

# McGUIRE WOODS

December 30, 2019

VIA E-MAIL (shareholderproposals@sec.gov)

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F. Street, N.E.  
Washington, D.C. 20549

Re: Dominion Energy, Inc. – Exclusion of Shareholder Proposal Submitted by Diana Smith  
Pursuant to Rule 14a-8

Ladies and Gentlemen:

On behalf of our client Dominion Energy, Inc., a Virginia corporation (the “Company”), we hereby respectfully request that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission” or “SEC”) advise the Company that it will not recommend any enforcement action to the SEC if the Company omits from its proxy materials to be distributed in connection with its 2020 annual meeting of shareholders (the “Proxy Materials”) a proposal (the “Proposal”) and supporting statement submitted to the Company on November 25, 2019 by Diana Smith (the “Proponent”). References to a “Rule” or to “Rules” in this letter refer to rules promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

The Company anticipates that its Proxy Materials will be available for mailing on or about March 19, 2020. We respectfully request that the Staff, to the extent possible, advise the Company with respect to the Proposal consistent with this timing.

The Company agrees to forward promptly to the Proponent any response from the Staff to this no-action request that the Staff transmits by e-mail or facsimile to the Company only.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the SEC or Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the SEC or the Staff with respect

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to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

### **THE PROPOSAL**

The resolution portion of the Proposal reads as follows: “Shareholders request Dominion evaluate how cultural shifts towards human rights and climate justice affect the corporation’s governance.”

In the supporting statement, the Proposal outlines the various topics the Company may evaluate if the Proposal were to pass:

- if and how the board oversees environmental risks and opportunities;
- if and how executive compensation is linked to environmental and social objectives;
- if and how Dominion is addressing pollution prevention;
- if and how Dominion is addressing water conservation;
- if and how Dominion is addressing carbon footprint;
- if and how Dominion is addressing gender diversity;
- if and how Dominion is addressing data privacy;
- if and how Dominion is addressing consumer health;
- if and how Dominion is addressing ethical practices;
- if and how Dominion is addressing conflict materials;
- if and how Dominion is addressing forced labor.

The supporting statement also references the Company’s environmental, social and governance ratings from Censible.<sup>1</sup> It asserts that “[w]hile Dominion has good scores for employee satisfaction, workplace safety and governance, the ratings are low for pollution prevention, water conservation, carbon footprint and gender diversity. Dominion does not even receive ratings for: data privacy, consumer health, ethical practices, conflict materials and forced labor.”

Taken together, the Proposal is asking shareholders to request the Company evaluate how a wide-variety of environmental, social and governance (“ESG”) topics and trends that are related to human rights or to climate justice are affecting its governance.

A copy of the Proposal and supporting statement, as well as related submission correspondence from the Proponent, is attached to this letter as Exhibit A.

### **BASIS FOR EXCLUSION**

The Company believes that the Proposal may be properly excluded from the Proxy Materials pursuant to:

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<sup>1</sup> According to its website ([www.Censible.co](http://www.Censible.co)), Censible operates a database for investment professionals that aggregates millions of Environmental Social and Governance (ESG) data points to measure how stocks, mutual funds and ETFs perform on a variety of topics, from carbon emissions or gender diversity.

- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite and, otherwise, materially false and misleading in violation of Rule 14a-9; and
- Rule 14a-8(i)(10) because the Proposal has been substantially implemented by the Company.

## DISCUSSION

### **I. Rule 14a-8(i)(3) – the Proposal may be omitted because it is vague and indefinite and otherwise materially false and misleading in violation of Rule 14a-9.**

Rule 14a-8(i)(3) provides that a proposal may be omitted if it is “contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” Rule 14a-9(a) prohibits statements which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements therein not false or misleading.

The Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB 14B”). The Staff further indicated that this objection is warranted “where the proposal and the supporting statement, when read together, have the same result.” (SLB 14B). In applying the inherently vague and indefinite standard, the Staff has noted that a proposal may be materially misleading where “any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal.” *Fuqua Industries, Inc.* (March 12, 1991).

