HISTORY OF THE CASE

On September 26, 2018, New Albertsons L.P. d/b/a New Albertsons Virginia, L.P. ("Albertsons" or "Petitioner"), filed a petition ("Petition") with the State Corporation Commission ("Commission") seeking approval to aggregate the demands of certain nonresidential customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia ("Code"). Concurrent with the Petition, Albertsons filed a Motion for Protective Order.

Albertsons seeks Commission approval to aggregate the demand of 37 nonresidential retail customers, totaling 14.12 megawatts ("MW") of load, so that it could obtain electric supply directly from a competitive service provider ("CSP") (hereafter, "aggregated retail choice"). The Petition identified Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion" or "Company") as the local distribution company certificated to provide retail electric service where Albertsons proposes to aggregate load.

On October 4, 2018, the Commission entered an Order for Notice and Hearing in which it, among other things: docketed the Petition; established a procedural schedule; scheduled a public hearing for March 28, 2019; directed Albertsons to serve a copy of the Order for Notice and Hearing on Dominion; directed the Commission’s Staff ("Staff") to investigate the Petition; and assigned the case to a Hearing Examiner to conduct all further proceedings on behalf of the Commission and file a final report.

On October 10, 2018, a Hearing Examiner’s Protective Ruling was entered in this matter.

1 Retail access to competitive electric supply is governed by statute in Virginia. The governing statutes include: §§ 56-577 A 3 ("Section A 3"), 56-577 A 4 ("Section A 4"), and 56-577 A 5 ("Section A 5") of the Code. Section A 5 is inapplicable to the present case.
2 The nonresidential retail customers are also referred to as "grocery stores" or "stores" in this Report.
3 Ex. 1, at 1. The Petition provided, among other things, peak demand figures and locations of the grocery stores. Id. at Attachment A.
On October 18, 2018, Calpine Energy Solutions LLC ("Calpine") filed a Notice of Participation. Calpine is one of the nation's largest independent, nonresidential retailers and marketers of retail energy services. Calpine is licensed by the Commission as a CSP to offer, render, furnish, or supply electricity and electric competitive supplier services to residential, commercial, and industrial customers throughout Virginia, including in Dominion's service territory.

On November 14, 2018, Albertsons filed its Proof of Service with the Commission.4

On December 6, 2018, Dominion filed a Notice of Participation. Dominion confirmed it is the local electric distribution company certificated to provide retail electric service to customers where Albertsons proposes to aggregate load.

The hearing on the Petition was convened on March 28, 2019. Michael J. Quinan, Esquire, with the law firm of Christian & Barton, LLP, appeared on behalf of Albertsons. Brian R. Greene, Esquire, with the law firm of GreeneHurlocker PLC, appeared on behalf of Calpine. Elaine S. Ryan, Esquire, and Sarah R. Bennett, Esquire, with the law firm of McGuireWoods LLP, appeared on behalf of Dominion. David J. DePippo, Esquire, with Dominion Energy Services, Inc., also appeared on behalf of Dominion. K. Beth Clowers, Esquire, and William H. Harrison, IV, Esquire, with the Commission’s Office of General Counsel, appeared on behalf of Staff.

Post-Hearing Briefs were filed timely by Albertsons, Dominion, Calpine, and Staff.

In its Post-Hearing Brief, Albertsons argued it meets the demand requirements of Sections A 3 and A 4 to seek Commission approval to aggregate its load in Dominion’s service territory. In its Petition, Albertsons requested to aggregate 37 nonresidential retail accounts, totaling 14.12 MW of load. Albertsons’ aggregated load exceeds 5 MW, but does not exceed 1% of Dominion’s peak load.5

Albertsons argued the Petition meets the public interest standards of Section A 4. Albertsons noted the public interest standards in Section A 4 do not require that its requested aggregation further the public interest; the statutory standard only requires the requested aggregation to be “consistent with the public interest” and not to be “contrary to the public interest.” Albertsons further noted Section A 4 does not require: (i) a heightened review standard by the Commission; (ii) consideration of pending or anticipated aggregation petitions; or (iii) consideration of customers that are retail shopping pursuant to Sections A 3 and A 5. Contrary to Dominion’s assertions, Section A 4 requires only consideration of previously approved aggregation petitions.6

Albertsons argued Section A 4 does not require Dominion or its non-shopping customers to be held harmless. Although the Commission has been given broad discretion under Section A 4, Albertsons argued the Commission cannot exercise its discretion in a manner that nullifies Section A 4. Under the plain language of Section A 4, Albertsons argued the Petition cannot be denied

4 Ex. 2.
5 Albertsons Post-Hearing Brief at 1-2.
6 Id. at 2-4.
because of any adverse effect. To do so would create a per se rule that nullifies the meaning and intent of Section A 4. To satisfy the “contrary to the public interest,” Albertsons argued “there must be credible evidence that adverse impacts actually will occur in such magnitude as to be contrary to the public interest.” Albertsons believes no such proof exists.8

Albertsons argued its load is extremely small and would, at most, have a de minimis impact on Dominion and its non-shopping customers. If aggregated retail choice is permitted for anyone, Albertsons argued it should be allowed to aggregate its load. Albertsons’ load amounts to 14.12 MW of aggregated peak demand, which is 0.086% (eighty-six thousandths of one percent) of Dominion’s 2017 peak load of 16,350 MW. Contrary to Dominion’s assertion that any possible adverse impacts must result in denial of the Petition, Albertsons argued Section A 4 must be viewed within the broader context of Chapter 23, which preserves the ability of certain customers to shop for an electric supplier. Albertsons explained why Dominion would not be impacted in a manner contrary to the public interest. First, any adverse impact on Dominion’s earnings would most likely decrease the Company’s overearnings. Second, any adverse impact would be temporary and would be remedied in the Company’s next base rate case. Third, any impact on Dominion’s total revenues would be negligible because of Albertsons’ small load. Finally, Dominion regularly manages changes in load and generation supply and the loss of Albertsons’ small load would not place an undue burden on the Company, nor would it rise to the level of being contrary to the public interest. In sum, Albertsons believes the evidence of adverse effects on non-shopping customers, if the Petition is approved, is speculative.9

Finally, Albertsons argued any negative impacts would be effectively mitigated, and would likely be more than outweighed, by positive impacts. Assuming the Albertsons Petition is granted and nothing else changes, according to Dominion there is a miniscule adverse impact on the Company and its non-shopping customers. Albertsons argued the assumption “nothing else changes” is not plausible because Dominion’s analysis ignores all the countervailing factors that might further reduce or eliminate adverse impacts or provide a net benefit to Dominion and its non-shopping customers. Those factors include: the impact on Dominion’s load growth; the reduction in Dominion’s peak demand and supply costs; the potential impact of market forces on rates charged to non-shopping customers; the potential impact lower rates would have on Albertsons’ customers; and the impact on jobs, tax revenues, and economic development generally in Virginia. Albertsons argued to compete in the retail sector, it must have the ability to tailor its energy purchases to its specific needs. Albertsons reaffirmed its commitment to invest $1 million in energy efficiency in its Virginia stores during the first year of participation in aggregated retail choice if its Petition is approved. Albertsons believes Commission approval of its Petition would send a strong price signal to Dominion that would benefit Dominion’s non-shopping customers.10

In its Post-Hearing Brief, Dominion addressed the legal standard, and the historical and regulatory context surrounding the adoption of Sections A 3 and A 4. Dominion observed the

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7 Id. at 4.
8 Id.
9 Id. at 5-8.
10 Id. at 8-9.
Commission restated the requirements of Section A 4 in its Order Scheduling Additional Proceedings entered on July 12, 2018, in the Walmart Case.¹¹

Taken from the plain language of the statute, the participants are requested to provide evidence that they wish the Commission to consider regarding the following:

(1) (a) if, and how, the incumbent electric utility will be adversely affected by granting such petition, and
   (b) how such effects are, or are not, contrary to the public interest;
(2) (a) if, and how, the retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected by granting such petition, and
   (b) how such effects are, or are not, contrary to the public interest; and
(3) if, and how, approval of such petition is consistent with the public interest.

With respect to requirement (2), Dominion noted the Commission previously considered “whether such customers would be held harmless if the aggregated retail choice request is granted.”¹² As for requirement (3), Dominion noted the Commission was given broad discretion to determine what is, or is not, in the “public interest.”¹³ Dominion noted the Commission made clear Albertsons bears the burden of showing its Petition complies with Section A 4.¹⁴ Albertsons is required to put forth evidence that: (i) allows the Commission to make the three minimum required statutory findings; and (ii) supports the decision the Commission should otherwise grant the aggregation petition, in the Commission’s discretion, when considering all relevant facts and circumstances.¹⁵ Dominion contrasted the requirements of Section A 3 with those of Section A 4, and described the regulatory context surrounding the adoption of Sections A 3 and A 4, which the Commission addressed in the Final Order in the Walmart Case.¹⁶ Dominion believes the provisions of Section A 4 must be interpreted and applied in a manner consistent with the regulatory paradigm established by the General Assembly in the 2007 Regulation Act, including the restrictions placed on aggregated retail choice.¹⁷

¹¹ Dominion Post-Hearing Brief at 7; Petition of Walmart Stores East, LP and Sam’s East, Inc., For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia, Case No. PUR-2017-00173, Order Scheduling Additional Proceedings at 4 (July 12, 2018) (“Walmart Case”).
¹² Walmart Case, Final Order at 8 (February 25, 2019).
¹³ Dominion Post-Hearing Brief at 7-8.
¹⁴ Dominion Post-Hearing Brief at 8; Petition of Reynolds Group Holdings Inc., For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia, Case No. PUR-2017-00109, Opinion at 3 (May 16, 2018) (“Reynolds Case”).
¹⁵ Dominion Post-Hearing Brief at 8.
¹⁶ Dominion Post-Hearing Brief at 8-9; Walmart Case, Final Order at 5-7 (February 25, 2019).
¹⁷ Dominion Post-Hearing Brief at 10. See Blake v. Commonwealth, 288 Va. 375, 383, 764 S.E.2d 105, 108 (2014) (“[S]tatutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great connected, homogenous system, or a single and complete statutory arrangement.” (quoting Prillaman v. Commonwealth, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957))).
Dominion’s argument focused on the evidence in the record, and in Dominion’s view, the failure of Albertsons to present sufficient evidence to support approval of its Petition pursuant to Section A 4. Dominion stated the evidence shows approval of the Petition: (i) would adversely affect the Company’s remaining customers in a manner contrary to the public interest; (ii) would adversely affect the Company in a manner contrary to the public interest; and (iii) is not consistent with the public interest. Dominion argued the facts in this case regarding cost-shifting to non-shopping customers are not distinguishable from the facts in the Walmart Case; therefore, the Albertsons Petition should likewise be denied.19

Dominion argued its non-shopping customers that cannot choose to obtain electric supply from a CSP would be adversely affected by granting the Petition, and such effects are contrary to the public interest. Dominion argued the record establishes the Company’s non-shopping customers would not be held harmless if the Petition was granted. Dominion explained how cost-shifting occurs when a customer leaves its system for aggregated retail choice, which could result in costs being shifted to customers in other jurisdictions and to other customer classes within the Virginia jurisdiction. Dominion noted the testimony of Staff witnesses Ellis and White of the effects on utility rates if the Commission grants the Petition. Dominion urged the Commission to rely on the analysis prepared by Dominion witness Haynes of the effect on the cost of service for Virginia jurisdictional customer classes if the Petition was granted, which showed the Company would need to increase revenues to achieve the same rate of return. Dominion argued Albertsons’ objections to the Company’s and Staff’s rate impacts analysis “all things being equal” should be rejected by the Commission. Dominion noted the Commission has relied on a point in time analysis in other proceedings, and such an analysis shows the effect of the specific filing before the Commission for decision. If the Commission granted the Petition, the analysis shows customers’ rates would likely be higher than they otherwise would have been. Dominion stated Staff used the same approach to evaluate the effects of granting the Petition. Dominion believes the evidence shows granting the Petition would likely result in cost-shifting to non-shopping customers, and as a result, the Company’s non-shopping customers would not be held harmless if the Commission granted the Petition.22

Dominion argued approval of the Petition is not consistent with the public interest for the same reasons the Commission recently found in the Walmart Case. Dominion argued the “circumstances existing” in this case are no different than the “circumstances” that existed two months ago when the Commission denied the Walmart petition. For that reason alone, the Commission should deny the Albertsons Petition as inconsistent with the public interest. Dominion noted Albertsons asserted granting the Petition was consistent with the public interest because it (i) is “within the parameters” for load size set forth in Section A 3; (ii) reflects a de minimis amount of the Company’s total load; and (iii) promotes economic development.24

18 Walmart Case, Final Order at 12 (February 25, 2019).
19 Dominion Post-Hearing Brief at 10-11.
20 See Ex. 8 at 2, 5, 10; and Ex. 7, at 7.
21 See Corrected Ex. 5; and Ex. 6C.
22 Dominion Post Hearing Brief at 14.
23 Walmart Case, Final Order at 12-13 (February 25, 2019).
Dominion argued three points in support of its position. First, Dominion noted Section A 4 contains no presumption in favor of approval based on load size. The mere fact an applicant meets the load requirements of Section A 3, does not mean the requirements of Section A 4 are automatically satisfied. The Commission explicitly rejected this argument. Accordingly, Albertsons’ evidence of the load size it intends to aggregate is insufficient to satisfy the findings required by Section A 4.

