COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 10, 2022

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY CASE NO. PUR-2021-00247

For approval of its 2021 DSM Update
pursuant to § 56-585.1 A 5 of the Code of Virginia

FINAL ORDER

On December 14, 2021, Virginia Electric and Power Company ("Dominion" or "Company") made a filing pursuant to § 56-585.1 A 5 of the Code of Virginia ("Code"), the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities[1] of the State Corporation Commission ("Commission"), the Commission's Rules Governing Utility Promotional Allowances,[2] the Commission's Rules Governing Cost/Benefit Measures Required for Demand-Side Management Programs,[3] the Commission's Rules Governing the Evaluation, Measurement and Verification of the Effects of Utility-Sponsored Demand-Side Management Programs,[4] and the directive contained in Ordering Paragraph (4) of the Commission's September 7, 2021 Final Order in Case No. PUR-2020-00274.[5] Specifically, Dominion filed with the Commission its petition requesting

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[1] 20 VAC 5-204-5 *et seq.*

[2] 20 VAC 5-303-10 *et seq.*

[3] 20 VAC 5-304-10 *et seq.*

[4] 20 VAC 5-318-10 *et seq.*

[5] *Petition of Virginia Electric and Power Company, For approval of its 2020 DSM Update pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUR-2020-00274, Doc. Con. Cen. No. 210920009, Final Order (Sept. 7, 2021) ("2020 DSM Order").

(1) approval to implement new demand-side management ("DSM") programs, including approval of additional funding[6] and extension of existing DSM programs;[7] (2) approval to increase funding for customer awareness and marketing to drive increased participation in the Company's DSM programs; and (3) approval of an annual update to continue rate adjustment clauses designated Riders C1A, C2A, C3A, and C4A ("Petition").[8]

In its Petition, the Company requests approval to implement the following new programs as the Company's "Phase X" programs, which include "energy efficiency" ("EE") DSM programs, as this term is defined by Code § 56-576:[9]

- Residential Income and Age Qualifying Home Energy Report (EE)
- Non-residential Income and Age Qualifying Program for Health Care and Rental Property Owners (EE)
- Small Business Behavioral (EE)
- Non-residential Data Centers and Server Rooms (EE)
- Non-residential Health Care (EE)
- Non-residential Hotel and Lodging (EE)
- Voltage Optimization (EE)
- Enhancement of the Residential Income and Age Qualifying Home Improvement (EE)
- Extension of the Non-residential Lighting Systems & Controls Program (EE)[10]

[6] The Company seeks additional funding for the Company's Phase VII Residential Efficiency Products Marketplace Program. Ex. 2 (Petition) at 11.

[7] The Company seeks approval for future closure of the AC Cycling Program, with the ability to recover costs for program wind-down through base rates through 2023. *Id.* at 12.

[8] *Id.* at 2.

[9] *Id.* at 9.

[10] *Id.*

The Company proposes an aggregate total cost cap for the Phase X programs in the amount of approximately $140 million.[11] Additionally, the Company requests the ability to exceed the spending cap by no more than 15 percent.[12]

The Company also requests, through revised Riders C1A, C2A, and C3A, recovery of costs for September 1, 2022 through August 31, 2023 ("Rate Year") associated with programs previously approved by the Commission in Case No. PUE-2011-00093 ("Phase II Programs"),[13] Case No. PUE-2013-00072 ("Phase III Programs"),[14] Case No. PUE-2014-00071 ("Phase IV Programs"),[15] Case No. PUE-2015-00089 ("Phase V Program"),[16] and Case No. PUE-2016-00111 ("Phase VI Program");[17] in addition to projected Rate Year financing costs on the Actual Cost True-up Factor deferred balances associated with

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[11] *Id.* at 10. *See also* Ex. 10 (Bates Direct) at 9.

[12] Ex. 2 (Petition) at 10-11.

[13] *Application of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia,* Case No. PUE-2011-00093, 2012 S.C.C. Ann. Rept. 298, Order (Apr. 30, 2012).

[14] *Petition of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2013-00072, 2014 S.C.C. Ann. Rept. 289, Final Order (Apr. 29, 2014).

[15] *Petition of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2014-00071, 2015 S.C.C. Ann. Rept. 230, Final Order (Apr. 24, 2015).