As described above, the Proposal requests that the Company “evaluate how cultural shifts towards human rights and climate justice affect the corporation’s governance.” First, it is unclear what specific steps the Proposal is asking the Company to take. Is it asking management to prepare a report? Is it seeking Board involvement or oversight? If the Proposal were to pass, would the Company be expected to evaluate its charter and bylaws, or also all of its governance-related policies and procedures and compensation practices, against a variety of ESG concerns? Would management or the Board be expected to establish forward-looking goals and/or propose possible changes? Even more importantly, which of the varied ESG topics described in the Proposal (carbon footprint, gender diversity, water conservation, forced labor, conflict materials, etc.) would shareholders expect the Company to address? For example, would it be expected to evaluate how carbon emission standards are affecting governance, or rather global human rights issues, such as forced labor in the African nations that produce conflict minerals?

The Proposal leaves these important points unexplained or otherwise up to the Company to determine. Different shareholders could have materially different interpretations of the Proposal, and different expectations of the actions by the Company if the Proposal were to pass. Some may expect the Company to evaluate gender and diversity issues, while other shareholders may expect the Company to evaluate data privacy or pollution prevention. As a result, the Proposal would confuse shareholders attempting to vote on the matter. Also, if the Proposal were to pass, it would be impossible for the Company to understand which of the numerous ESG topics shareholders were

expecting the Company to evaluate, or to understand the specific steps shareholders expected the Company to take in order to complete the requested evaluation.

The Staff has previously allowed the exclusion of shareholder proposals where the proposal is subject to materially differing interpretations on the grounds that neither the shareholders nor the company would be able to determine with reasonable certainty what actions or measures the proposal requires. For example, in *Puget Energy Inc.* (Mar. 7, 2002), the Staff allowed Puget Energy to exclude a shareholder proposal where the proponent requested that Puget Energy create a policy for “improved corporate governance.” The proponent did not define the term “improved corporate governance” and the rest of the proposal did not include a definitive statement describing what was to be included in the policy or the means for its implementation. Similarly, in *Cisco Systems, Inc.* (Oct. 7, 2016), the Staff found that a shareholder proposal that asked the board of directors to not take any action “whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification...” to be excludable as vague and indefinite. In *eBay Inc.* (Apr. 10, 2019), the Staff allowed the exclusion of a proposal where the proponent requested that eBay should reform its executive compensation committee. The Staff allowed exclusion of the proposal because it would be difficult for either eBay or its shareholders to determine with reasonable certainty the “reform” that was being requested. Finally, in *Alcoa, Inc.* (Dec. 24, 2002), the Staff found that a shareholder proposal referencing “these human rights standards” was impermissibly vague and indefinite, and was excludable.

Like these excludable proposals, the Proposal is impermissibly vague and indefinite, and therefore, materially misleading in violation of Rule 14a-9 and the Company may exclude the Proposal from its Proxy Materials under Rule 14a-8(i)(3).

## **II. Rule 14a-8(i)(10) – The Proposal may be excluded because the Company has already substantially implemented the Proposal.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The SEC’s view of the purpose of this exclusion was stated with respect to the predecessor to Rule 14a-8(i)(10): the rule was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” SEC Release No. 34-12598 (July 7, 1976). To be excluded, the proposal does not need to be implemented in full or exactly as presented by the proponent. Instead, the standard for exclusion is substantial implementation. Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”).

The Staff has stated that, in determining whether a shareholder proposal has been substantially implemented, it will consider whether a company’s particular policies, practices, and procedures “compare favorably with the guidelines of the proposal.” The Staff has permitted companies to exclude proposals from their proxy materials pursuant to Rule 14a-8(i)(10) where a company satisfied the essential objective of the proposal, even if the company did not take the exact action requested by the proponent or implement the proposal in every detail or if the company exercised discretion in determining how to implement the proposal. See, e.g., *Cisco Systems, Inc.* (Sept. 27, 2016) (allowing exclusion under Rule 14a-8(i)(10) of a proxy access proposal despite its including eligibility criteria distinguishable from those in the company’s existing proxy access bylaw); *Walgreen Co.* (Sept. 26, 2013) (allowing exclusion under Rule 14a-8(i)(10) of a proposal requesting an amendment to the company’s organizational documents that would eliminate all super-majority vote requirements, where such company eliminated all but one such requirement); and *Johnson & Johnson* (Feb. 19, 2008) (allowing exclusion under Rule 14a-8(i)(10) of a proposal