Second, no de minimis standard for approval to aggregate load exists. In support of its Petition, Albertsons asserted “[a]ny outcome other than approval of [ ] Albertsons’ [P]etition would render [Section] A 4 virtually meaningless.” Dominion observed the Commission rejected the same argument in the Walmart Case. Dominion noted the Commission’s inquiry in aggregation cases has focused on whether customers that cannot or choose not to take service from a CSP are held harmless. Dominion believes the uncontroverted evidence shows that non-shopping customers are not held harmless. Dominion urged the Commission to reject Albertsons’ assertion that projected load growth would offset any effects of the Petition; therefore, the Company and its non-shopping customers would not be affected in a manner contrary to the public interest. In the Walmart Case, the Commission found aggregation results in a reallocation of costs to non-shopping customers independent of whether load growth exists. Dominion argued using projected load growth to suggest there would be no harm to the Company and its non-shopping customers is inaccurate and contrary to Commission precedent.

Third, Albertsons provided insufficient evidence that granting the Petition would promote economic development in Virginia. Dominion argued the potential cost savings Albertsons could achieved from aggregating load and the associated downstream economic benefits to the Commonwealth are hypothetical. Although Dominion considers Albertsons’ $1 million commitment to energy efficiency laudable, the Company noted nothing prevents Albertsons from making energy efficiency investments today. Additionally, the Albertsons’ commitment does not change the fact that non-shopping customers would be harmed if the Commission approved the Petition. As in the Walmart Case, the fact remains, notwithstanding some purported economic benefit, non-shopping customers would still be harmed if the Petition was granted and that is contrary to the public interest.

Dominion argued the Company would be adversely affected if the Commission granted the Petition, and such effects are contrary to the public interest. Dominion argued the loss of the

25 Walmart Case, Order Scheduling Additional Proceedings at 3 (July 12, 2018).
27 Ex. 3, at 40.
28 Walmart Case, Final Order at 7 (February 25, 2019) (“We likewise disagree with Walmart’s additional assertion that if the Commission denies the Petitions, we ‘would render [§ 56-577 A 4] meaningless.’”).
29 Walmart Case, Final Order at 8-9 (February 25, 2019) (“We also find that the potential for load growth does not alter our public interest determinations [. . . because] the reallocation of costs among remaining customers occurs independent of whether load growth exists.”).
30 Dominion Post-Hearing Brief at 15-16.
31 Walmart Case, Final Order at 9 (February 25, 2019).
Albertsons’ load would significantly undermine the Company’s resource planning process. The Company must plan for, and invest in, a level of installed capacity based on forecasted demand. Granting the Petition could significantly undermine the Company’s integrated resource planning (“IRP”) process to the extent that up to one-third of the jurisdictional load could unexpectedly exit the system through aggregation. Dominion presented evidence that granting the Petition could create some level of additional financial risk for the Company and could have a negative effect on the Company’s ability to compete for capital on reasonable terms. Finally, Dominion argued the extent to which the Company might, or might not, have over-earned would be determined in its next base rate case and has no bearing on the Petition in this proceeding.  

Dominion argued the Commission should consider the Company’s highest metered peak demand from the prior calendar year in evaluating the Petition. Dominion recommended the Commission add the customer’s highest measured peak demand for the most recent calendar year for each account, compared to the utility’s highest measured peak demand for the same year, for purposes of measuring whether the demand requirements of Section A 3 have been met. Dominion believes PJM Interconnection’s (“PJM”) five coincident peaks (“5CP”) method recommended by Albertsons is inconsistent with Section A 3.  

If the Commission approves the Albertsons Petition, Dominion argued the Commission should limit approval to the specific customer accounts listed in Attachment A of the Petition. Albertsons believes once approval has been granted to aggregate it should be able to add or delete stores when needed. Dominion noted Albertsons has only sought approval to aggregate the 37 nonresidential retail customers listed in Attachment A of the Petition, and no others. Dominion further noted its position is consistent with the Hearing Examiners’ recommendations in the Walmart and Costco Cases. Dominion argued Albertsons’ position is contrary to the language of Section A 4 and has been rejected in prior aggregation cases.  

In sum, Dominion believes Albertsons failed to present sufficient evidence to support approval of the Petition under Section A 4. Dominion stated the evidence shows granting the Petition would not hold non-shopping customers harmless, and is not consistent with the public interest. Dominion believes it would be adversely affected if the Commission granted the Petition. Dominion stated the circumstances in this case are no different than the circumstances in the Walmart Case; therefore, the Albertsons Petition should be denied.  

In its Post-Hearing Brief, Calpine addressed six issues in support of its position that granting the Albertsons Petition would not adversely affect Dominion or non-shopping customers in a manner contrary to the public interest under Section A 4 a, and is consistent with the public interest under Section A 4 b.
First, the competitive retail energy market benefits Virginia commercial electric customers. Calpine noted there is no dispute commercial customers such as Albertsons want to shop for electric service, and capacity and ancillary services that only a CSP could provide. Calpine noted the testimony that, based on its experience in PJM over the last ten years, Albertsons could lower its energy costs in the competitive wholesale market compared to taking service from Dominion. Albertsons estimated it would save between $600,000 to $1 million annually with aggregated retail choice.39

Second, the Petition satisfies the demand requirements of Sections A 3 and A 4 for aggregated retail choice. Calpine recommended the Commission use the PJM 5CP to measure Dominion’s peak load. Calpine believes use of the PJM 5CP is administratively efficient for an incumbent utility, is a currently-used measure in the wholesale market, and is consistent with Dominion’s capacity obligations within PJM. Calpine argued, while not dispositive, the fact that an aggregation petition is less than 1% of the utility’s peak load should serve as compelling evidence there is no adverse effect to a utility or its non-shopping customers that is contrary to the public interest.40

Third, there is no evidence Dominion would be adversely affected were the Commission to grant the Petition. Calpine argued “Dominion presented no reliable evidence that it would be harmed were the Commission to grant the [ ] Albertsons [P]etition.”41 Calpine noted any costs associated with Albertsons’ retail shopping would likely be recovered in a future base rate case, and shareholders would not be on the hook for under- or unrecovered costs. Calpine noted Dominion’s 2017 base rates produced excess revenues of $365 million, which would insulate Dominion from any negative impacts associated with Albertsons’ retail shopping. Calpine noted there is no evidence that the loss of Albertsons’ load would reduce Dominion’s overearnings by any amount, much less a meaningful amount. Finally, the Grid Transformation and Security Act of 2018 (“GTSA”) provides no basis to deny the Petition.42

Fourth, if the Commission grants the Petition, non-shopping customers would not be adversely impacted in a manner contrary to the public interest. Calpine argued any adverse impact on rates is purely speculative. Dominion’s analysis relies on the assumption “all things being equal.” Calpine believes all things are not equal; they are subject to change. Consequently, the Commission should not rely on a rate impacts analysis that the parties and Staff acknowledged is speculative, unreliable, and full of presumptions. Calpine argued Dominion’s inconsistent factual positions regarding its rate impacts analysis appear to violate the prohibition against approbation and reprobation.43 Calpine noted Dominion offered its rate impacts analysis in the Walmart Case as

39 Id. at 4-5.
40 Id. at 5-6.
41 Id. at 6.
42 Id. at 6-7.
43 See, e.g., Eilber v. Floor Care Specialists, Inc., 294 Va. 438, 442 (2017) (Under the prohibition against approbation and reprobation, “a party is prohibited from assuming successive positions in an action or series of actions, regarding the same fact or state of facts, which are inconsistent with each other or are mutually contradictory.”) (quoting Parson v. Carroll, 272 Va. 560, 565 (2006) (citing Bentley Funding Group, L.L.C. v. SK&R Group, L.L.C., 269 Va. 315, 325 (2005))); Board of Supervisors of Loudoun County v. State Corp. Comm’n, 292 Va. 455 n.11 (“Under approbate-
illustrative of the impact on non-shopping customers, but has consistently walked back in other aggregation cases the reliability of its rate impacts analysis. If Dominion’s actions do not violate the prohibition against approbation and reprobation, the Company’s actions are inconsistent with the doctrine that a party should not be allowed “to talk through both sides of his mouth.”

Calpine argued Dominion’s analysis ignored positive long-term impacts to non-shopping customers. Dominion’s analysis did not consider that granting the Petition would allow the Company to plan for Albertsons’ departure to aggregated retail choice and avoid the construction of new generation resources. Calpine argued Dominion’s “all else being equal” rate impact analysis ignores that retail shopping could defer the need for new generation.

Calpine argued, if there is any adverse rate impact, it is de minimis and it is the natural intended result of retail shopping. Under Section A 4, the Commission must determine how much retail shopping is “too much.” Calpine asserted the estimated impact of Albertsons’ retail shopping is nowhere near “too much.” Calpine observed any potential impact of the Petition would be comparable to the Reynolds Case, rather than the Walmart Case. Calpine argued cost-shifting is a natural consequence of retail shopping under Sections A 3, A 4, and A 5, and was contemplated when the General Assembly adopted the statutes. Calpine argued the GTSA provides no basis to deny the Petition, and recent action by the General Assembly rejected efforts to limit the right to retail shop under Sections A 3 and A 4.

Calpine argued Dominion’s projected load growth nullifies any adverse impact to non-shopping customers. Calpine observed the Commission has taken inconsistent positions with respect to load growth, and the ability of load growth to offset any negative impacts associated with aggregated retail choice under Section A 4. Calpine urged the Commission to consider the impact of Dominion’s or PJM’s load estimates in deciding the Petition. The projected load growth estimates for a single year completely offset any load loss associated with granting the Albertsons Petition to aggregate. Calpine countered Dominion’s argument that certain costs drive the need for cost recovery whether or not load growth exists. Calpine observed these costs existed before the General Assembly adopted § 56-577 of the Code. Calpine argued the mere fact Dominion’s overall peak demand is lower than it otherwise would have been if aggregation had not occurred, provides no valid reason to deny an aggregation petition. Calpine noted allowing 37 accounts to retail shop would have no meaningful impact on Dominion’s rates because the Company’s $6.8 billion annual revenue is spread over approximately 2.57 million ratepayers. Calpine provided an example in which Dominion’s revenues would increase by $8,981,007 in one year based on load growth of 90.58 MW, even if Albertsons was permitted to aggregate its 14.12 MW load.

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44 Calpine Post-Hearing Brief at 7-10.
45 Id. at 10.
46 Id. at 10-12.
47 Id. at 13-15.
Calpine argued the timing of any change to base rates is a mitigating factor. Dominion’s next base rate case would occur in 2021, and in that proceeding, the Commission would have to find earnings outside of the earnings band for customers to feel the effects of any cost-shifting that might occur because of approval of the Albertsons Petition.\(^48\)

Calpine argued past and potential future rate increases are not the cause and effect of the Albertsons Petition to aggregate. Calpine noted retail shopping under § 56-577 of the Code acts as a check against Dominion’s quest for more rate adjustment clauses ("RACs"), higher returns, and increased rates. Calpine believes the Commission’s reliance on Dominion’s rate increases as a basis to deny an aggregation petition is inconsistent with § 56-577 of the Code and the 2007 Regulation Act. In addition, Calpine argued it is inappropriate for the Commission to rely on any mandate in the GTSA to deny an aggregation petition. Calpine noted the General Assembly did not amend § 56-577 of the Code when it adopted the GTSA, and the Commission has the authority to reject Dominion’s GTSA filings.\(^49\)

Finally, it is not known whether Dominion’s customers would receive a refund or a customer credit reinvestment offset as part of the Company’s 2021 base rate case. If Albertsons was permitted to shop, Calpine argued there would be virtually no impact on the amount of the refund non-shopping customers might receive.\(^50\)

Fifth, Section A 4 directs the Commission to "take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent utility when analyzing the impact on the incumbent utility and remaining customers." Calpine noted the Commission has approved one such petition for 10.12 MW in the Reynolds Case. Calpine argued the Commission should reject Dominion’s argument that the Commission consider all aggregation petitions, as contrary to the plain language of Section A 4.\(^51\)

Sixth, the Albertsons Petition is consistent with the public interest and should be approved by the Commission. Calpine acknowledged the Commission has interpreted the term “public interest” broadly. Calpine summarized the record supporting Albertsons’ reasons for seeking to aggregate its load including the need to become more competitive in the retail sector, lower its cost of operations, and manage its load for the benefit of its subsidiaries. Calpine urged the Commission to disregard Dominion’s arguments that: (i) Albertsons has not provided evidence that the public interest would offset the negative impacts of Albertsons’ shopping; (ii) Albertsons has not “guaranteed” any savings; and (iii) Albertsons may not realize any savings in the competitive market. Calpine noted those arguments go beyond Section A 4’s requirement that the Petition be “consistent” with the public interest. Calpine argued there is no Section A 4 criteria that a prospective aggregator must “hold harmless” or “offset” for its petition to be approved. Under the statute, some adverse effects are permitted so long as they are not inconsistent with the public interest. Calpine argued Section A 4 does not obligate Albertsons to guarantee anything for its Petition to be approved. Calpine further argued Dominion was unable to support its assertion Albertsons could not achieve cost savings by retail shopping. Dominion produced no evidence to

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\(^{48}\) Id. at 15-16.

