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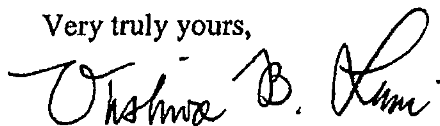
Application of Virginia Electric and Power Company
For approval to implement demand-side management programs
and for approval of two updated rate adjustment clauses
pursuant to § 56-585.1 A 5 of the Cod of Virginia
Case No. PUR-2018-00168

Dear Mr. Peck:

Please find enclosed for filing in the above-captioned proceeding the *Legal Memorandum of Virginia Electric and Power Company*.

Please do not hesitate to call if you have any questions in regard to the enclosed.

Very truly yours,



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Enclosures

cc: Audrey T. Bauhan, Esq.
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190310073

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

PETITION OF VIRGINIA ELECTRIC AND POWER COMPANY For approval to implement demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia	))))))))	Case No. PUR-2018-00168

LEGAL MEMORANDUM OF VIRGINIA ELECTRIC AND POWER COMPANY

In conjunction with its rebuttal testimony and in response to legal issues raised by the joint direct testimony of Tim Woolf and Erin Malone on behalf of the Sierra Club ("Woolf and Malone Direct"), and the direct testimony of Rachel Gold on behalf of the Virginia Energy Efficiency Council ("VAEEC") ("Gold Direct"),[1] which argue that the $870 million of projected costs for the utility to design, implement, and operate energy efficiency ("EE") programs pursuant to Enactment Clause 15 of the Grid Transformation and Security Act of 2018 ("GTSA"), as codified at Virginia Code § 56-596.2 ("Enactment Clause 15"), should not include revenue reductions related to energy efficiency programs ("lost revenue" or "lost revenues"), Virginia Electric and Power Company ("Dominion Energy Virginia" or the "Company"), by counsel, hereby respectfully submits this legal memorandum ("Legal Memo"). In his direct testimony, Commission Staff ("Staff") Witness Britton Ellis ("Ellis Direct") noted that Staff did not take a position regarding the Respondent Lost Revenue Testimony, but suggested that the Commission may wish to consider how to appropriately integrate lost revenues when developing the cost caps for the proposed Phase VII Programs. The rebuttal testimonies of Company

[1] Collectively, the Woolf and Malone Direct and the Gold Direct will be referred to herein as the "Respondent Lost Revenue Testimony."

Witnesses Michael T. Hubbard, Jarvis E. Bates, and Elizabeth Lecky respond to factual issues raised in the respondent and Staff testimony with respect to the proper inclusion of lost revenues within the $870 million of projected costs of EE programs and the Commission-approved program spending caps.

As discussed herein, the Code of Virginia and Commission precedent recognize lost revenues as a projected cost of the Company's proposed EE Programs, and the Respondent Lost Revenue Testimony does not provide any valid legal basis for the Commission to deviate from a plain reading of the statutes and its prior precedent in this case. Further, the requirement in Enactment Clause 15 that the Company propose $870 million of projected costs for the utility to design, implement, and operate EE programs by 2028 (hereafter, "$870 million EE projected cost goal"), still speaks to "costs." Based on a plain reading of the statutes and the Commission's repeated recognition that lost revenues are indeed a "cost" of EE programs, the Commission should likewise rule in this proceeding that lost revenues are a legitimate program cost that can count towards the $870 million EE projected cost goal.

I. RELEVANT BACKGROUND

On October 3, 2018, Dominion Energy Virginia filed with the Commission an application seeking approval: (i) to implement eleven new Demand-Side Management programs (individually, "DSM Program" or "Program" and collectively with other DSM Programs, the "DSM Portfolio" or "Portfolio") as the Company's "Phase VII" Programs and cost recovery related thereto; and (ii) of the Company's annual update application to continue two rate adjustment clauses ("RAC"), Riders C1A and C2A, for cost recovery associated with DSM Programs that have been previously approved ("Application"). On October 16, 2018, the Commission issued its Order for Notice and Hearing.

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On January 2, 2019, the Sierra Club filed its Notice of Participation as a Respondent, and on February 6, 2019, submitted the Woolf and Malone Direct. As relevant here, Woolf and Malone took the position that the Company's DSM budgets should not include lost revenues because lost revenues "are not a budgetary item,"[2] are purportedly already included in base rates,[3] and because other unidentified utilities in other unidentified states apparently do not categorize lost revenues as a DSM cost.[4]

Similarly, Ms. Gold testified that the VAEEC does not support the inclusion of lost revenues in the Commission's spending caps for EE programs because they "are not program costs" as defined by Enactment Clause 15, which directs utilities to spend $870 million to "design, implement, and operate" EE programs.[5]

Commission Staff filed the direct testimony of its witnesses on February 15, 2019. Though the Ellis Direct did not take a formal position on the Respondent Lost Revenue Testimony, Staff's recommendation that the Commission consider *how* to appropriately integrate lost revenues when developing the cost caps for the proposed Phase VII Programs signals that inclusion in the cost caps is appropriate.[6]