requesting that the company's board of directors amend the bylaws to permit a "reasonable percentage" of shareholders to call a special meeting where the proposal states that it "favors 10%" and the company planned to propose a bylaw amendment requiring at least 25% of shareholders to call a special meeting). See also, e.g., *Hewlett-Packard Company* (Dec. 11, 2007), *Anheuser-Busch Cos., Inc.* (Jan. 17, 2007) and *Bristol-Myers Squibb Co.* (Mar. 9, 2006). Further, when a company can demonstrate that it has already taken actions to address each element of a shareholder proposal, the Staff has concurred that the proposal has been "substantially implemented." See, e.g., *WD-40 Co.* (Sept. 27, 2016); *Oracle Corp.* (Aug. 11, 2016); *Exxon Mobil Corp.* (Mar. 17, 2015); *Deere & Company* (Nov. 13, 2012); *Exxon Mobil Corp.* (Mar. 23, 2009); *Exxon Mobil Corp.* (Jan. 24, 2001); and *The Gap, Inc.* (Mar. 8, 1996).

The Company continues to believe the Proposal is impermissibly vague and indefinite because it is unclear what specific actions the Company should take if it were to pass and because it is unclear as to which of the many ESG topics referenced in the Proposal the Company would be expected to address. Notwithstanding, we also believe the Proposal is excludable because the Company has established a formal mechanism by which a wide variety of ESG topics are regularly evaluated by the Company, including many of the topics specifically mentioned in the Proposal. In 2018, the Board of Directors of the Company established a standing Sustainability and Corporate Responsibility Committee of the Board (the "SCR Committee") comprised of non-employee directors, that oversees the Company's performance as a sustainable organization and responsible corporate citizen. The SCR Committee is responsible for overseeing the Company's strategies, activities and policies regarding environmental sustainability, corporate social responsibility and public issues of significance that may affect the stakeholders of the Company, including shareholders, employees, customers and the communities in which the Company operates.

As described in the SCR Committee's charter, attached hereto as Exhibit B, the SCR Committee is specifically tasked with overseeing a variety of ESG topics, including the protection and improvement of the quality of the environment (which would naturally include pollution prevention, water conservation and carbon emissions), diversity, environmental justice, innovation, and sustainability and many others. The SCR Committee regularly receives and reviews reports on "societal, governmental, and environmental trends, risks and issues which may affect the Company's operations" and makes "recommendations to the Board of Directors regarding plans and programs with respect thereto."

Additionally, the Company regularly issues a Sustainability & Corporate Responsibility Report (the "SCR Report").<sup>2</sup> The SCR Report is prepared in accordance with the Core Option of the Global Reporting Initiative (GRI) Standards. As defined by those standards, the material topics discussed in the SCR Report are those that "reflect the ... organization's significant economic, environmental, and social impacts; or substantively influence the assessments and decisions of stakeholders," and includes an index cross-referencing the topics covered in this report with the relevant GRI standards. In the interest of even greater transparency, the Company has also mapped disclosures in the SCR Report to two other important sets of standards: the United Nations Sustainable Development Goals and Sustainability Accounting Standards Board standards. Therefore, not only does the Company regularly evaluate a multitude of ESG topics under the oversight of the SCR Committee, the Company also discloses significant amounts of information in its SCR Report regarding the same, consistent with the leading global reporting standards.

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<sup>2</sup> The 2018 SCR Report is available at <https://sustainability.dominionenergy.com/downloads/>

As the Commission has recognized, there is no need to present shareholders a Proposal regarding a matter on which the Company's management or board has already acted upon favorably. See e.g., *Entergy Corporation* (Feb. 14, 2014) (permitting the exclusion, under Rule 14a-8(i)(10), of a shareholder proposal requesting a report on near-term policies a company could adopt to reduce its greenhouse gas emissions where the company had already made numerous public disclosures regarding its greenhouse gas emissions).

For example, in *Hess Corp.* (April 11, 2019), the Staff permitted Hess Corp. to exclude a proposal requesting a report on how it could reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Agreement's goals. Hess Corp. argued that its existing disclosures substantially implemented this proposal. Similarly, in *AutoZone Inc.* (Oct. 9, 2019), the Staff permitted AutoZone to exclude a proposal calling for a sustainability report that was prepared in consideration of certain industry targets. In each of *Hess Corp.* and *AutoZone Inc.*, the Staff agreed that the companies' existing public disclosures compared favorably with the guidelines of the proposals submitted by stockholders.