\(^{49}\) Id. at 16-18.

\(^{50}\) Id. at 18.

\(^{51}\) Id. at 18-19.
rebut Albertsons’ cost savings estimates. Calpine noted Albertsons is so confident of cost savings it committed to invest $1 million in energy efficiency in its Virginia stores in the first year of aggregated retail choice, if its Petition is approved. Albertsons expressed its confidence “that aggregation will result in cost savings that will allow this level of investment.” Finally, Calpine requested the Commission approve the Albertsons Petition pursuant to Section A 4.

In its Post-Hearing Brief, Staff confirmed it did not determine whether Dominion or its non-shopping customers would be adversely affected in a manner contrary to the public interest by approving the Petition, or whether approval of the Petition is consistent with the public interest.

If the Commission approves the Petition, Staff recommended the Commission adopt, at a minimum, the reporting requirements included in Staff witness White’s Attachment EJW-3. Staff disagreed with Albertsons witness Waidelich that PJM 5CP data should be used to determine compliance with the demand requirements of Sections A 3. While Staff has no objection to Albertsons supplying the PJM 5CP information to the Commission in addition to the other reporting requirements, Staff believes Albertsons should use a different methodology to demonstrate its aggregated load continues to meet the requirements of the statutes.

In addition, if the Commission approves the Petition, Staff recommended that Albertsons should only be allowed to aggregate the 37 stores specifically listed in the Petition. Any new store or any store relocation should be addressed in a new filing with the Commission. Staff argued the specific facts and evidence in this proceeding relate to the aggregation of the 37 accounts identified in the Petition. If additional accounts are added, the Commission’s public interest analyses and determinations could reach a different result.

SUMMARY OF THE RECORD

Albertsons Direct Testimony

Albertsons presented the testimony of George M. Waidelich, Jr., Vice President – Energy Operations. Mr. Waidelich manages the Energy Operations team at Albertsons Companies, Inc., the corporate parent of Albertsons. His team is responsible for the management of all electric and natural gas operations across the company’s footprint, which includes 35 states and the District of Columbia under 20 well-known operating names including Albertsons and Safeway. Mr. Waidelich also serves on the Finance Committee of PJM.

Mr. Waidelich testified: (i) the Petition is consistent with the public interest requirements of Section A 4; and (ii) if the Petition is granted, neither Dominion nor its non-shopping customers would be adversely affected in a manner contrary to the public interest.

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52 Ex. 9, at 2-3.
53 Calpine Post-Hearing Brief at 19-22.
54 Staff Post-Hearing Brief at 3.
55 Id. at 5-6.
56 Id. at 6-7.
57 Ex. 3, at 1-2.
58 Id. at 3.
Mr. Waidelich discussed the other Section A 4 petitions filed by: Reynolds Group Holdings Inc. ("Reynolds"), Walmart Stores East, LP and Sam’s East, Inc. ("Walmart"), Kroger Limited Partnership and Harris Teeter, LLC ("Kroger/Harris Teeter"), Costco Wholesale Corporation ("Costco"), and Target Corporation ("Target"). He reviewed the testimony filed in those cases, and his testimony relied upon and substantially mirrored the testimony in the Costco Case.

Mr. Waidelich recommended the Commission evaluate the Petition on the following three principles: “Consistency,” “Transparency,” and “Simplicity.” Based on that evaluation, he recommended the Commission approve the Petition.

Mr. Waidelich explained Consistency means the Commission should provide customers an opportunity to realize benefits provided under Chapter 23 of Title 56 of the Code consistent with the utilities having been afforded the opportunity to realize benefits provided under Chapter 23. Consistency also means Section A 4 should be implemented in a manner consistent with the core purpose of the revisions to Chapter 23 set forth in Senate Bill 1416 in the 2007 General Assembly Session (“SB 1416”) – to protect electric customers from high electricity prices. SB 1416 was supported by Dominion to resolve the perceived failure of electric deregulation and the prospect of electric customers paying high market rates, such as those experienced in neighboring de-regulated states like Maryland. SB 1416 provided “benefits” to both electric utilities and to their customers. To the extent Dominion sought and received electric utility “benefits” under the revisions to Chapter 23, the Commission should be consistent in implementing customer “benefits” under Chapter 23. Mr. Waidelich believes Chapter 23 should not be implemented in a manner that only benefits electric utilities. Doing so defeats a core purpose of the revisions to Chapter 23 in SB 1416 when Section A 4 was enacted, which was to protect electric customers from high electricity prices.

Mr. Waidelich explained Transparency means the Commission should use readily available data to determine compliance with Section A 4 and should use similar data when evaluating all Section A 4 petitions.

Mr. Waidelich explained Simplicity means the Commission should make the benefits of Section A 4 available to eligible customers in a simple and streamlined manner.

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59 Reynolds Case, Final Order (February 21, 2018).
60 Walmart Case, Order Granting Reconsideration (March 15, 2019).
61 Petitions of Kroger Limited Partnership I and Harris Teeter, LLC, For approval to aggregate demand of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia, Case Nos. PUE-2018-00150 and PUR-2018-00151, Hearing (February 27, 2019) ("Kroger/Harris Teeter Case").
63 Petition of Target Corporation, For permission to aggregate or combine demands of two or more nonresidential customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia, Case No. PUR-2018-00158, Hearing (March 12, 2019) ("Target Case").
64 Ex. 3, at 6-8.
65 Id. at 8.
66 Id. at 8-9.
67 Id. at 9.
68 Id.
Applying these principles to the Petition, Mr. Waidelich believes the Commission would make three findings. First, approval of the Petition is consistent with the public interest because approval provides one of the important customer benefits afforded under Chapter 23 of Title 56, approval imposes no adverse impacts inconsistent with Section A 4, and approval is consistent with a core purpose of enacting Section A 4. Second, PJM 5CP data should be used to establish compliance with the 1% system peak limitation applicable to the Petition and other aggregation petitions. Third, oversight of Albertsons and other aggregation petitioners following approval should be simple and streamlined to avoid future formal proceedings to the maximum extent possible. Based on these findings, Mr. Waidelich believes the Commission should approve the Petition.69

Mr. Waidelich described Albertsons’ operations in Virginia, which include: 39 stores,70 2766 hourly employees covered by a collective bargaining agreement, and 66 salaried managers. Albertsons serves approximately 926,000 households in Virginia. After salaries and benefits, energy is Albertsons’ third largest operating expense. Albertsons is seeking the flexibility to manage its energy expenses to reduce its overall operating expenses. In 2017, Albertsons collected approximately $23.1 million in taxes for Virginia, paid approximately $23 million in state and local taxes, and purchased approximately $40.2 million in goods and services from Virginia-based suppliers, supporting supplier jobs and the Virginia economy generally.71

Mr. Waidelich explained Albertsons meets the demand limitations of Sections A 3 and A 4. Each of its accounts had an individual peak demand of less than 5 MW in the prior 12-month period, and the accounts totaled approximately 14.12 MW of load in Dominion’s service territory. This represents 0.086% (eighty-six thousandths of one percent) of Dominion’s 2017 peak load of 16,350 MW. Mr. Waidelich believes Albertsons’ load is miniscule compared to Dominion’s peak load no matter what methodology is used to compute peak load. Having met the statutory requirements, he believes there is a presumption the Petition is not adverse to the public interest or the interests of the incumbent electric utility or its non-shopping customers.72

Mr. Waidelich discussed the impact on Dominion if all the Section A 4 petitions were granted. Assuming Dominion’s growth estimates are remotely accurate, Dominion’s load growth would absorb any loss that may result from granting the Petition (even when the load from the Reynolds, Walmart, Costco, Kroger/Harris Teeter, and Target petitions is factored in) within less than one year. For this reason, Mr. Waidelich believes neither Dominion nor its non-shopping customers would experience any adverse impacts contrary to the public interest if the Commission granted the Petition. Even if Dominion’s load growth forecasts are overstated, Albertsons’ demand is insignificant by comparison.73

Mr. Waidelich explained why the Petition is “consistent with” the public interest as required by Section A 4. He noted the “consistent with the public interest” requirement is a lower standard

69 Id. at 9-10.
70 Albertsons operates 39 grocery stores in Virginia, 37 of those stores are in Dominion’s service territory.
71 Ex. 3, at 10-11.
72 Id. at 11-14.
73 Id. at 14-15.
than an “in the public interest” requirement. He explained the Commission would only need to find that approval of the Petition has a “neutral” effect, rather than finding the approval has a “positive” effect on the public interest. This is true even if the Commission interprets the public interest broadly. Mr. Waidelich noted the General Assembly established a retail shopping benefit for certain eligible customers, as permitted by Sections A 3 and A 4, so it would be reasonable to assume the General Assembly considered retail shopping by those customers was in the public interest.74

Mr. Waidelich noted Dominion has benefitted from SB 1416. Dominion’s stock price was $7.23 in November 2007, $52.28 in October 2012, and $76.93 in October 2017. Dominion’s earnings were $1.7 billion in 2007, $1.97 billion in 2010, and $2.35 billion in 2016. During the same period, residential customer bills rose 29% and Dominion’s profit levels exceeded levels allowed in most states. Mr. Waidelich explained SB 1416 was also intended to benefit certain customers. The retail shopping benefit in Section A 4 was enhanced in the Governor’s amendment of SB 1416, which was designed to provide “additional flexibility for industrial and commercial customers to use competitive electricity providers” and to “ensure that appropriate consumer protection measures were in place to keep Virginians’ electric rates among the lowest in the country.”75 Mr. Waidelich explained the amendments were designed to effect two purposes: (i) to allow certain customers who are sensitive to electric utility pricing an opportunity to obtain immediate relief from high rates through retail shopping; and (ii) to send a strong signal to the incumbent electric utility that its rates are undermining, rather than furthering, a core purpose of SB 1416.76

Mr. Waidelich identified the factors the Commission should consider in determining whether an aggregation petition is consistent with the public interest. These factors include the aggregator’s business model, whether the petition encourages economic development, whether the petition fosters competition, and whether the petition promotes access to competitive energy markets.77

In terms of economic development, Albertsons must remain competitive in the retail sector, which has a direct impact on its existing stores and future expansion opportunities. To remain competitive, Albertsons must lower its operating costs. Based on its experience in the PJM market over the last 10 years, Albertsons believes it can lower its energy costs by approximately $600,000 to $1 million annually. These cost reductions would enable Albertsons to remain competitive in the grocery sector, sustain jobs, support taxes, continue purchases from Virginia suppliers, invest in energy efficiency, and promote economic development directly and indirectly in Virginia.78

In terms of competition, lower energy costs could result in lower prices, lower prices encourage competitors to lower their prices, and competition benefits the public interest. Because of the competitive and dynamic nature of the retail sector, Albertsons cannot guarantee an exact amount of direct savings from lower energy costs to any one store or any one individual in Virginia.

74 Id. at 15-17.
75 Id. at Exhibit GMW-3.
76 Id. at 17-19.
77 Id. at 19.
78 Id. at 19-20.
Mr. Waidelich noted under the requirements of Section A 4, Albertsons is not obligated to guarantee anything, and the Petition is consistent with the public interest even without any guaranteed benefits. He further noted Albertsons' load is miniscule and any adverse impacts are dependent upon the questionable assumption of “all else being equal.” Albertsons has demonstrated benefits would accrue to the public generally through: (i) lowering Albertsons' cost of doing business, which increases competitive pressures on its competitors; (ii) encouraging electric utilities to keep downward pressure on rates for existing customers; (iii) making Virginia more attractive for economic development; and (iv) supporting the existing fleet of Albertsons' stores that provide goods, services, and jobs to Virginia residents, business opportunities for other companies that support the grocery sector, and state and local tax revenue to Virginia.79

Mr. Waidelich explained why Albertsons' interests align with the public interest in terms of (i) the members of the public who Albertsons serves, (ii) the members of the public who Albertsons employs, (iii) the members of the public who benefit from Albertsons contribution to the local tax base and to local charities, (iv) the members of the public who benefit from retail competition, (v) the members of the public who benefit from competition in electric markets, (vi) the members of the public who benefit from lower greenhouse gas emissions, (vii) the members of the public who benefit from economic development afforded by offering nonresidential accounts the opportunity to aggregate electric load, and (viii) the members of the public who benefit from Albertsons' purchases of goods and services. Mr. Waidelich believes these benefits would not accrue without granting the Petition. For this reason, he believes the Petition meets the “consistent with the public interest” requirement of Section A 4.80