Although Virginia Code § 56-585.1 A 5 ("Subsection A 5") specifically authorizes the recovery of lost revenues, the Company has only sought to recover lost revenues in two of its

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[2] Woolf and Malone Direct at 19.
[3] Woolf and Malone Direct at 20.
[4] Woolf and Malone Direct at 20.
[5] Gold Direct at 18.
[6] Ellis Direct at 7.

prior DSM Applications, in 2010[7] and 2011,[8] and the Commission denied both requests.[9] In the present proceeding, as in prior proceedings, the Company represented in its Application that it would "not seek recovery of any lost revenues for periods that have already been trued-up for Riders C1A and C2A."[10] The Company has historically included lost revenues in the cost caps for its DSM Programs, however, and the Commission has specifically required inclusion of lost revenues in the cost caps it has imposed on the Company's DSM Programs beginning with the Company's 2011 DSM Proceeding, as discussed in detail below. This consistent and repeated recognition of lost revenues as a cost of DSM Programs should be followed to determine that the $870 million of projected costs for the utility to design, implement, and operate energy efficiency programs should likewise include lost revenues.

II. LEGAL ARGUMENT

Revenue reductions related to EE programs are a cost for the utility to implement and operate EE programs, are properly includable in cost caps required by the Commission, and should count toward the $870 million EE projected cost goal.

"Revenue reductions related to energy efficiency programs" is defined in Va. Code § 56-576 as:

> mean[ing] reductions in the collection of total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a utility, that occur due to measured and verified decreased consumption of electricity caused by energy efficiency programs approved by the Commission and implemented by the utility, less the amount by which such non-fuel reductions in total

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[7] *Application of Virginia Electric and Power Company, For approval to continue two rate adjustment clauses, Riders C1 and C2, as required by the Order Approving Demand-Side Management Programs of the State Corporation Commission in Case No. PUE-2009-00081*, Case No. PUE-2010-00084, Order Approving Rate Adjustment Clauses (Mar. 22, 2011) ("2010 Final Order").

[8] *Application of Virginia Electric and Power Company For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2011-00093 ("2011 DSM Proceeding"), Final Order (Apr. 30, 2012) ("2011 Final Order").

[9] 2010 DSM Order at 4; 2011 DSM Order at 8.

[10] Application at 13.

revenues have been mitigated through other program-related factors, including reductions in variable operating expenses.

"Measured and verified" is further defined in Va. Code § 56-576 as:

> a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include . . . measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

Subsection A 5 provides for the recovery of lost revenues, which Va. Code § 56-576 defines as a "measured and verified" decreased consumption of electricity caused by energy efficiency programs. Specifically, subsection A 5 c provides in part that:

> A utility may at any time, after the expiration or termination of capped rates, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers *of the following costs*: . . .
>
> Projected and actual costs for the utility to design, implement, and operate energy efficiency programs, including a margin to be recovered on operating expenses, which margin for the purposes of this section shall be equal to the general rate of return on common equity determined as described in subdivision 2. The Commission shall only approve such a petition if it finds that the program is in the public interest. *As part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to energy efficiency programs.* The Commission shall only allow such recovery to the extent that the Commission determines such revenue has not been recovered through margins from incremental off-system sales as defined in § 56-249.6[11] that are directly attributable to energy efficiency programs.

[11] Va. Code § 56-249.6 D 1 provides in part that "75 percent of the total annual margins from off-system sales shall be credited against fuel factor expenses . . . . The remaining margins from off-system sales shall not be considered in the biennial review of electric utilities . . . ."

190310073

(emphasis added). A plain reading of subsection A 5 supports the finding that revenue reductions related to EE programs are properly includable as a cost for the utility to design, implement, and operate such programs. In addition, subsection A 5 c goes on to require:

> None of the costs of new energy efficiency programs of an electric utility, *including recovery of revenue reductions*, shall be assigned to any large general service customer.

(emphasis added). Collectively, these statutes recognize that revenue reductions related to EE programs, or lost revenues, are a cost for the utility to design, implement, and operate such programs.

Specifically, Enactment Clause 15's $870 million EE projected cost goal requires Phase II Utilities to propose $870 million in "projected costs for the utility to design, implement, and operate . . . energy efficiency programs, including a margin to be recovered on operating expenses" by July 1, 2028. Based on a plain reading of Enactment Clause 15 and its use of the same words found in subsection A 5 c (*i.e.*, "projected costs for the utility to design, implement and operate" EE programs), the Commission should find here that lost revenues are included in the term "costs" of EE Programs and should be counted towards the $870 million EE projected cost goal.

