

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 4, 2020

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APPLICATION OF

J. W. WHITING CHISMAN, III

On behalf of himself and all other licensed
branch pilots in the Commonwealth of
Virginia who are members of the
Virginia Pilot Association

CASE NO. PUR-2020-00161

For approval of a revision of rates
and charges for pilotage

ORDER FOR NOTICE AND HEARING

On August 24, 2020, J. W. Whiting Chisman, III, on behalf of himself and all other licensed branch pilots in the Commonwealth of Virginia who are members of the Virginia Pilot Association ("Association"), filed an Application with the State Corporation Commission ("Commission") for approval to revise the Association's rates and charges for pilotage services. The Association, among other things, proposes an increase in the Association's annual revenues by 8.2% to recover increased operating expenses (including new expenses related to COVID-19) and to fund additional capital improvements and salary and benefit increases.¹

The Association also filed, in Appendix C, a proposed schedule of rates and charges, which are expected to produce the requested increase in annual revenues.² The proposed

¹ Application at 3-6.

² *Id.* at 6, Appendix C.

pilotage rates and charges are based on the gross tonnage formula approved by the Commission in the Association's last rate case, Case No. PUE-2016-00098.³

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; the Association should provide public notice of its Application; a public hearing should be scheduled for the purpose of receiving testimony and evidence on the Application; interested persons should have the opportunity to file comments on the Application or participate as a respondent in this proceeding; and the Commission's Staff ("Staff") should be directed to investigate the Application and file testimony and exhibits containing its findings and recommendations thereon. Further, we find that a Hearing Examiner should be appointed to conduct all further proceedings in this matter, including filing a final report containing the Hearing Examiner's findings and recommendations.

The Commission further takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.⁴ The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding.⁵

³ *Id.* at Appendix C. See *Application of J. William Cofer, On behalf of himself and all other licensed branch pilots in the Commonwealth of Virginia who are members of the Virginia Pilot Association, For approval of a revision of rates and charges for pilotage*, Case No. PUE-2016-00098, 2017 S.C.C. Ann. Rept. 376, Final Order (March 17, 2017).

⁴ See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Governor Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

⁵ See, e.g., *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission,*

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Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless they contain confidential information, and require electronic service on parties to this proceeding.

We realize that the current COVID-19 public health crisis has caused devastating economic effects. Accordingly, we are sensitive to the effects of rate increases, especially in times such as these. The Commission, however, must and will follow the laws applicable to this case, as well as the findings of fact supported by evidence in the record.

Accordingly, IT IS ORDERED THAT:

(1) As provided by § 54.1-918 of the Code of Virginia ("Code"), the Association's Application is docketed and assigned Case No. PUR-2020-00161.

(2) All pleadings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁶ Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person

Ex Parte: Revised Operating Procedures During COVID-19 Emergency, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency Extension of Prior Orders*, Case Nos. CLK-2020-00004 and CLK-2020-00005, Doc. Con. Cen. No. 200520101, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020).

⁶ 5 VAC 5-20-10 *et seq.*

seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁷

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission.

(5) A public hearing on the Application shall be convened at 10 a.m. on December 15, 2020, to receive the testimony of public witnesses and the evidence of the Association, any respondents, and the Staff. Further details on the hearing will be provided by subsequent Commission Order or Hearing Examiner's Ruling.

(6) An electronic copy of the Application also may be obtained by submitting a written request to counsel for the Association, Eric M. Page, Eckert Seamans Cherin & Mellott, LLC, 919 East Main Street, Suite 1300, Richmond, Virginia 23219, or epage@eckertseamans.com.

⁷ As noted in the Commission's March 19, 2020 Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency in Case No. CLK-2020-00005, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency. *See* n.5, *supra*.

Interested persons also may download unofficial copies from the Commission's website:

<https://scc.virginia.gov/pages/Case-Information>.

(7) On or before October 2, 2020, the Association shall cause the following notice to be published as display advertising (not classified) once a week for two consecutive weeks in newspapers of general circulation in the Cities of Norfolk, Portsmouth and Newport News, Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION
BY THE VIRGINIA PILOT ASSOCIATION TO
INCREASE THE RATES AND CHARGES FOR PILOTAGE
CASE NO. PUR-2020-00161

- The Virginia Pilot Association ("Association") has applied for approval to revise the Association's rates and charges for pilotage services.
- The Association's request would increase the Association's annual revenues by 8.2%.
- A Hearing Examiner appointed by the State Corporation Commission will hold a public hearing in the case on December 15, 2020.
- Further information about this case is available on the SCC website at: <https://scc.virginia.gov/pages/Case-Information>.