Mr. Waidelich testified there is no credible evidence impacts from the Petition on Dominion would rise to the level of being contrary to the public interest. To the extent there are any adverse impacts, the impacts would be miniscule, and would be offset by positive impacts on Dominion. He believes Dominion has overstated its claims of load loss, erosion of the utility model, lower rates of return, and the General Assembly’s desire to encourage new generation. Mr. Waidelich noted Section A 4 contemplates that load loss will occur; however, load loss needs to be significant enough to have an “adverse impact contrary to the public interest.” He noted the statute recognizes: (i) miniscule impacts, such as the Petition, do not rise to the level of being adverse to the public interest; (ii) load loss is inevitable when a responsible customer does what the Code encourages such as on-site energy, energy efficiency projects, and participation in demand response programs, all of which are in the public interest; and (iii) load loss may produce offsetting benefits, especially in avoiding construction of new generation. Mr. Waidelich believes it is significant there are seven aggregation petitions pending before the Commission, which should send a clear message to Dominion that its rates might be unreasonable.81

Mr. Waidelich noted Albertsons has a strong objection to furthering Dominion's version of the “utility model” which produces unreasonably high rates of return. He views any erosion of Dominion’s utility model as furthering the public interest, not being contrary to the public interest.82

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79 Id. at 20-22.
80 Id. at 22-23.
81 Id. at 23-26.
82 Id. at 26.
Mr. Waidelich disagreed with Dominion’s assertion the GTSA only incentivizes new
generation. The GTSA also provides for spending $1 billion on energy efficiency measures which,
by applying Dominion’s logic in aggregation cases, would have even more “adverse” impacts on
electric utilities because energy efficiency results in a total loss of load, while aggregation only
results in a partial loss of load.83

Mr. Waidelich disagreed with Staff witness Carr’s testimony in the Walmart Case that
aggregation could result in lower earnings, all else being equal, especially considering Dominion’s
current overearnings position. He noted in calendar year 2017, Dominion had an earned ROE on
generation of 19.09% and an overall earned ROE of 13.84%, both of which exceeded the 10% ROE
approved in the last base rate case and the 9.2% ROE approved for use in RACs. Since Albertsons’
load is miniscule, any impact on Dominion’s overearnings would be de minimis.84

Mr. Waidelich differentiated Dominion witness Morgan’s testimony in the Walmart Case
regarding who bears the risk for large losses during spikes in market prices. If Albertsons is
permitted to aggregate, non-shopping customers would not bear any risk for losses attributable to
Albertsons’ load; Albertsons would be entirely at risk for any increases in market prices. Under the
utility model, spikes in market prices would be borne by all customers.85

Mr. Waidelich is aware of no credible evidence the impacts from the Petition on non­
shopping customers rise to the level of being contrary to the public interest. He noted to the extent
there are any impacts, those impacts would be miniscule and could be offset by positive impacts on
non-shopping customers. Mr. Waidelich attacked Dominion’s claims of cost-shifting as overstated,
and based on the implausible assumption of “all else being equal.” He believes trying to evaluate
aggregation petitions in a vacuum, “all else being equal,” fails to account for the timing of
rate changes or the amounts by which rates would change as the result of a base rate case.
Mr. Waidelich noted Staff recognized the difficulty of quantifying the rate impact associated with
a customer choosing retail shopping. He noted many factors impact Dominion’s rates, and the
Albertsons Petition impact is likely to be dwarfed by those other factors. Mr. Waidelich cited an
example from the Walmart Case that a customer changing a 100-watt lightbulb to a 14-watt (100­
watt equivalent) LED lightbulb would completely offset any impact of the Walmart petition; any
impact of the Albertsons Petition is one-fifth the impact of the Walmart petition.86

Mr. Waidelich explained how the principles of Consistency, Transparency, and Simplicity
should be implemented by the Commission. This includes: (i) recognizing Chapter 23 of Title 56
establishes a retail shopping benefit for certain customers; (ii) using PJM’s 5CP data to calculate an
aggregator’s peak demand; and (iii) once a petition is approved under Section A 4, then compliance
should be governed by Section A 3, a load could not go below 5 MW and could not exceed 1% of
Dominion’s system peak. This would allow Albertsons the flexibility to add or deleted load without
having another formal Commission proceeding.87

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83 Id. at 27.
84 Id. at 27-29.
85 Id. at 29.
86 Id. at 29-34.
87 Id. at 34-39.
Mr. Waidelich disagreed with Dominion witness Morgan’s testimony that any retail shopping above zero could be too much because the retail shopping benefit under Section A 4 would become meaningless. Since Albertsons’ load is such a small percentage of Dominion’s total load, any outcome other than approval of the Petition would render Section A 4 virtually meaningless.88

Finally, Mr. Waidelich discussed the limited reporting requirements the Commission should impose. The incumbent electric utilities or the CSPs should report the PJM 5CP data of the Section A 4 customers to Staff for the limited purpose of confirming a Section A 4 customer’s aggregated load remains above 5 MW and below 1% of the utility’s peak load.89

Dominion Direct Testimony

Dominion presented the testimony of Gregory J. Morgan, Director of Customer Rates and Regulation; and Paul B. Haynes, Director of Regulation.

In his direct testimony, Mr. Morgan responded to the Petition and Albertsons witness Waidelich’s testimony.90

Mr. Morgan noted, except for three limited circumstances, aggregated retail choice does not exist in Virginia. Under Section A 3, large retail customers meeting the demand requirements have the automatic right to purchase electricity from a CSP. Under Section A 5, if the incumbent electric utility does not have an approved tariff for 100% renewable energy, any retail customer, regardless of size, may purchase 100% renewable energy from a CSP. However, under Section A 4, Commission approval is required and must be consistent with the public interest. Mr. Morgan noted three hurdles must be cleared under Section A 4, and even if those hurdles are cleared, the statute is permissive by using the words “may approve.” He believes this leaves approval to the Commission’s discretion based on other relevant facts and policy considerations. Mr. Morgan believes aggregation must be viewed as a narrow exception to the utility model because electric utilities should be investing in new supply resources to serve their customers’ needs, not planning for those customers to be supplied by someone else. He noted Dominion has installed over 6,000 MW of capacity over the last decade for the benefit of its customers, and with the passage of the GTSA, the General Assembly raised the bar even higher for customers seeking to leave an incumbent electric utility through aggregation. Mr. Morgan believes the exception in Section A 4 must be interpreted in the context of current law and policies, as they relate to today’s regulatory compact.91

Mr. Morgan provided an overview of the Petition, and described the adverse effects to Dominion and its non-shopping customers, if the Petition was approved. He explained changes in load for generation service can affect the system peak load, jurisdictional and customer class peak

88 Id. at 40.
89 Id. at 40-41.
90 Ex. 4, at 1-2.
91 Id. at 3-6.
loads, and energy consumption. These changes could alter the allocation factors for Dominion’s four jurisdictions and the Virginia jurisdictional customer classes, and result in cost-shifting. This cost-shifting adversely impacts those customers. For a typical residential customer using 1,000 kilowatt hours ("kWh") per month, the increase in the bill would be $0.02, $0.01 for base rates and $0.01 for generation riders, after taking into consideration the impact of the Tax Cuts and Jobs Act of 2017 ("TCJA").

Mr. Morgan explained the cumulative impact if all the Section A 4 petitions were approved. The impact was $0.16 for Walmart, $0.03 for Costco, $0.03 for Kroger, $0.05 for Harris Teeter, and $0.05 for Target. This would increase a typical residential customer’s electric bill by $0.33 per month. This does not consider the impact of the Reynolds petition, or the adverse impact from retail shopping under Sections A 3 or A 5. Additionally, these amounts do not consider any account deferral balances accrued while Albertsons received retail electric service from Dominion. Mr. Morgan believes these adverse impacts to non-shopping customers are contrary to the public interest.

Mr. Morgan explained Dominion plans for and invests in a level of installed capacity based on its forecasted demand. Nonresidential retail customers with demands of less than 5 MW represent approximately 35% of the Company’s jurisdictional load. Dominion’s IRP process would be significantly undermined if up to one-third of the Company’s jurisdictional load could exit the system through an aggregation process that does not require the petitioner to present evidence beyond its load size.

Dominion would have to reallocate its RAC costs to other customers and shift the fixed costs of generation investments from Albertsons to non-shopping customers. This would include any deferral balances accrued while Albertsons received retail electric supply from Dominion.

Mr. Morgan explained the impact Section A 4 petitions might have on the investment community and Dominion’s ability to access capital at reasonable rates. Section A 4 petitions might be viewed as increasing Dominion’s financial risk, which in turn increases the cost of capital to the detriment of the Company’s customers.

Mr. Morgan stated the Petition must be considered with the other petitions pending before the Commission. The Commission’s determination of adverse impacts should consider the total number of customers that have elected to, or have been approved to, leave the utility’s system to purchase from a CSP. Mr. Morgan believes this is within the scope of the Commission’s discretion to consider. As of December 31, 2018, the load of retail shopping customers under Sections A 3 and A 5 in Dominion’s service territory was 66.2 MW. Including the Reynolds, Walmart, Costco, Kroger/Harris Teeter, and Target petitions and the Albertsons Petition, results in a total load of 243.06 MW, or 1.86% of Dominion’s peak load. If the Commission does not consider the load loss

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92 Id. at 7. See infra n.116.
93 Id. at 7-8.
94 Id. at 8-9.
95 Id. at 7-8.
96 Id. at 9-10.
under Sections A 3 and A 5, and only considers the Albertsons Petition and the petitions filed before the Albertsons Petition (176.86 MW), the potential load loss amounts to 1.35% of Dominion’s peak load.97

Mr. Morgan responded to the Petition and the testimony of Albertsons witness Waidelich. Mr. Morgan explained, contrary to the assertion made in the Petition, the plain language of Section A 4 demonstrates meeting the 1% limitation in Section A 3 is merely a pre-requisite to seek approval to aggregate load, not the reason that a petition must be approved. Mr. Morgan noted the Commission stated, “[t]he requirements of Section A 4 are not automatically satisfied if the applicant meets the demand limitations of Section A 3. Rather, before approving any retail choice aggregation for nonresidential customers under Section A 4, the Commission must also make the specific public interest findings included therein.”98 Additionally, the Commission emphasized in its opinion in the Reynolds Case99 that approval of the Reynolds petition did not mean aggregation under 1% of peak load must be approved.100

Mr. Morgan also discussed the Commission’s July 12, 2018, Order in the Walmart Case. In that Order, the Commission stated Section A 4 permits aggregation if it is not “too much.”101 If any aggregation is permitted under Section A 4, Mr. Morgan believes it should be merit based and meet the following standards: (i) approval does not adversely affect the incumbent electric utility in a manner contrary to the public interest; (ii) approval does not adversely affect the utility’s remaining customers in a manner contrary to the public interest; and (iii) approval of the Petition is consistent with the public interest. To the extent the Commission considers an aggregate limit appropriate, Mr. Morgan stated 1.35% or more of Dominion’s peak load may already be “too much.”102

Mr. Morgan disputed Albertsons’ assertion that aggregating load and purchasing from a CSP would result in cost savings. He believes Albertsons failed to consider several factors that could substantially reduce the purported savings, such as pending or likely rate changes resulting from the TCJA, and adjustments in Dominion’s current fuel rate. Mr. Morgan explained Dominion is an active participant in the PJM market and is aware of current market prices and trends. He does not believe Albertsons would achieve the savings it claims. Mr. Morgan is unaware of any support that suggested cost savings would further economic development in Virginia, or would otherwise result in some benefit consistent with the public interest.103

Mr. Morgan noted Albertsons provided no information on how its purported cost savings would equate to increased investments in energy efficiency.104

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97 Id. at 10-11.
98 Walmart Case, Order Scheduling Additional Proceedings at 3 (July 12, 2018).
99 Reynolds Case, Opinion at 6 (May 16, 2018).
100 Ex. 4, at 11-12.
101 Walmart Case, Order Scheduling Additional Proceedings at 3 (July 12, 2018).
102 Ex. 4, at 12-13.
103 Id. at 14-15.
104 Id. at 15-16.
Mr. Morgan disputed the benefits cited by Albertsons witness Waidelich in his testimony.\textsuperscript{105} He noted all but one of the benefits cited by Mr. Waidelich rely upon the premise that aggregation would result in cost savings and in turn economic development. Mr. Morgan believes these benefits are purely hypothetical. Mr. Morgan stated Albertsons provided no support for its claim that granting its Petition would reduce greenhouse gas emissions. To the extent Albertsons has renewable energy goals, Mr. Morgan provided the ways Albertsons could meet those goals under Dominion’s existing tariff.\textsuperscript{106}

Mr. Morgan explained load growth does not offset potential harm to Dominion, if the Petition was approved. He noted several economic factors drive the need for cost recovery without regard to load growth. He explained the detrimental effects to rate reallocation associated with aggregated retail choice occur independent of load growth. Load growth could moderate the effects, but would not eliminate them.\textsuperscript{107}

Mr. Morgan explained, contrary to Albertsons witness Waidelich’s complaints about the shortcomings of an “all else being equal” analysis of the potential harm to non-shopping customers, the Commission is familiar with such an analysis and it shows the potential impact of a filing before the Commission.\textsuperscript{108}

Mr. Morgan stated petitions before the Commission are granted based on the specific facts and circumstances of the case; they are not granted based on “Consistency.” Mr. Morgan disagreed denial of the Petition would result in a “lopsided” implementation of Section A 4.\textsuperscript{109}