In sum, where particular policies, practices, and procedures of a company "compare favorably with the guidelines of the proposal" (*AutoZone, Inc.* (Oct. 9, 2019)), then the proposal may be excluded on the grounds that it has been substantially implemented. The Company has a dedicated committee of the Board that regularly evaluates a variety of human rights and climate justice topics, reviews the Company's "policies, programs and activities" with respect to such topics and oversees the Company's strategies and efforts regarding these matters. The Company also regularly discloses its efforts in these areas through its publicly available CSR Reports. Accordingly, because the Company has substantially implemented the Proposal, the Company may properly exclude the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(10).

### CONCLUSION

For the reasons stated above, we believe that the Proposal may be properly excluded from the Proxy Materials. If you have any questions or need any additional information with regard to the enclosed or the foregoing, please contact me at (804) 775-4385 or [kdeluca@mcguirewoods.com](mailto:kdeluca@mcguirewoods.com) or Meredith Sanderlin Thrower, the Company's Senior Assistant General Counsel – Securities, M&A and Project Development at (804) 819-2139 or [meredith.s.thrower@dominionenergy.com](mailto:meredith.s.thrower@dominionenergy.com).

Sincerely,



Katherine K. DeLuca

#### Enclosures

cc: Meredith Sanderlin Thrower, Senior Assistant General Counsel – Securities, M&A and Project Development  
Karen W. Doggett, Assistant Corporate Secretary and Director – Governance  
Jane Whitt Sellers, Esquire, McGuireWoods LLP  
Ms. Diana Smith, Proponent

Exhibit A  
Proposal Submission and Related Correspondence

11/25/2019

**To:** Corporate Secretary at Dominion Energy, Inc., 120 Tredegar Street, Richmond, Virginia 23219.

**From:** Diana Smith, Shareholder

**Subject:** Submission of Shareholder Resolution for the 2020 annual shareholder meeting and inclusion in the 2020 Proxy Statement

I am a Dominion Energy shareholder; all of my shares are managed by Dominion – I do not have any paper shares. I have over 1300 shares as last verified in a phone call with one of your staff last week. My shareholder account number is [REDACTED]

I am providing a resolution for the 2020 annual shareholder meeting and proxy statement, entitled ***“Resolution on Human Rights, Climate Justice and Corporation Governance”***

I am also providing a notarized statement saying I intend to keep my shares (not sell) as required.

Thank you,  
Diana Smith  
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Resolution:

Shareholders request Dominion evaluate how cultural shifts towards human rights and climate justice affect the corporation's governance.

Supporting statement:

The evaluation could include, at management's discretion, items such as:

- if and how the board oversees environmental risks and opportunities;
- if and how executive compensation is linked to environmental and social objectives;
- if and how Dominion is addressing pollution prevention;
- if and how Dominion is addressing water conservation;
- if and how Dominion is addressing carbon footprint;
- if and how Dominion is addressing gender diversity;
- if and how Dominion is addressing data privacy;
- if and how Dominion is addressing consumer health;
- if and how Dominion is addressing ethical practices;
- if and how Dominion is addressing conflict materials;
- if and how Dominion is addressing forced labor.

The [US SIF Foundation's 2018 Report on US Sustainable, Responsible and Impact Investing Trends](#) reports:

- Sustainable, responsible and impact investing (SRI) assets have expanded to \$12.0 trillion in the United States, up 38 percent from \$8.7 trillion in 2016
- Much of this growth is driven by asset managers, who now consider environmental, social or corporate governance (ESG) criteria across \$11.6 trillion in assets, up 44 percent from \$8.1 trillion in 2016.
- The top three issues for asset managers and their institutional investor clients are climate change/carbon, tobacco and conflict risk.

This demonstrates a high level of interest from investors and the public in corporate social responsibility.

Shareholders are concerned about the implications in November 2018 [report "Social Cost and Material Loss: The Dakota Access Pipeline"](#) that can be a warning for the fiscal risk of the Atlantic Coast Pipeline. The final cost of DAPL was nearly double the initial project cost. "The banks that financed DAPL incurred an additional \$4.4 billion in costs in the form of account closures, not including costs related to representational damage."

[Censible's ratings for Dominion](#) show there's room for improvement. While Dominion has good scores for employee satisfaction, workplace safety and governance, the ratings are low for pollution prevention, water conservation, carbon footprint and gender diversity. Dominion does not even receive ratings for: data privacy, consumer health, ethical practices, conflict materials and forced labor.