On August 24, 2020, the Virginia Pilot Association ("Association") filed an Application with the State Corporation Commission ("Commission") for approval to revise the Association's rates and charges for pilotage services to increase the Association's annual revenues by 8.2%. The proposed pilotage rates and charges are based on the gross tonnage formula approved by the Commission in the Association's last rate case, Case No. PUE-2016-00098.

Interested persons are encouraged to review the Application and supporting documents for the details of these and other proposals.

TAKE NOTICE that the Commission may apportion revenues among customer classes and/or design rates in a manner differing from that shown in the Application and supporting documents and thus may adopt rates that differ from those appearing in the Association's Application and supporting documents.

The Commission entered an Order for Notice and Hearing in this case that, among other things, scheduled a public hearing on December 15, 2020, at 10 a.m., to receive the testimony of public witnesses and the evidence of the Association, any respondents, and the Commission's Staff. Further details on the hearing will be provided by subsequent Commission Order or Hearing Examiner's Ruling.

The Commission has taken judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels. In accordance therewith, all pleadings, briefs, or other documents required to be served in this matter should be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"). Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission has directed that service on parties and the Commission's Staff in this matter shall be accomplished by electronic means. Please refer to the Commission's Order for Notice and Hearing for further instructions concerning Confidential or Extraordinarily Sensitive Information.

An electronic copy of the Association's Application may be obtained by submitting a written request to counsel for the

Association, Eric M. Page, Eckert Seamans Cherin & Mellott, LLC, 919 East Main Street, Suite 1300, Richmond, Virginia 23219, or epage@eckertseamans.com. Interested persons also may download unofficial copies from the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

On or before December 15, 2020, any interested person may file comments on the Application by following the instructions found on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. All comments shall refer to Case No. PUR-2020-00161.

On or before October 30, 2020, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at <https://scc.virginia.gov/clk/efiling/>. Such notice of participation shall include the email addresses of such parties or their counsel. The respondent simultaneously shall serve a copy of the notice of participation on counsel to the Association. Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00161.

On or before November 6, 2020, each respondent may file with the Clerk of the Commission and serve on the Staff, the Association, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case, and each witness's testimony shall include a summary not to exceed one page. In all filings, respondents shall comply with the Commission's Rules of Practice, including 5 VAC 5-20-140, *Filing and service*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2020-00161.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Hearing, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

The Association's Application, the Commission's Rules of Practice and the Commission's Order for Notice and Hearing may be viewed at: <https://scc.virginia.gov/pages/Case-Information>.

VIRGINIA PILOT ASSOCIATION

(8) On or before October 16, 2020, the Association shall file proof of the newspaper publication required by Ordering Paragraph (7) with the Clerk of the Commission.

(9) On or before December 15, 2020, any interested person may file comments on the Application by following the instructions found on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. All comments shall refer to Case No. PUR-2020-00161.

(10) On or before October 30, 2020, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at <https://scc.virginia.gov/clk/efiling/>. Such notice of participation shall include the email addresses of such parties or their counsel. The respondent simultaneously shall serve a copy of the notice of participation on counsel to the Association. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00161.

(11) Within three (3) business days of receipt of a notice of participation as a respondent, the Association shall serve a copy of the Application on the respondent.

(12) On or before November 6, 2020, each respondent may file with the Clerk of the Commission and serve on the Staff, the Association, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case, and each witness's testimony shall include a summary not to exceed one page. In all filings, respondents shall comply with the Commission's Rules of Practice, as modified herein, including, but not limited to:

5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

All filings shall refer to Case No. PUR-2020-00161.

(13) On or before November 17, 2020, the Staff shall investigate the Application and file with the Clerk of the Commission its testimony and exhibits concerning the Application, and each Staff witness's testimony shall include a summary not to exceed one page. A copy thereof shall be served on counsel to the Association and all respondents.

(14) On or before December 1, 2020, the Association shall file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer, and each rebuttal witness's testimony shall include a summary not to exceed one page. The Association shall serve a copy of its rebuttal testimony and exhibits on the Staff and all respondents.

(15) Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(16) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. In addition to the service requirements of

5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.⁸ Except as modified herein, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq.*

(17) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

⁸ The assigned Staff attorney is identified on the Commission's website, <https://scc.virginia.gov/pages/Case-Information>, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2020-00161 in the appropriate box.