Mr. Morgan disagreed with Albertsons witness Waidelich’s discussion of “utility benefits” and “customer benefits.” First, he noted the applicable statutes require new generation projects to both be required by the public convenience and necessity and not otherwise contrary to the public interest. Second, he explained each of the generation projects demonstrated substantial life cycle net customer benefits. Mr. Morgan described these generation projects as a customer benefit, a utility benefit, and a public interest benefit. He expressed his concern with allowing aggregating customers to leave the utility in the early years of generation cost recovery while still having the potential to enjoy the later-in-life benefits should the customer return to utility service. Mr. Morgan believes this is unfair for non-shopping customers and unwise public policy.\textsuperscript{110}

Mr. Morgan discussed the competitiveness of Dominion’s rates. The Company’s rates today, inclusive of riders, are lower than at the same point in 2008. Fuel rates and base rates have decreased more than riders have risen. Dominion’s rates offer less risk and volatility, while remaining competitive with market-based rates in the DOM Zone. Dominion’s rates are below both the South Atlantic average and the U.S. national average for similarly sized customers.\textsuperscript{111}

\textsuperscript{105} Ex 3, at 22.  
\textsuperscript{106} Ex. 4, at 16.  
\textsuperscript{107} Id. at 17.  
\textsuperscript{108} Id. at 17-18.  
\textsuperscript{109} Id. at 18.  
\textsuperscript{110} Id. at 18-20.  
\textsuperscript{111} Id. at 20.
Mr. Morgan disagreed with Albertsons witness Waidelich that approval of the Petition would permit Albertsons to add additional accounts as long as it stayed below the 1% load cap. Mr. Morgan believes any approval should be limited to the 37 customer accounts listed in the Petition.\footnote{Id. at 21-22.}

Finally, Mr. Morgan summarized Dominion's position that sufficient evidence has not been presented by Albertsons to meet the requirements of Section A 4, specifically because the current public policy in Virginia is in favor of taking supply from an incumbent electric utility. Dominion recommended the Commission find the Petition failed to demonstrate: (i) Dominion would not be adversely affected in a manner contrary to the public interest; (ii) Dominion's remaining customers would not be adversely affected in a manner contrary to the public interest; and (iii) approval of the Petition is consistent with the public interest. For these reasons, Dominion recommended the Commission deny the Petition.\footnote{Id. at 22-23.}

In his direct testimony, Mr. Haynes responded to the Petition and Albertsons witness Waidelich's testimony. Mr. Haynes prepared a cost of service analysis that removed the effects of Albertsons' load and usage, like the analysis presented in the previous aggregation cases, which provides an example of the possible adverse impacts on non-shopping customers. In addition, he addressed whether Albertsons' load of 14.12 MW meets the demand requirements of Section A 3. Finally, Mr. Haynes responded to Mr. Waidelich's proposal for measuring the total load impact on Dominion and the aggregating customer.\footnote{Ex. 5, at 1-2.}

Based on an analysis of the impact of the allocation of production plant costs and related non-fuel expenses using Dominion's production demand allocation factor ("Factor 1") and energy allocation factor ("Factor 3"), considering an adjustment to reduce purchased power capacity expense associated with Albertsons' load, and considering an adjustment for the reduction in base generation and generation rider revenue from Albertsons, Mr. Haynes found the jurisdictional and customer class rates of return have declined from those presented in Case No. PUR-2018-00055.\footnote{Commonwealth of Virginia, ex rel. state Corporation Commission, Ex Parte: In the matter concerning the implementation by Virginia Electric and Power Company d/b/a Dominion Energy Virginia of reductions in rates for generation and distribution services pursuant to Enactment Clause Nos. 6 and 7 of Senate Bill 966, Case No. PUR-2018-00055, Final Order (March 8, 2019).} To achieve the same rates of return, there would need to be an increase in revenue. For a typical residential customer using 1,000 kWh per month, the increase in the bill would be $0.03 assuming the Petition is approved and Albertsons had taken service from a CSP during 2017. The amount of change in base revenue required is $0.02 and the amount of change in generation rider revenue would be $0.01. Taking into consideration the impact of the TCJA further reduces these amounts. The change in revenue needed because of the Petition for a residential customer using 1,000 kWh per month would be $0.02, $0.01 for base rates and $0.01 for generation riders. These calculations do not represent the cumulative impact on non-shopping customers of all the approved and pending aggregation cases.\footnote{Corrected Ex. 5, Id. at 3-12. After the hearing, in the process of preparing Late-Filed Exhibit 6, the Company discovered an inadvertent error in the revenue impact analyses presented by Dominion witness Haynes in his prefiled}
consideration the TCJA would be $1,780,282, which includes $1,386,931 in base rate revenue and $393,351 in RAC rate revenues. 117

Finally, Mr. Haynes addressed the demand requirements for aggregation petitions. Dominion believes the Petition satisfies the demand requirements in Section A 3. He explained how demand should be measured in accordance with the language of the statute. For the utility’s demand, Mr. Haynes recommended using the highest metered demand that would be experienced by the distribution system for the Virginia jurisdiction. For the petitioner’s demand, Mr. Haynes recommended looking at each individual account of the petitioner and the tariff (rate schedule) under which it is served to determine the highest metered distribution demand for the year. Once the highest metered demand for each of the petitioner’s accounts is obtained, he recommended determining the sum of these highest metered demands for all accounts and that sum would be the peak demand for the petitioner. Mr. Haynes believes Albertsons witness Waidelich’s recommendation to use the PJM 5CP to measure load might not accurately measure the aggregated customers’ highest demand during the calendar year. Mr. Haynes noted the hours when the 5CP is measured may be hours in which customers participating in aggregated retail choice would have a strong incentive to curtail load. 118

Staff Direct Testimony

Staff presented the testimony of Earnest J. White, Senior Utilities Analyst in the Division of Public Utility Regulation; and Britton Ellis, Manager in the Division of Utility Accounting and Finance.

In his direct testimony, Mr. White commented on the Petition. In addition, he addressed: Section A 4; the demand limitations in Section A 3; and the public interest arguments presented by Albertsons witness Waidelich, and Dominion witnesses Morgan and Haynes. 119

Mr. White noted Albertsons is seeking to aggregate 37 nonresidential accounts in Dominion’s service territory. Each individual account had a peak demand of less than 5 MW in the prior 12-month period. The 37 accounts represent approximately 14.12 MW of peak demand. Albertsons operates 39 stores in Virginia, employs approximately 2,832 associates, and contributes significantly to the tax base, economy, and other businesses in Virginia. 120

Mr. White explained the requirements of Section A 4. He noted the information included in the Petition demonstrated each nonresidential customer account had an individual demand below 5 MW, and a combined peak demand of 14.12 MW. Each individual account’s demand met the minimum and maximum demand requirements in Section A 4. As required by Section A 3,

direct testimony. The corrections in the base rate and RAC rate revenue impacts are provided above. These corrections also impact the direct testimony of Dominion witness Morgan, the rebuttal testimony of Albertsons witness Waidelich, and the direct testimony of Staff witness White.

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117 Ex. 6C, at 1.
118 Id. at 12-14.
119 Ex. 7, at 2-3.
120 Id. at 3.
Albertsons' combined demand was less than 1% of Dominion's peak load in 2017. Mr. White concluded the Petition met the demand requirements of Sections A 3 and A 4.121

Mr. White addressed the public interest requirement in Section A 4. He summarized the testimony of Albertsons witness Waidelich and Dominion witness Morgan.122

Mr. White commented on the issue of cost-shifting and the timing of rate changes. He noted retail shopping results in a loss of load to the incumbent electric utility. The customer no longer purchases generation and transmission service directly from the incumbent utility. Holding all other rate effects constant, this would result in a reduction in the kilowatt ("kW") and kWh sales across which the utility's fixed generation and transmission costs are allocated. All else being equal, the reduction in kW and kWh sales increases the cost responsibility allocated to non-shopping customers, which could place upward pressure on rates for generation and transmission. Mr. White noted there are several factors that affect the extent and timing of any rate impact on non-shopping customers; and consequently, it is difficult to quantify with any precision.123

Mr. White discussed Dominion's estimate of the impact of Albertsons participating in aggregated retail choice on non-shopping customers. Dominion witness Haynes developed revisions to Factor 1 and Factor 3. Dominion estimates a typical residential customer using 1,000 kWh per month would see a monthly increase of approximately $0.01 attributed to RACs and $0.02 attributed to base rates, or approximately $0.03.124 Mr. White cautioned this is a static simulation, and there are many factors that influence both the extent and timing of any rate impact on Dominion's non-shopping customers. Those factors may include: (i) the impact of retail shopping on the earnings position at the time of a future base rate proceeding; (ii) the impact of retail shopping on the average cost of fuel; and (iii) changes in wholesale generation and transmission costs and revenues associated with the loss of Petitioner's aggregated demands. Mr. White provided a summary of Dominion's estimated bill impact for Albertsons' retail shopping. In addition, he provided the cumulative impact of the Walmart, Costco, Kroger/Harris Teeter, Target, and Albertsons petitions. Mr. White cautioned the cumulative impact might not necessarily be additive in the context of ratemaking.125

Finally, if the Petition is approved, Mr. White recommended an annual reporting requirement so Staff could monitor compliance with the demand limitations in Sections A 3 and A 4. In addition, the information would allow Staff to monitor the effect of all like approved petitions. Mr. White disagreed with Albertsons witness Waidelich that PJM 5CP data would be the best benchmark for Section A 4 compliance purposes due to the sensitive nature of the data.126

In his direct testimony, Mr. Ellis addressed the impact on Dominion's rates if Albertsons were to take service from a CSP. He described the three types of rate mechanisms (RACs, fuel

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121 Id. at 3-6.
122 Id. at 6-7.
123 Id. at 7-8.
124 These estimates do not include the impact of the TCJA. In addition, these estimates incorporate Dominion witness Haynes' corrections to his prefilled direct testimony. See supra n.116.
125 Ex. 7, at 8-10.
126 Id. at 11-12 and Attachment EJW-3.
factor, and base rates), and described the impact of retail shopping on each. Mr. Ellis’s analysis was based on “all else being equal” and did not consider the impact of load growth.\textsuperscript{127}

In the near-term, retail shopping would cause a net increase in RAC rates for mechanisms avoided by shopping customers. In the long-term, there is the potential for certain costs to be delayed or avoided, if loss of load delays or avoids building new generation.\textsuperscript{128}

The loss of a customer to retail shopping can have a positive (savings to non-shopping customers) or negative (costs shifted to non-shopping customers) impact on fuel rates. The directionality of the impact depends on whether the avoided fuel costs due to retail shopping are higher (positive impact) or lower (negative impact) than the utility’s average fuel cost. Considering Albertsons’ relatively flat load shape, the impact of retail shopping would more or less even out.\textsuperscript{129}

For base rates, the impact is similar to RACs. Fixed and un-avoided variable generation costs persist, but rate recovery is reduced as the retail shopping customers no longer pay generation base rates, which results in lower earned returns in the next base rate case.\textsuperscript{130}

Finally, Mr. Ellis explained the impact of retail shopping on RACs would be more immediate and the impact on base rates would not be determined until Dominion’s next base rate case in 2021.\textsuperscript{131}

\textit{Albertsons Rebuttal Testimony}

In his rebuttal testimony, Mr. Waidelich stated most of the arguments raised by Dominion were addressed in the Petition and his direct testimony. In addition, he continued to request the Commission exercise its discretion under Section A 4 to approve the Petition notwithstanding that it recently denied the aggregation petition in the Walmart Case. Finally, Mr. Waidelich responded to Dominion’s criticism of Albertsons’ lack of commitment to make an investment in energy efficiency if its Petition is granted.\textsuperscript{132}

Mr. Waidelich distinguished the Albertsons Petition from the Walmart petition. He noted the impact of the Walmart petition on a typical residential customer using 1,000 kWh per month was $0.09, while the Albertsons’ impact was $0.03. After taking into consideration the TCJA, the impact would only be $0.02.\textsuperscript{133} He noted these impacts assume no other factors would affect non-shopping customers, and these impacts ignore countervailing impacts, such as increases in economic development and energy efficiency. Mr. Waidelich continues to believe the Albertsons Petition would have a \textit{de minimis} impact on non-shopping customers.\textsuperscript{134}

\begin{thebibliography}{9}
\bibitem{127} Ex. 8, at 1-2.
\bibitem{128} Id. at 2-3.
\bibitem{129} Id. at 3.
\bibitem{130} Id. at 3-4.
\bibitem{131} Id. at 4-5.
\bibitem{132} Ex. 9, at 1.
\bibitem{133} See supra n.116. These estimates incorporate Dominion witness Haynes’ corrections to his prefiled direct testimony.
\bibitem{134} Id. at 1-2.
\end{thebibliography}
Mr. Waidelich responded to Dominion witness Morgan’s criticism of Albertsons’ lack of commitment to make any investment in energy efficiency in its Virginia stores resulting from aggregation savings. He confirmed Albertsons would invest $1 million in energy efficiency in its Virginia stores during the first year of participation in aggregated retail choice, if the Commission approves its Petition. Mr. Waidelich stated Albertsons is confident aggregation would result in cost savings allowing this level of energy efficiency investment in its stores.135

DISCUSSION

The following issues must be decided in this case: (i) whether the Albertsons Petition meets the demand requirements of Sections A 3 and A 4 of the Code to aggregate its load to qualify to purchase electric energy from any retail supplier licensed in Virginia; (ii) whether approval of the Albertsons Petition would adversely affect Dominion in a manner contrary to the public interest; (iii) whether approval of the Albertsons Petition would adversely affect Dominion’s non-shopping customers in a manner contrary to the public interest; and (iv) whether approval of the Albertsons Petition is consistent with the public interest? If the Albertsons Petition is approved, there are post-approval issues relating to the scope of approved aggregation and reporting requirements that must also be addressed.