Such a ruling would also be consistent with Commission precedent, as the Commission has recognized lost revenues as a "cost" in several of its prior DSM Orders. For example, in the 2011 DSM Proceeding, the Commission explained that "rates are impacted not only by the operating cost of a program, but by the lost revenue *cost* that Dominion may collect from customers for an unspecified number of years."[12] In the same case, the Commission also found that "lost revenues are a major *cost* component to be considered in evaluating programs and

[12] 2011 Final Order at 9 (emphasis added).

determining whether they are in the public interest."[13]

Perhaps most importantly, the Commission's prior Orders also require the Company to include lost revenues projections as a component of its DSM filings insofar as they subject EE Programs to cost caps that include lost revenues. Specifically, in the 2011 Final Order, the Commission ordered that:

> new energy efficiency programs . . . will be subject to specific cost caps, which include all *potential costs* of the programs – including but not limited to operating costs, *lost revenues,* common costs, return on capital expenditures, margins on O&M, and evaluation, measurement and verification ("EM&V") costs.[14]

In each subsequent year, the Commission has continued to include lost revenue as a component of the cost caps it has imposed on the Company's approved EE Programs by again including this language in each of its Final Orders.[15]

Commission Staff ("Staff") Witness Britton Ellis also noted in his direct testimony that the Commission's approved cost caps in the last several years have included a category of lost revenue.[16] Mr. Ellis further explained that, while Staff takes no position regarding lost revenues in this proceeding, the Commission may want to consider reserving a specific dollar amount for

[13] 2011 Final Order at 9, n. 18 (emphasis added).
[14] 2011 Final Order at 9 (emphasis added).
[15] 2012 Final Order at 9, n. 34; *Petition of Virginia Electric and Power Company For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia,* PUE-2013-00072, Final Order (Apr. 29, 2014) ("2013 Final Order") at 11, n. 36; *Petition of Virginia Electric and Power Company For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia,* PUE-2014-00071, Final Order (Apr. 24, 2015) ("2014 Final Order") at 8, n. 27; *Petition of Virginia Electric and Power Company For approval to implement new demand-side management programs, for approval to continue a demand-side management program, and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia,* PUE-2015-00089, Final Order (Apr. 19, 2016) ("2015 Final Order") at 11, n. 40; *Petition of Virginia Electric and Power Company For approval to implement new, and to extend existing, demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia,* PUE-2016-00111, Final Order (Jun. 1, 2017) ("2016 Final Order") at 10, n. 34; *Petition of Virginia Electric and Power Company For approval to extend an existing demand-side management program and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia,* PUR-2017-00129, Final Order (May 10, 2018) ("2017 Final Order") at 7, n. 28.
[16] Direct Testimony of Staff Witness Britton Ellis at page 2, lines 1-9; page 4, lines 3-4.

190310073

lost revenues when developing the cost caps associated with the proposed Phase VII Programs. Alternatively, Mr. Ellis suggested that the Phase VII cost caps could "utilize the initial estimate of lost revenues until such time as the Commission is able to verify actual lost revenues."[17] Both proposals assume that it is appropriate to include lost revenue in the Commission's cost caps, which are based on the Company's lost revenue projections.

In sum, the Virginia Code authorizes the Company to recover lost revenues in connection with its EE Programs, as appropriate, and Enactment Clause 15 further permits the Company to include lost revenues in its progress towards the $870 million EE projected cost goal. Moreover, the Commission has included lost revenues in all of the cost caps it has imposed on approved EE Programs since the 2011 DSM Proceeding, and has specifically referred to lost revenues as a "major cost component" that should be evaluated at the program approval phase.[18] For these reasons, as discussed more fully herein, the Respondent Lost Revenue Testimony should be disregarded insofar as it asks the Commission to eliminate lost revenues from its cost caps and/or order the Company to eliminate lost revenues from inclusion in $870 million EE projected cost goal. This is particularly true where the Sierra Club's proposal was based on Woolf and Malone's review of unidentified energy efficiency plans submitted in states and provinces outside the Commonwealth of Virginia.

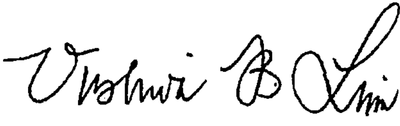
WHEREFORE, for good cause shown and for the reasons set forth above, the Company respectfully requests that the Commission: (i) evaluate the foregoing Legal Memo in connection with the rebuttal testimony of Company Witnesses Michael T. Hubbard, Jarvis E. Bates, and Elizabeth Lecky, (ii) enter a ruling confirming that the Company's lost revenues are a "cost" of designing, implementing, and operating EE programs pursuant to Enactment Clause 15, and

[17] *Id.* at page 7, lines 7-17.
[18] 2011 Final Order at 9, n. 18.

should therefore count towards cost caps and the $870 million EE projected cost goal, and (iii) and provide any other relief as deemed appropriate and necessary.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY



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Counsel for Virginia Electric and Power Company

March 1, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March 2019, a true and accurate copy of the foregoing filed in Case No. PUR-2018-00168 was delivered by hand, email or mail first class postage pre-paid to the following:

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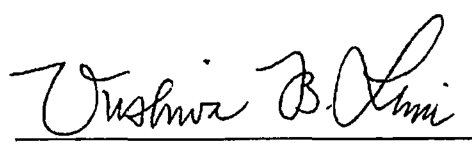

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