commonwealth's right, title and interest in, to and under the Assigned Assets, free and clear of any liens, for a purchase price of zero dollars (\$0). Delivery of this Agreement constitutes receipt by the Port of such Assigned Assets, to have and to hold all such Assigned Assets for the Port and its successors and assigns for their own use and behalf forever.

2. Assumption of Liabilities. Effective immediately upon this Assignment, the Port hereby assumes and agrees to pay, perform and discharge any and all the liabilities arising out of or in connection with the Assigned Assets in the form the payment or acceptance of any REF amount when due. The Port further accepts the Letter Supplement conditions established in and for the Deferral Period, to be applied at (i) ten percent (10%) of the Commonwealth's responsibility for the Set Aside Assets (ii) plus such additional percentage representing the Port's share of remaining Renewable Energy Product for the Pro Rata Assets, in each case whether in the form of debit or credit at the conclusion of the Deferral Period. The Port agrees that Dominion may create a separate rider to charge or credit the Port for the Assigned Assets. In no event shall the per-unit value of the Assigned Assets be different than the per-unit value of the remaining, unassigned Renewable Energy Product.

3. Grant of Option. As further consideration for the Port's assumption of liabilities and inducement for the Port to accept the Assigned Assets, the Commonwealth hereby grants to the Port the sole and exclusive option to obtain, for no additional consideration and free and clear of any liens or claims, that certain amount of the Renewable Energy Product as required to cover a reasonably anticipated shortfall of Assigned Assets against the electric energy usage of the Port (the "Option"). The Option may be

exercised in the Port's sole discretion at any time, or number of times, in the Letter Supplement Term and on the same terms as provided herein for the Assigned Assets, as necessary for the Port's electricity consumption to remain one hundred percent offset by Renewable Energy Product, provided that the Option shall be capped at a total of fifteen percent (15%) of all of the Commonwealth's Renewable Energy Product received under the Letter Supplement as of the Option Date in addition to the Port's Pro Rata Assets, or as otherwise mutually agreed in writing. In the event of the exercise of the Option, the Parties agree to promptly execute an assignment agreement and such other documents, instruments, certifications and confirmations as may be reasonably required to fully effect and consummate the option transaction contemplated by this Paragraph.

4. Effect. Nothing herein shall be construed to amend the respective obligations of the Commonwealth or Dominion under the Letter Supplement, except that Dominion agrees to create and administer a separate charge as may be necessary for the Port to pay via its electric bills for the Assigned Assets.

5. Appointment as Administrator. Effective as of the date above first written, the Port acknowledges the Commonwealth, by and through Virginia Energy, as the current administrator of the Renewable Energy Product in accordance with the Letter Supplement. The Port hereby appoints the Commonwealth as the administrator of the Assigned Assets on behalf of the Port, and the Commonwealth agrees administer the Assigned Assets in accordance with the Port's instructions, to include segregating and designating the Assigned Assets from the remaining Renewable Product and, where directed, retiring, selling, or taking other actions as directed by the Port. The Commonwealth agrees to provide quarterly updates to the Port regarding the performance of the Assigned Assets, provided that such information is provided to Virginia Energy in a timely manner. The Commonwealth further agrees to alert the Port if and when the Port's energy usage is reasonably anticipated to exceed the corresponding amount of the Assigned Assets. The Parties agree that the Commonwealth will take reasonable actions to assist the Port in demonstrating the Port's total renewable energy assets (the Assigned Assets plus the remaining pro rata share) as may be necessary for the Port to establish its renewable electricity use to the Port's customers.

6. REC Optimization. The Commonwealth agrees (i) not to request that Dominion perform any REC Optimization of the Port's RECs without the advance written consent of the Port and (ii) that in the event that Dominion elects to perform REC Optimization during the Deferral Period due to the Deferral Payment exceeding \$500,000, the optimized RECs will be accounted pro rata with respect to the Port's RECs—for the avoidance of doubt, if Dominion optimizes fifty percent (50%) of RECs, the no more than fifty percent (50%) of the Port's RECs will be counted as optimized by the Commonwealth.

7. Headings. The headings used in this Agreement are for purposes of convenience only and shall not be used in construing the provisions hereof.

8. Covenant of Further Assurances. The Parties agree to execute such other documents and perform such other acts as may be necessary or such other reasonable acts as may be desirable to carry out the purposes of this Agreement.

9. Successors and Assigns. This Agreement shall bind and benefit the respective successors and permitted assigns of the Commonwealth as assignor and the Port as assignee.

10. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or give to, any person, other than the Parties and their successors and permitted assigns, any remedy or claim under or by reason of this Agreement or any agreements, terms, covenants or conditions hereof.

10. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the Applicable Law of the Commonwealth of Virginia without giving effect to the choice of law principles thereof. In the event of any dispute, the Parties shall first elevate the matter to management in an attempt to resolve such dispute for thirty (30) days prior to filing any civil action.

11. Modification and Termination. This Agreement may not be modified or amended except by the written agreement of each of the Parties. The Parties do not have the right to terminate this Agreement except as expressly stated herein or as mutually agreed in writing.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be executed and delivered as of the day and year first above written.

**ASSIGNOR:**

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_  
John Warren  
Director  
Virginia Department of Energy

**ASSIGNEE:**

VIRGINIA PORT AUTHORITY

BY: \_\_\_\_\_

VIRGINIA ELECTRIC AND POWER COMPANY

By: \_\_\_\_\_