Code of Virginia

Under Section A 3 of the Code, retail access to competitive electric supply is available to certain large customers with demand exceeding 5 MW, but less than 163.5 MW.136 If a customer meets the requirements of the statute, no prior Commission approval is required to obtain electric supply from any licensed retail supplier. Under the statute, all of an incumbent electric utility’s qualifying load could switch to retail access service and such action is not contrary to the public interest for the incumbent electric utility or its non-shopping customers, nor is it inconsistent with the public interest generally. The General Assembly has decided the public policy supports allowing large customers retail access, if they so choose. As of December 31, 2018, retail access under Sections A 3 and A 5 represented approximately 66.2 MW of load in Dominion’s service territory.137

Section A 3 provides, in part, that:

After the expiration or termination of capped rates, and subject to the provisions of [Sections A 4 and A 5], only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer’s incumbent electric utility’s peak load during the most recent calendar year unless such customer has noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail

135 Id. at 2-3.
136 Ex. 3, at 11-12. Dominion’s summer 2017 peak load was 16,350 MW and 1% of that amount is 163.5 MW.
137 Ex. 4, at 11. No other information was submitted in this record, such as: what is the load represented separately by Sections A 3 and A 5; or what is the eligible load under Section A 3 that is not retail shopping?
electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:

a. If such customer does not purchase electric energy from licensed suppliers after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in [Section A 4], the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years’ advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier.

Under Section A 4 of the Code, retail access to competitive electric supply is available to two or more individual nonresidential retail customers, whose individual demand during the most recent calendar year did not exceed 5 MW, and in the aggregate, did not exceed 163.5 MW. They may petition the Commission for permission to aggregate their demands for purposes of meeting the demand limitations of Section A 3. Section A 4 does not reflect the same public policy considerations as Section A 3. The General Assembly has decided for purposes of Section A 4, the public policy of the Commonwealth is for the Commission to make the decision whether retail access is appropriate in accordance with the requirements of the statute.

Section A 4 provides, in part, that:

After the expiration or termination of capped rates, two or more individual nonresidential retail customers of electric energy within the Commonwealth, whose individual demand during the most recent calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate or combine their demands, for the purpose of meeting the demand limitations of [Section A 3], so as to become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth under the conditions specified in [Section A 3]. The Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

a. Neither such customers’ incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such

138 Walmart Case, Final Order at 5 (February 25, 2019).
petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility; and

b. Approval of such petition is consistent with the public interest.

If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be subject in all respects to the provisions of [Section A 3] and shall be treated as a single, individual customer for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to meet the demand limitations of [Section A 3]. If the Commission finds, after notice and opportunity for a hearing, that such group of customers no longer meets the above demand limitations, the Commission may revoke its previous approval of the petition, or take such other actions as may be consistent with the public interest.

In addressing the above statutory standards, the Commission noted in the Walmart Case the General Assembly “did not define the factors for determining what is, or is not, ‘contrary to’ or ‘consistent with’ the public interest. Accordingly, the General Assembly has delegated to the Commission the broad discretion to determine the public interest for purposes of aggregated retail choice under [Section A 4].”

**Burden of Proof**

The Commission previously stated a petitioner bears the burden to show its request complies with Section A 4. A petitioner must prove its petition by a preponderance of the evidence, which has been defined by the Supreme Court of Virginia as:

The weight or preponderance of the evidence is its power to convince the tribunal which has the determination of fact, of the actual truth of the proposition to be proved. After the evidence has been weighed, that proposition is proved by a preponderance of the evidence if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal, notwithstanding any doubts that may still linger there.

**Other Section A 4 Petitions**

When evaluating the impact of a petition to switch to aggregated retail choice on Dominion and its non-shopping customers, Section A 4 directs the Commission to consider “the impact and effect of any and all other previously approved petitions of like type with respect to” Dominion.

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139 Id. In the Walmart Case, the Commission provided a brief history of retail choice in Virginia that began with deregulation in 1999 and ended in re-regulation in 2007. Id. at 5-7. After 2007, retail choice was available in three limited circumstances, Sections A 3, A 4, and A 5. With respect to Section A 4, the Commission noted it must implement the statute as it is written, and the General Assembly may amend the statute anytime it chooses. Id. at 6-7.

140 Reynolds Case, Opinion at 3 (May 16, 2018).


142 Section 56-577 A 4 a.
In the Reynolds Case, the only Section A 4 petition approved to date, the Commission approved Reynolds' request to aggregate approximately 10.12 MW of load in Dominion's service territory. In that case, the Commission noted Reynolds' aggregated demand of 10.12 MW represented approximately 0.06% of Dominion's peak demand, Dominion's demand was expected to grow more than 0.06% each year over the next 15 years, and the impact of granting the Reynolds petition would be de minimis. The Commission found, pursuant to Section A 4 of the Code, "[n]either such customers' incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition." In its Opinion, the Commission explained its decision in the context of the governing statutes and provided guidance for future aggregation cases. The Commission stated:

[T]he Commission's findings herein have obviously been informed by the fact that this is the first request under Section A 4, and that it is limited to 10.12 MW. As recognized in the statute, every such petition must be evaluated under the specific circumstances attendant thereto. Thus, the Commission emphasizes that the result of this initial review is strictly limited to the instant case and does not establish specific rules for, or the eventual scope of, retail access under Section A 4. Any subsequent aggregation proceeding under this statute must independently evaluate whether the statutory requirements have been met in the specific circumstances of that proceeding. For example, the result of the instant case does not mean the following:

- That the Commission has created a de minimis standard for all aggregation requests;
- That all 10 MW aggregation, or aggregation under 1% of peak load, must be approved;
- That aggregation over 10 MW must be denied;
- That the scope of retail access under Section A 4 will be unreasonably expanded;
- That the five-year stay-out protection provided via Section A 3 is a material safeguard for any amount of aggregation (separately or in total);
- That factors currently supporting the public interest will necessarily do so in the future; or
- That subsequent cases will be precluded from considering other factors, or reaching different conclusions, based on the specific circumstances and arguments attendant thereto. (emphasis in original).

Several other cases have been filed to aggregate load in Dominion's service territory and they are at various stages in the Commission's process. In the Walmart Case, the Commission

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143 Reynolds Case, Final Order at 3-4 (February 21, 2018).
144 Id. at 4; § 56-577 A 4 a.
145 Reynolds Case, Opinion at 5-6 (May 16, 2018).
initially denied Walmart's petitions to aggregate 70.52 MW of load,\textsuperscript{146} and Walmart petitioned for rehearing or reconsideration.\textsuperscript{147} On May 30, 2019, the Commission entered an Order on Reconsideration denying Walmart's Petition for Limited Rehearing or Reconsideration.\textsuperscript{148} The Costco petition to aggregate approximately 12.71 MW of load was denied by the Commission on May 30, 2019.\textsuperscript{149} The Kroger/Harris Teeter petitions to aggregate approximately 45.4 MW of load are pending before the Commission. Target seeks to aggregate approximately 23.99 MW of load and that case was heard on April 12, 2019.

Dominion believes the Albertsons Petition must be considered with the other petitions pending before the Commission, including those filed after the Albertsons Petition. The Commission's determination of adverse impacts should consider the total number of customers that have elected to, or have been approved to, leave the utility service for retail access service, which is within the scope of the Commission's discretion to consider. As of December 31, 2018, the customers that have chosen retail access service from a CSP under Sections A 3 and A 5 in Dominion's service territory represented a total load of 66.2 MW. Together with the Albertsons (14.12 MW) load and the Reynolds (10.12 MW), Kroger/Harris Teeter (45.4 MW), and Target (23.99 MW) loads, this would total approximately 159.83 MW or 0.98% of Dominion's peak load. If the Commission does not consider load loss under Sections A 3 and A 5, and only considers the petitions filed before and after the Albertsons Petition, this would result in a load loss of 93.63 MW or 0.57% of the Company's peak load.\textsuperscript{150}

I disagree with Dominion that the Commission must consider all petitions filed under Section A 4, including those filed after the Albertsons Petition. The statute requires the Commission consider "any and all other previously approved petitions of like type."\textsuperscript{151} There is no statutory requirement the Commission consider petitions filed after the Albertsons Petition.

\textsuperscript{146} Walmart Case, Final Order (February 25, 2019). The Commission found granting the Walmart petition would "adversely affect, in a manner contrary to the public interest, customers not purchasing from alternate suppliers," and was "not consistent with the public interest." \textit{Id.} at 9. The record in the case established non-shopping customers "would not be held harmless if either of the Petitions [was] granted." \textit{Id.} at 8 (emphasis in original). The Commission's analysis focused on the cost-shifting that would occur to non-shopping customers if Walmart and Sam's Club switched to aggregated retail choice. \textit{Id.} at 8-9. The Commission found "the harm to customers who do not (or cannot) switch to a CSP is contrary to the public interest." \textit{Id.} at 9.

\textsuperscript{147} Walmart Case, Order Granting Reconsideration (March 15, 2019). Walmart sought rehearing or reconsideration for the limited purpose of considering whether some aggregated load less than the total load sought in Walmart's petition would satisfy the public interest requirements of Section A 4 and authorized Walmart to aggregate such load. Walmart Case, Petition for Limited Rehearing or Reconsideration at 1-2 (March 13, 2019).

\textsuperscript{148} Walmart Case, Order on Reconsideration at 3 (May 30, 2019) (The Commission exercised "its discretion not to provide specific relief – on reconsideration – that was not requested by Walmart in the original petitions.").

\textsuperscript{149} Costco Case, Final Order at 10 and 14 (May 30, 2019) (The Commission found approval of the Costco petition was not "consistent with the public interest" under Section A 4 b because of the costs that would be shifted to non-shopping customers, primarily residential and small business customers, who cannot switch to a CSP. In addition, the Commission found under Section A 4 a "retail customers of [Dominion] that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting [Costco's Petition]." In sum, the Commission found "it is not consistent with the public interest for Costco to save money 'at the expense of other customers.'").

\textsuperscript{150} Ex. 4, at 10-11. Dominion's position was amended to reflect the denial of the Walmart and Costco petitions.

\textsuperscript{151} Section 56-577 A 4 a.
In the example provided above, Dominion includes the retail shopping occurring under Sections A 3 and A 5, with retail shopping that might occur under Section A 4. Under Sections A 3 and A 5, the General Assembly has already decided it is consistent with the public interest that all of Dominion’s customers that meet the requirements of the statutes may shop if they choose to do so. Unfortunately, there is insufficient evidence in this record to determine the extent to which retail shopping is occurring under Sections A 3 and A 5. However, those numbers are not relevant to any decision the Commission must make under Section A 4. Section A 4 contemplates some level of retail shopping above that permitted in Sections A 3 and A 5. The Dominion 1% peak load limitation (136.5 MW) applies to an individual aggregation petition, not all aggregation occurring under Section A 4.

I. Whether the Albertsons Petition meets the demand requirements of Sections A 3 and A 4 of the Code to aggregate its respective load to qualify to purchase electric energy from any retail supplier licensed in Virginia?

In its Petition, Albertsons requested to aggregate the load of 37 stores in Dominion’s service territory, which totals 14.12 MW of load. Each individual grocery store had a peak demand of less than 5 MW in the prior 12-month period. The Albertsons’ 14.12 MW aggregated load represented 0.086% (eighty-six thousandths of one percent) of the actual 16,350 MW summer peak load for Dominion in 2017, well below the 1% requirement in Section A 3.

Dominion and Staff agreed the Albertsons Petition meets the demand requirements of Sections A 3 and A 4.

Albertsons believes its aggregated load is miniscule when compared to Dominion’s peak load. Having met the statutory load requirements, Albertsons believes there is a presumption the Petition is not adverse to the public interest or the interests of Dominion or its non-shopping customers.