[16] *Petition of Virginia Electric and Power Company, For approval to implement new demand-side management programs, for approval to continue a demand-side management program, and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2015-00089, 2016 S.C.C. Ann. Rept. 275, Final Order (Apr. 19, 2016).

[17] *Petition of Virginia Electric and Power Company, For approval to implement new, and to extend existing, demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2016-00111, 2017 S.C.C. Ann. Rept. 384, Final Order (June 1, 2017).

Case No. PUR-2018-00168 ("Phase VII Programs")[18] and Case No. PUR-2019-00201 ("Phase VIII Programs").[19] [20] Additionally, the Company requests, through recently approved Rider C4A, to recover the projected Rate Year costs for applicable programs in the Phase VII, VIII, IX, and X Programs.[21]

The Company further requests approval of an administrative process by which it can make modifications or adjustments to approved DSM programs, in conjunction with the annual update proceedings.[22]

On January 10, 2022, the Commission issued an Order for Notice and Hearing that, among other things, directed Dominion to provide notice of its Petition, provided interested persons the opportunity to comment or participate in the proceeding, directed Staff to investigate the Petition, scheduled public hearings on the Company's Petition, and assigned a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission.

The following entities filed notices of participation: Appalachian Voices; the Natural Resources Defense Council ("NRDC"); the Virginia Energy Efficiency Council; and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel").

[18] *Petition of Virginia Electric and Power Company, For approval to implement demand-side management programs and for two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUR-2018-00168, 2019 S.C.C. Ann. Rept. 285, Order Approving Programs and Rate Adjustment Clauses (May 2, 2019).

[19] *Petition of Virginia Electric and Power Company, For approval of its 2019 DSM Update pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUR-2019-00201, 2020 S.C.C. Ann. Rept. 368, Final Order (July 30, 2020).

[20] Ex. 11 (Woolridge Direct) at 2.

[21] *Id.* Rider C4A was approved in Case No. PUR-2020-00274. *See* 2020 DSM Order at 10-11, 14.

[22] Ex. 2 (Petition) at 13.

On March 22, 2022, Appalachian Voices and the Virginia Energy Efficiency Council each filed testimony. On April 12, 2022, Staff filed the testimony of its witnesses. On April 26, 2022, Dominion filed rebuttal testimony of its witnesses.

On May 11, 2022, a public witness proceeding was conducted telephonically.[23] The hearing continued on May 12, 2022, pursuant to the Hearing Examiner's Ruling dated April 8, 2022, in the Commission's courtroom to hear testimony and accept evidence on the Company's Petition. On June 2, 2022, the Company, Appalachian Voices, NRDC, the Virginia Energy Efficiency Council, Consumer Counsel, and Staff filed post-hearing briefs.

On June 24, 2022, the Report of A. Ann Berkebile, Senior Hearing Examiner ("Report") was issued. The Report contained the following findings and recommendations:[24]

1. The Commission should approve the Company's proposed Phase X DSM Programs, including the proposed Enhancement of the Residential IAQ Home Improvement (EE) Program (initially approved in Phase IX) and Extension of the Non-residential Lighting Systems & Controls (EE) Program (initially approved in Phase VII);
2. The Commission should approve the Company's request for the operation of the Phase X Programs, as well as previously approved DSM programs, without predetermined closure dates;
3. The Commission should approve the Company's proposed Phase X DSM Program cost cap of $140 million and the ability to exceed such cap by no more than 15 percent;
4. The Commission should approve the Company's request to increase the budget for the Phase VII Residential Efficient Products Marketplace Program;
5. The Commission should approve the Company's closure of the Phase I AC Cycling Program (with the ability to recover associated wind-down costs in base rates through 2023);
6. The Commission should approve the Company's request for increased funding (that is, an annual investment of $2.5 million from 2022 to 2026) directed toward improving customer awareness and marketing as a common cost of the Company's DSM Portfolio;
7. The Commission should approve the Company's proposed reorganization and consolidation of its DSM Portfolio consistent with the Company's long-term plan;

[23] Three people testified as public witnesses on May 11, 2022. Tr. 9-30.

[24] Report at 84-85.