Improving Dominion's environmental, social and governance ratings will improve relations with the community as well as creating a fiscally successful future for the company.

**RE: Intent to Hold Shares**

To Whom It May Concern:

By this letter I hereby express my intent to hold a sufficient value of stock (as defined within SEC Rule 14a-8) from the time of filing a shareholder proposal through the date of the subsequent annual meeting of shareholders.

This statement of intent acknowledges this responsibility under SEC rules, and applies to the shares of any company that I own at which a shareholder proposal is filed (whether directly or on my behalf). This statement of intent is intended to be durable, and forward-looking as well as retroactive.

Sincerely,

*Diana Smith, Reston Va.*

Diana Smith



City/County of Fairfax  
Commonwealth of Virginia  
The foregoing instrument was acknowledged before me  
this 23 day of November, 2019  
by Diana Smith  
Emily Smith Notary Public  
Reg # 7820700 Com Exp 8/31/2023

Exhibit B  
Sustainability and Corporate Responsibility Committee Charter

**Dominion Energy, Inc.**  
("Dominion Energy")

**Sustainability and Corporate Responsibility  
Committee Charter**

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**I. PURPOSE**

The Sustainability and Corporate Responsibility Committee will assist the Dominion Energy Board of Directors in overseeing the Company's performance as a responsible corporate citizen, including oversight of strategies, activities and policies regarding environmental sustainability, human talent management, diversity, corporate social responsibility, public issues of significance and related innovation matters, which may affect the stakeholders of the Company, including shareholders, employees, customers and the communities in which the Company operates.

**II. ORGANIZATION AND ADMINISTRATION**

1. The Committee is comprised of three or more non-management Directors who are appointed by the full Board and who serve at the Board's pleasure. Unless a Chair is elected by the Board, the Committee may designate a Chair by majority vote of its members.
2. The Committee will meet at least three times annually or more frequently as circumstances dictate, and report at least annually to the Board on all of the matters discussed and acted on by the Committee. A majority of the Committee constitutes a quorum, and the Committee may act by unanimous written consent.
3. Periodically, the Committee will review this charter and update it as necessary (with any amendments subject to approval by the Board).
4. The Committee will conduct an evaluation of its performance on an annual basis.

**III. RESPONSIBILITIES**

The Committee's responsibilities and duties will be as follows:

1. Review the Company's policies, programs and activities and oversee the Company's strategies and efforts with respect to the following environmental, social, economic and reputational matters:
  - a. The Company's protection and improvement of the quality of the environment, climate change programs and broader environmental policies and programs;
  - b. Diversity, inclusion and talent management; and
  - c. Community and stakeholder engagement, including but not limited to, environmental justice, engagement with diverse and local suppliers and community relations.
2. Receive and review reports from management regarding:

- a. Societal, governmental, and environmental trends, risks and issues which may affect the Company's operations, and make recommendations to the Board of Directors regarding plans and programs with respect thereto;
  - b. Integration of sustainability into the Company's operations;
  - c. The state of the Company's relationships with key stakeholders, how those constituencies view the Company and the issues raised by them; and
  - d. The Company's efforts to support community needs, including charitable contributions and community service, including those of the Company's charitable foundation.
3. Review sustainability and corporate responsibility reports and other significant communications and reporting to stakeholders of environmental and social responsibility initiatives and activities.
  4. Review sustainability targets established by the Company and receive reports from management on the Company's progress in achieving those commitments.
  5. Receive, review and discuss regular reports from the Company's Environmental Officer, or such other appropriate or successor position(s), regarding the Company's initiatives to support environmental performance and compliance.
  6. Receive periodic reports from the Company's Chief Innovation Officer, or such other appropriate or successor position(s), and oversee the Company's Innovation, Technology & Sustainability Committee, or such other appropriate or successor management committee(s), regarding the Company's initiatives to support innovation, technology and sustainability.
  7. Review and discuss any shareholder proposal that relates to any matter overseen by the Committee.
  8. Perform such other functions as may be assigned by the Board of Directors or as specified in its Corporate Governance Guidelines or any policies approved by the Board or such other duties and responsibilities as consistent with the purpose of the Committee and as the Board or Committee may deem appropriate.