Dominion responded to the assertion made by Albertsons that there is a presumption the Petition is not adverse to the public interest or the interests of Dominion or its non-shopping customers. Dominion noted the plain language of Section A 4 demonstrates meeting the 1% limitation in Section A 3 is merely a pre-requisite to seek approval to aggregate load, not that a...
petition meeting this demand limitation must be approved. Dominion noted the Commission stated, "[t]he requirements of Section A 4 are not automatically satisfied if the applicant meets the demand limitations of Section A 3. Rather, before approving any retail choice aggregation for nonresidential customers under Section A 4, the Commission must also make the specific public interest findings included therein." Additionally, the Commission emphasized in its opinion in the Reynolds Case\(^{158}\) that approval of the Reynolds petition did not mean aggregation under 1% of peak load must be approved.\(^{159}\)

Dominion further noted the Commission’s July 12, 2018, Order in the Walmart Case. In that Order, the Commission stated Section A 4 permits aggregation if it is not “too much.”\(^{160}\) If any aggregation is permitted under Section A 4, Dominion believes it should be merit based and meet the following standards: (i) approval does not adversely affect the incumbent electric utility in a manner contrary to the public interest; (ii) approval does not adversely affect the utility’s remaining customers in a manner contrary to the public interest; and (iii) approval of the Petition is consistent with the public interest. To the extent the Commission considers an aggregate limit appropriate, Dominion witness Morgan stated 1.35% (220 MW) or more of Dominion’s peak load may already be “too much.”\(^{161}\)

As part of its Transparency argument, Albertsons witness Waidelich recommended using PJM 5CP data to calculate an aggregator’s peak demand. Albertsons argued the PJM 5CP is an industry standard methodology, publicly available from PJM, and cannot be arbitrarily changed by either the incumbent utility or the aggregating customer. Albertsons does not want to be subject to an arbitrary load calculation methodology that does not apply to any other customer, nor does it support the notion that Dominion should be held to a standard that could differ from one aggregation petition to another.\(^{162}\)

Dominion witness Haynes explained how demand should be measured in accordance with the language of the statute. For the utility’s demand, he recommended using the highest metered demand that would be experienced by the distribution system for the Virginia jurisdiction. For the petitioner’s demand, he recommended looking at each individual account of the petitioner and the tariff (rate schedule) under which it is served to determine the highest metered distribution demand for the year. Once the highest metered demand for each of the petitioner’s accounts is obtained, he recommended determining the sum of these highest metered demands for all accounts and that sum would be the peak demand for the petitioner. Mr. Haynes believes Albertsons witness Waidelich’s recommendation to use PJM 5CP data to measure load might not accurately measure the aggregated customers’ highest demand during the calendar year. Mr. Haynes explained the hours when the 5CP is measured may be hours in which customers participating in aggregated retail choice would have a strong incentive to curtail load.\(^{163}\)

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\(^{157}\) Walmart Case, Order Scheduling Additional Proceedings at 3 (July 12, 2018).

\(^{158}\) Reynolds Case, Opinion at 6 (May 16, 2018).

\(^{159}\) Ex. 4, at 11-12.

\(^{160}\) Walmart Case, Order Scheduling Additional Proceedings at 3 (July 12, 2018).

\(^{161}\) Ex. 4, at 12-13.

\(^{162}\) Ex. 3, at 35.

\(^{163}\) Ex. 5, 12-14.
Staff believes the PJM 5CP methodology advanced by Albertsons witness Waidelich might not be the best measure of compliance with Sections A 3 and A 4. Although the PJM 5CP is used to determine a wide range of wholesale costs within PJM, Staff does not believe this sensitive information is necessary to fulfill the reporting requirements of Section A 4.164

Although the 5CP for PJM is publicly available, the 5CP for Dominion and Albertsons is not publicly available and is considered confidential. For this reason, I agree with Staff that 5CP data is not transparent and should not be used to determine compliance with Sections A 3 and A 4.

II. Whether approval of the Albertsons Petition would adversely affect Dominion in a manner contrary to the public interest?

Assuming Dominion’s growth estimates are remotely accurate, Albertsons believes Dominion’s load growth would absorb any loss that might result from granting the Petition. Even if the Reynolds, Walmart, Costco, Kroger/Harris Teeter, and Target loads are factored in, Albertsons believes Dominion’s load growth would offset any lost load within less than one year. For this reason, Albertsons believes neither Dominion nor its non-shopping customers would experience any adverse impacts contrary to the public interest, if the Commission granted the Petition. Even if Dominion’s load growth forecasts are overstated, Albertsons believes its demand is insignificant by comparison and would not be missed by Dominion. Albertsons noted it would continue to be a distribution customer and support Dominion’s rate base at the distribution level. As a CSP customer, Albertsons would reduce Dominion’s peak demand and supply costs, which benefits Dominion and its non-shopping customers.165

Albertsons believes Dominion benefitted from SB 1416 and the re-regulation of electric rates. Albertsons noted Dominion’s stock price was $7.23 in November 2007, $52.28 in October 2012, and $76.93 in October 2017. Dominion’s earnings were $1.7 billion in 2007, $1.97 billion in 2010, and $2.35 billion in 2016. During the same period, residential customer bills rose 29% and Dominion’s profit levels exceeded levels allowed in most states. Albertsons further noted SB 1416 was also intended to benefit certain commercial and industrial customers by providing flexibility in electric supply to keep electric rates low in Virginia. Albertsons noted the Governor’s amendments to SB 1416 were designed to effect two purposes: (i) to allow certain customers that are sensitive to electric utility pricing an opportunity to obtain immediate relief from high rates through retail shopping; and (ii) to send a strong signal to the incumbent electric utility that its rates are undermining, rather than furthering, a core purpose of SB 1416.166

Albertsons believes there is no credible evidence impacts from the Petition on Dominion would rise to the level of being contrary to the public interest. To the extent there are any adverse impacts, the impacts would be miniscule, and would be offset by positive impacts on the Company. Albertsons believes Dominion has overstated its claims of load loss, erosion of the utility model, lower rates of return, and the General Assembly’s desire to encourage new generation. Albertsons noted Section A 4 contemplates that load loss would occur, however, load loss needs to be significant enough to have an “adverse impact contrary to the public interest.” Albertsons noted the

164 Ex. 7, at 11.
166 Id. at 17-19.
meaningless. Since Albertsons' load is such a small percentage of Dominion's total load, any outcome other than approval of the Petition would render Section A 4 virtually meaningless.170

Dominion believes authorizing Albertsons to switch to aggregated retail choice would adversely affect the Company in a manner contrary to the public interest.

Dominion explained the Company plans for and invests in a level of installed capacity based on its forecasted demand. Nonresidential retail customers with demands of less than 5 MW represent approximately 35% of the Company's jurisdictional load. Dominion's IRP process would be significantly undermined if up to one-third of the Company's jurisdictional load could exit the system through an aggregation process that does not require the petitioner to present evidence beyond its load size.171

Albertsons disagreed with Dominion's assertion the GTSA only incentivizes new generation. The GTSA also provides for spending $1 billion on energy efficiency measures which, by applying Dominion's logic in aggregation cases, would have even more "adverse" impacts on electric utilities because energy efficiency results in a total loss of load, while aggregation only results in a partial loss of load.169

Albertsons disagreed with Dominion witness Morgan's testimony that any retail shopping above zero could be too much because the retail shopping benefit under Section A 4 would become meaningless. Since Albertsons' load is such a small percentage of Dominion's total load, any outcome other than approval of the Petition would render Section A 4 virtually meaningless.170

Dominion explained load growth does not offset potential harm to the Company, if the Petition was approved. Dominion noted several economic factors drive the need for cost recovery without regard to load growth. Dominion explained the detrimental effects to rate reallocation associated with aggregated retail choice occur independent of load growth. Load growth could moderate the effects, but would not eliminate them.172

167 Id. at 23-26.
168 Id. at 26.
169 Id. at 27.
170 Id. at 40.
171 Ex. 4, at 8-9.
172 Id. at 17.
Finally, Dominion believes Albertsons presented insufficient evidence to meet the requirements of Section A 4, specifically because the current public policy in Virginia is in favor of taking supply from an incumbent electric utility. Dominion recommended the Commission find the Petition failed to demonstrate: (i) Dominion would not be adversely affected in a manner contrary to the public interest; (ii) Dominion’s remaining customers would not be adversely affected in a manner contrary to the public interest; and (iii) approval of the Petition is consistent with the public interest. For these reasons, Dominion recommended the Commission deny the Petition.173

III. Whether approval of the Albertsons Petition would adversely affect Dominion's non-shopping customers in a manner contrary to the public interest?

Albertsons is aware of no credible evidence the impacts from the Petition on non-shopping customers rise to the level of being contrary to the public interest. To the extent there are any impacts, those impacts would be miniscule and could be offset by positive impacts on non-shopping customers. Albertsons attacked Dominion’s claims of cost-shifting as overstated, and based on the implausible assumption of “all else being equal.” Albertsons believes trying to evaluate aggregation petitions in a vacuum, “all else being equal,” fails to account for the timing of rate changes or the amounts by which rates would change as the result of a base rate case. Staff recognized the difficulty of quantifying the rate impact associated with a customer choosing retail shopping. Albertsons noted many factors impact Dominion’s rates, and the impact of the Albertsons Petition is likely to be dwarfed by those other factors. Albertsons provided an example from the Walmart Case that a customer changing a 100-watt lightbulb to a 14-watt (100-watt equivalent) LED lightbulb would completely offset any impact of the Walmart petition; any impact of the Albertsons Petition is one-fifth the impact of the Walmart petition.174

Albertsons differentiated Dominion witness Morgan’s testimony in the Walmart Case regarding who bears the risk for large losses during spikes in market prices. If Albertsons is permitted to aggregate, non-shopping customers would not bear any risk for losses attributable to Albertsons’ load; Albertsons would be entirely at risk for any increases in market prices. Under the utility model, spikes in market prices would be borne by all customers.175

Albertsons distinguished the impact of its Petition on non-shopping customers from the Walmart petition. Albertsons noted the impact of the Walmart petition on a typical residential customer using 1,000 kWh per month was $0.09, while the Albertsons’ impact was $0.03. After taking into consideration the TCJA, the impact would only be $0.02.176 Albertsons noted these impacts assume no other factors would affect non-shopping customers, and these impacts ignore countervailing impacts, such as increases in economic development and energy efficiency. Albertsons continues to believe the Petition would have a de minimis impact on non-shopping customers.177

173 Id. at 22-23.
174 Ex. 3, at 29-34.
175 Id. at 29.
176 See supra n. 116.
177 Ex. 9, at 1-2.
Dominion explained why authorizing Albertsons to switch to aggregated retail choice would adversely affect the Company’s non-shopping customers in a manner contrary to the public interest.

Dominion explained changes in load for generation service can affect the system peak load, jurisdictional and customer class peak loads, and energy consumption. These changes could alter the allocation factors for Dominion’s four jurisdictions and the Virginia jurisdictional customer classes, and result in cost-shifting. This cost-shifting adversely impacts those customers. For a typical residential customer using 1,000 kWh per month, the increase in the monthly bill would be $0.02 taking the TCJA into consideration.178

Dominion believes the Company would have to reallocate its RAC costs to other customers and shift the fixed costs of generation investments from Albertsons to non-shopping customers. This would include any deferral balances accrued while Albertsons received retail electric supply from Dominion.179

Dominion believes Section A 4 petitions might be viewed as increasing Dominion’s financial risk, which in turn increases the cost of capital to the detriment of the Company’s customers.180

Contrary to Albertsons’ complaints about the shortcomings of an “all else being equal” analysis of the potential harm to non-shopping customers, Dominion stated the Commission is familiar with such an analysis and it shows the potential impact of a filing before the Commission.181

Dominion disagreed with Albertsons’ interpretation of SB 1416 as it relates to “utility benefits” and “customer benefits.” First, Dominion noted the applicable statutes require new generation projects to be both required by the public convenience and necessity and not otherwise contrary to the public interest. Second, Dominion explained each of the generation projects demonstrated substantial life-cycle net customer benefits. The Company’s generation projects are a customer benefit, a utility benefit, and a public interest benefit. Dominion expressed its concern with allowing aggregating customers to leave the utility in the early years of generation cost recovery and still have the potential to enjoy the later-in-life benefits should the customer return to utility service. Dominion believes this is unfair for non-shopping customers and unwise public policy.182

Based on an analysis of the impact of the allocation of production plant costs and related non-fuel expenses using Dominion’s Factor 1 and Factor 3, considering an adjustment to reduce purchased power capacity expense associated with Albertsons’ load, and considering an adjustment for the reduction in base generation and generation rider revenue from Albertsons, Dominion determined the jurisdictional and customer class rates of return would decline if the Albertsons Petition was approved. For the Company to achieve the same rates of return, there would need to

178 Ex. 4, at 7. See supra n.116.
179 Id. at 7-8.
180 Id. at 9-10.
181 Id. at 17-18.
182 Id. at 18-20.
be an increase in revenue. For a typical residential customer using 1,000 kWh per month, the increase in the bill would be $0.03 assuming the Petition is approved and Albertsons had taken service from a CSP during 2017. The change in base revenue required is $0.02 and the change in generation rider revenue is $0.01. The TCJA reduces these amounts. The change in revenue needed for a residential customer using 1,000 kWh per month would be $0.02, $0.01 for base rates and $0.01 for generation riders.\footnote{Corrected Ex. 5, at 3-12. \textit{See supra} n.116.} The total revenue shift resulting from the Albertsons Petition taking into consideration the TCJA would be $1,780,282, which includes $1,386,931 in base rate revenue and $393,351 in RAC rate revenues.\footnote{Ex. 6C, at 1.}