8. The Commission should deny the Company's request for an administrative process to approve modifications to previously approved DSM programs;
9. The Commission should approve the Company's request for the use of the gross savings metric to evaluate the Company's attainment of statutory savings targets;
10. The Commission should approve a Rate Year beginning September 1, 2022, and ending August 31, 2023;
11. The Commission should approve a total revenue requirement of $90,660,518 to be recovered through Riders C1A, C2A, C3A, and C4A over the Rate Year;[25]
12. The Commission should approve the Company's proposed rate design and allocation methodology; and
13. The Commission should approve the Company's request to continue Riders C1A, C2A, C3A, and C4A to be effective for billing purposes on the later of September 1, 2022, or the first day of the month which is at least 15 days following the Commission's approval of the Phase X Programs.

The Senior Hearing Examiner then recommended that the Commission enter an order that adopts the findings of the Report and dismisses this case from the Commission's docket of active cases.[26]

The Company, Appalachian Voices, NRDC, the Virginia Energy Efficiency Council, Consumer Counsel, and Staff filed comments on the Report on July 15, 2022.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the findings and recommendations set forth in the Senior Hearing Examiner's Report should be adopted except as otherwise provided herein. The Commission approves the proposed Phase X programs and an overall Rate Year revenue requirement of $90,660,518, as recommended by the Senior Hearing Examiner.

[25] According to Dominion, implementation of the proposed Riders C1A, C2A, C3A and C4A on September 1, 2022, would increase the monthly bill of a residential customer using 1,000 kilowatt hours of electricity per month by $0.29. Ex. 13 (Catron Direct) at 6.

[26] Report at 85.

<u>Savings Achieved by Programs and Measures</u>

In its Application, Dominion "seeks Commission approval to use only the gross savings metric to measure the Company's actual and projected compliance or noncompliance with the total energy savings requirements in Va. Code § 56-596.2...."[27] As explained by Dominion, gross savings are unadjusted for market effects, such as a reduction for any energy efficiency savings that are attributable to "free riders" that would have occurred regardless of the DSM Program.[28] NRDC, Staff, and Appalachian Voices oppose Dominion's request to use gross savings to measure the energy savings requirements.[29]

Code § 56-596.2 B states, in part (emphasis added):

> Notwithstanding any other provision of law, each investor-owned incumbent electric utility shall implement energy efficiency programs and measures to achieve the following *total annual energy savings*: . . .
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> 2. For Phase II electric utilities:
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> a. In calendar year 2022, at least 1.25 percent of the average annual energy jurisdictional retail sales by that utility in 2019;
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> b. In calendar year 2023, at least 2.5 percent of the average annual energy jurisdictional retail sales by that utility in 2019;
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> c. In calendar year 2024, at least 3.75 percent of the average annual energy jurisdictional retail sales by that utility in 2019; and

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[27] Ex. 2 (Application) at 13.

[28] Ex. 3 (Frost Direct) at 7. The Company asserts that it is currently on track to meet the energy efficiency target established for 2022 of 1.25% on either a net or gross basis. *Id.* at 8.

[29] *See, e.g.,* NRDC Comments and Objections at 2-3; Staff's Comments at 2-5; Appalachian Voices' Comments at 3-19. While not expressly opposing Dominion's proposal, Consumer Counsel argues that the gross savings approach would be inappropriate for purposes of provisions of Code § 56-585.1 A 5 c that allow the Company to earn "a margin on energy efficiency operating expenses" and "an additional 20 basis points for each additional incremental 0.1 percent in annual savings in any year achieved by the utility's energy efficiency programs approved by the Commission pursuant to this subdivision . . . ." Consumer Counsel Comments at 2.

> d. In calendar year 2025, at least 5.0 percent of the average annual energy jurisdictional retail sales by that utility in 2019; ....

In turn, Code § 56-576 defines "[t]otal annual energy savings" as follows (emphasis added):

> (i) the total combined kilowatt-hour savings *achieved* by electric utility energy efficiency and demand response programs and measures installed in that program year, as well as savings still being achieved by measures and programs implemented in prior years, or (ii) savings attributable to newly installed combined heat and power facilities, including waste heat-to-power facilities, and any associated reduction in transmission line losses, provided that biomass is not a fuel and the total efficiency, including the use of thermal energy, for eligible combined heat and power facilitates must meet or exceed 65 percent and have a nameplate capacity rating of less than 25 megawatts.