Staff commented on the issue of cost-shifting and the timing of rate changes. Staff noted retail shopping results in a loss of load to the incumbent electric utility. The customer no longer purchases generation and transmission service directly from the incumbent utility. Holding all other rate effects constant, this would result in a reduction in kW and kWh sales across which the utility’s fixed generation and transmission costs are allocated. All else being equal, the reduction in kW and kWh sales increases the cost responsibility allocated to non-shopping customers, which could place upward pressure on rates for generation and transmission. Staff cautioned there are several factors that affect the extent and timing of any rate impact on non-shopping customers; consequently, it is difficult to quantify with any precision.\footnote{Ex. 7, at 7-8.}

Staff responded to Dominion’s estimate of the impact on non-shopping customers of Albertsons participating in aggregated retail choice. Dominion witness Haynes developed revisions to Factor 1 and Factor 3. Dominion estimated a typical residential customer using 1,000 kWh per month would see a monthly increase of approximately $0.01 attributed to RACs and $0.02 attributed to base rates, or approximately $0.03.\footnote{Staff’s estimates do not include the impact of the TCJA. \textit{See supra} n.116.} Staff cautioned this was a static simulation, and there are many factors that influence both the extent and timing of any rate impact on Dominion’s non-shopping customers. Those factors might include: (i) the impact of retail shopping on the earnings position at the time of a future base rate proceeding; (ii) the impact of retail shopping on the average cost of fuel; and (iii) changes in wholesale generation and transmission costs and revenues associated with the loss of Albertsons’ aggregated demand.\footnote{Ex. 7, at 8-10.}

Staff addressed the impact on Dominion’s rates if Albertsons were to take service from a CSP. In the near-term, retail shopping would cause a net increase in RAC rates for mechanisms avoided by retail shopping customers. In the long-term, there is the potential for certain costs to be delayed or avoided, if loss of load delays or avoids building new generation.\footnote{Ex. 8, at 2-3.}

Staff explained the loss of a customer to retail shopping can have a positive (savings to non-shopping customers) or negative (costs shifted to non-shopping customers) impact on fuel rates. The directionality of the impact depends on whether the avoided fuel costs due to retail shopping are higher (positive impact) or lower (negative impact) than the utility’s average fuel cost.
Considering Albertsons relatively flat load shape, Staff believes the impact of retail shopping would more or less even out.189

For base rates, the impact is similar to RACs. Fixed and un-avoided variable generation costs persist, but rate recovery is reduced as the retail shopping customers no longer pay generation base rates, which results in lower earned returns in the next base rate case.190

Finally, Staff explained the impact of retail shopping on RACs would be more immediate and the impact on base rates would not be determined until Dominion’s next base rate case in 2021.191

IV. Whether approval of the Albertsons Petition is consistent with the public interest?

Albertsons believes the “consistent with the public interest” requirement in Section A 4 is a lower standard than an “in the public interest” requirement. This would only require the Commission to find that approval of the Petition has a “neutral” effect, rather than finding the approval has a “positive” effect on the public interest. This would be true even if the Commission interprets the public interest broadly. Albertsons noted the General Assembly established a retail shopping benefit for certain eligible customers, as permitted by Sections A 3 and A 4, so it would be reasonable to assume the General Assembly considered retail shopping by those customers was in the public interest.192

Albertsons identified the factors the Commission should consider in determining whether an aggregation petition is consistent with the public interest. These factors include the aggregator’s business model, whether the petition encourages economic development, whether the petition fosters competition, and whether the petition promotes access to competitive energy markets.193

In its Petition, Albertsons is seeking the flexibility to manage its energy expenses to reduce its overall operating expenses. After salaries and benefits, energy is Albertsons’ third largest operating expense. Albertsons operates 39 grocery stores in Virginia, 37 of which are in Dominion’s service territory. Albertsons employs 2766 hourly employees covered by a collective bargaining agreement, and 66 salaried managers. Albertsons serves approximately 926,000 households in Virginia. In 2017, Albertsons collected approximately $23.1 million in taxes for Virginia, paid approximately $23 million in state and local taxes, and purchased approximately $40.2 million in goods and services from Virginia-based suppliers, supporting supplier jobs and the Virginia economy generally.194

In terms of economic development, Albertsons believes it must remain competitive in the retail sector, which has an impact its existing stores and future expansion plans. To remain

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189 Id. at 3.
190 Id. at 3-4.
191 Id. at 4-5.
192 Ex. 3, at 15-17.
193 Id. at 19.
194 Id. at 10-11.
competitive, Albertsons believes it must lower its operating costs. Based on its experience as a wholesale customer in PJM over the last 10 years, Albertsons believes it can lower its energy costs by approximately $600,000 to $1 million annually. Albertsons believes these cost reductions would enable it to remain competitive in the grocery sector, sustain jobs, support taxes, continue purchases from Virginia suppliers, invest in energy efficiency, and promote economic development directly and indirectly in Virginia.195

In terms of competition, Albertsons believes lower energy costs could result in lower prices, lower prices encourage competitors to lower their prices, and competition benefits the public interest. Because of the competitive nature of the retail sector, Albertsons cannot guarantee an exact amount of direct savings from lower energy costs to any one store or any one individual in Virginia. Albertsons noted under the requirements of Section A 4, it is not obligated to guarantee anything. The Albertsons Petition is consistent with the public interest even without any guaranteed benefits. Albertsons further noted its load is minuscule and any adverse impacts are dependent upon the questionable assumption of “all else being equal.” Albertsons believes it demonstrated benefits would accrue to the public generally through: (i) lowering Albertsons’ cost of doing business, which increases competitive pressures on its competitors; (ii) encouraging electric utilities to keep downward pressure on rates for existing customers; (iii) making Virginia more attractive for economic development; and (iv) supporting the existing fleet of Albertsons’ stores that provide goods, services, and jobs to Virginia residents, business opportunities for other companies that support the grocery sector, and state and local tax revenue to Virginia.196

Albertsons explained why its interests align with the public interest in terms of (i) the members of the public who Albertsons serves, (ii) the members of the public who Albertsons employs, (iii) the members of the public who benefit from Albertsons contribution to the local tax base and to local charities, (iv) the members of the public who benefit from retail competition, (v) the members of the public who benefit from competition in electric markets, (vi) the members of the public who benefit from lower greenhouse gas emissions, (vii) the members of the public who benefit from economic development afforded by offering commercial and industrial customers the opportunity to aggregate electric load, and (viii) the members of the public who benefit from Albertsons’ purchases of goods and services. Albertsons believes these benefits would not accrue without granting the Petition. For this reason, Albertsons believes the Petition meets the “consistent with the public interest” requirement of Section A 4.197

Albertsons responded to Dominion’s criticism of Albertsons’ lack of commitment to make any investment in energy efficiency in its Virginia stores resulting from aggregation savings. Albertsons confirmed it would invest $1 million in energy efficiency in its Virginia stores during the first year of participation in aggregated retail choice, if the Commission approves its Petition. Albertsons is confident aggregation would result in significant cost savings allowing this level of energy efficiency investment in its stores.198

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195 Id. at 19-20.
196 Id. at 20-22.
197 Id. at 22-23.
198 Ex. 9, at 2-3.
Albertsons believes approval of the Petition is consistent with the public interest because approval provides an important customer benefit afforded by the General Assembly under Chapter 23 of Title 56, approval imposes no adverse impacts inconsistent with Section A 4, and approval is consistent with a core purpose of enacting Section A 4.199

Dominion disputed Albertsons’ assertion that aggregating load and purchasing from a CSP would result in cost savings. Dominion believes Albertsons failed to consider several factors that could substantially reduce the purported savings, such as pending or likely rate changes resulting from the TCJA, and adjustments in Dominion’s current fuel rate. Dominion is an active participant in the PJM market and is aware of current market prices and trends. Dominion does not believe Albertsons would achieve the savings it claims. Dominion is unaware of any support that suggested cost savings would further economic development in Virginia, or would otherwise result in some benefit consistent with the public interest.200

Dominion noted Albertsons provided no information on how its purported cost savings would equate to increased investments in energy efficiency.201

Dominion disputed the benefits identified by Albertsons witness Waidelich’s testimony.202 Dominion stated all but one of the benefits rely upon the premise that aggregation would result in cost savings and in turn economic development. Dominion believes these benefits are purely hypothetical. Dominion stated Albertsons provided no support for its claim that granting its Petition would reduce greenhouse gas emissions. To the extent Albertsons has renewable energy goals, Dominion provided the ways Albertsons could meet those goals under the Company’s existing tariff.203

Dominion discussed the competitiveness of the Company’s rates. The Company’s rates today, inclusive of riders, are lower than at the same point in 2008. Fuel rates and base rates have decreased more than riders have risen. Dominion’s rates offer less risk and volatility, while remaining competitive with market-based rates in the DOM Zone. Dominion’s rates are below both the South Atlantic average and the U.S. national average for similarly sized customers.204

**Post-Approval Issues**

**Scope of Approved Aggregation**

In its Petition, Albertsons requested approval “to aggregate the demand of 37 nonresidential retail accounts listed in Attachment A” within Dominion’s service territory.205 At the time, no other approvals were requested by Albertsons. As part of his “Simplicity” argument, Albertsons witness Waidelich urged the Commission to make the benefits of Section A 4 available to eligible customers.206

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199 Ex. 3, at 9.  
200 Ex. 4, at 14-15.  
201 Id. at 15-16.  
202 Ex. 3, at 22.  
203 Ex. 4, at 16.  
204 Id. at 20.  
205 Ex. 1, at 1.
customers in a simple and streamlined manner.\textsuperscript{206} As part of that process, Mr. Waidelich advocated once the Albertsons Petition is approved under Section A 4, then compliance should be governed under Section A 3 where an aggregated load could not go below 5 MW and could not exceed 1\% of Dominion’s system peak. This would allow Albertsons the flexibility to add or delete load without having to report to the Commission or have another formal Commission proceeding.\textsuperscript{207}

Dominion witness Morgan disagreed with Albertsons witness Waidelich that approval of the Petition would permit Albertsons to add additional accounts as long as Albertsons stayed below the 1\% load cap. Mr. Morgan believes any approval should be limited to the 37 customer accounts listed in Attachment A of the Albertsons Petition.\textsuperscript{208}

In its Petition, Albertsons sought to aggregate only 14.12 MW of load, an amount close to that approved in the Reynolds Case. If Albertsons logic is followed, once its Petition is approved, it could aggregate over 100 MW of additional load without obtaining any further Commission approvals. This scenario could likely occur if Albertsons purchased another grocery store chain in Virginia. In the Walmart Case, the Commission determined Walmart’s petition to aggregate 70.52 MW of load was not consistent with the public interest. This example illustrates there is a point at which aggregation petitions could no longer be consistent with the public interest. By statute, the Commission is directed to make that determination. For this reason, I recommend any approval of the Albertsons Petition be limited to the account numbers identified in Attachment A to the Petition.

\textit{Reporting}

Section A 4 states, in part, that if an aggregation petition is approved, “the Commission shall impose reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to meet the demand limitations of [Section A 3].”

Albertsons believes the Commission should impose limited reporting requirements. The incumbent electric utilities or the CSPs should report the PJM 5CP data for the Section A 4 customers to Staff for the limited purpose of confirming a Section A 4 customer’s aggregated load remains above 5 MW and below 1\% of the utility’s peak load.\textsuperscript{209}

If the Albertsons Petition is approved, Staff recommended a report be submitted to the Commission annually containing, but not limited to, the following for each aggregated customer to monitor compliance with the demand limitations of Section A 3:\textsuperscript{210}

\begin{itemize}
  \item i. A list of the individual accounts contained in the aggregated customer’s account;
  \item ii. The locations of the individual accounts contained in the aggregated customer’s account; and
\end{itemize}

\textsuperscript{206} Ex. 3, at 9.
\textsuperscript{207} Id. at 36-39.
\textsuperscript{208} Ex. 4, at 21-22.
\textsuperscript{209} Ex. 3, at 40-41.
\textsuperscript{210} Ex. 7, at 11-12, and Attachment EJW-3.
iii. For each individual account, the billed or metered distribution-level demand for each month in the most recently completed calendar year, or prior 12-month period.

Staff's recommendation appears reasonable and consistent with the reporting requirements adopted in the Reynolds Case under Section A 4.211.

**FINDINGS AND RECOMMENDATIONS**

The Commission has broad discretion to evaluate the Albertsons Petition and the impacts associated therewith to determine whether the Petition should be approved or denied. If the Commission decides to approve the Albertsons Petition, I find:

1. Staff's recommended reporting requirements are reasonable; and
2. Any approval should be limited to the account locations identified in the Albertsons Petition.

Accordingly, I **RECOMMEND** the Commission enter an Order:

1. **ADOPTING** the findings and recommendations in this Report, if the Commission approves the Albertsons Petition; and
2. **DISMISSING** this case from the Commission's docket of active cases.

**COMMENTS**

The parties are advised that, pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure and § 12.1-31 of the Code, any comments to this Report must be filed within twenty-one (21) calendar days from the date hereof. If not filed electronically, an original and fifteen (15) copies must be submitted in writing to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

Michael D. Thomas
Senior Hearing Examiner

The Clerk of the Commission is requested to mail a copy of this Report to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, VA 23219.

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211 Reynolds Case, Final Order at 4 (February 21, 2018).