In response to Dominion's request, the Senior Hearing Examiner made a finding that the use of gross savings would be more appropriate for this purpose.[30] The Senior Hearing Examiner, however, also noted that the Commission need not reach this question in the instant proceeding, because Dominion is not herein seeking a finding that it achieved the 2022 total annual energy savings percentage set forth in Code § 56-596.2 B.[31]

Determining whether the Company has achieved the 2022 total annual savings percentage in Code § 56-596.2 B will require a factual analysis based on a separate record, which

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[30] Report at 82. In considering the Senior Hearing Examiner's findings on this matter, the Commission rejects Appalachian Voices' improper and unjustified attack on the Senior Hearing Examiner's good faith effort to analyze the facts and the law attendant to this question. *See, e.g.,* Appalachian Voices' Comments at 2, 12, 15 (accusing the Senior Hearing Examiner of "grasp[ing]," "searching," and "manufactur[ing]" a "purported interpretation" in order to reach her allegedly predetermined "preferred policy choice"). The Commission also rejects Appalachian Voices' multiple claims that because the Senior Hearing Examiner adopted one party's position, she necessarily "disregard[ed]" evidence presented by other parties. Appalachian Voices' Comments at 16 and 16 n.39. This allegation, as well, is neither factually nor legally supportable. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("[P]ursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

[31] Report at 82 n.675.

has yet to be developed and which is not yet before us for such purpose. Under the statute, that required factual analysis is not articulated in terms of "gross" or "net" savings, which are neither referenced nor defined therein. Rather, Dominion has the burden to establish, on a factual basis, the "total combined kilowatt-hour savings achieved by" its energy efficiency and demand response programs and measures.

In this regard, the definition of "achieved" is: "1 a : to bring to a successful conclusion : carry out successfully : ACCOMPLISH … 2 : to get as the result of exertion : succeed in obtaining or gaining : WIN, REACH, ATTAIN."[32] Accordingly, based on the plain language thereof, when Dominion seeks findings on the savings achieved for purposes of this statute, the Company must factually establish the amount of savings that occurred *as the result* of its programs and measures.[33]

EM&V

As the Commission has previously stated, it supports the deployment of cost-effective energy efficiency programs in the Commonwealth paired with rigorous Evaluation, Measurement, and Verification ("EM&V").[34] The Commission finds the Company shall provide additional information in future EM&V Reports to evaluate how programs are performing. In future EM&V Reports, the Company shall include the updated cost/benefit analysis of the DSM programs, along with a comparison of the updated cost/benefit analysis to the original

[32] Webster's Third New International Dictionary 16 (2002).

[33] For example, to the extent the term "free riders" factually represents specific savings that can be reasonably identified, and that were *not* achieved as a result of Dominion's programs and measures, such savings do not fall within the plain language of this statute.

[34] 2020 DSM Order at 11.

cost/benefit analysis when the Program was approved, as well as the results of cost/benefit analyses from prior EM&V Reports.

Finally, in approving the request rate increase herein, the Commission notes its awareness of the ongoing rise in gas prices, inflation, and other economic pressures that are impacting all utility customers. We are sensitive to the effects of rate increases, especially in times such as these. The Commission, however, must follow the laws applicable to any rate case, as well as the findings of fact supported by the evidence in the record. This is what we have done herein.

Accordingly, IT IS ORDERED THAT:

(1) The Petition is granted in part, consistent with the recommendations of the Senior Hearing Examiner, as modified herein.

(2) The Company forthwith shall file revised tariffs, designed to recover $90,660,518 for Riders C1A, C2A, C3A, and C4A, and terms and conditions of service and supporting workpapers with the Clerk of the Commission and with the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance, as is necessary to comply with the directives set forth herein. The Clerk of the Commission shall retain such filings for public inspection in person and on the Commission's website: scc.virginia.gov/pages/Case-Information.

(3) Riders C1A, C2A, C3A, and C4A as approved herein shall become effective for usage on and after September 1, 2022.

(4) Consistent with Code § 56-585.1 A 5, and the requirements of this Order, the Company shall file its application to continue Riders C1A, C2A, C3A, and C4A no later than January 2, 2023.

(5) In future EM&V Reports, the Company shall include the updated cost/benefit analysis of the DSM programs, along with a comparison of the updated cost/benefit analysis to

the original cost/benefit analysis as well as all other cost/benefit analyses from prior EM&V Reports.

(6) This matter is continued.

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